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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17
18 VERISIGN, INC., a Delaware
corporation,
19
20 Plaintiff,
21 v.
22 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
23 NUMBERS, a California corporation
24 Defendants.

Case No. CV 04-1292 AHM (CTx)

**FIRST AMENDED COMPLAINT
FOR VIOLATION OF THE
ANTITRUST LAWS, SPECIFIC
PERFORMANCE OF
CONTRACT, DAMAGES FOR
BREACH OF CONTRACT,
INTERFERENCE WITH
CONTRACTUAL RELATIONS,
DECLARATORY AND
INJUNCTIVE RELIEF**

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26
27 Plaintiff VERISIGN, INC. ("VeriSign") alleges, upon information and belief,
28 as follows:

THE INTERNET DOMAIN NAME SYSTEM

1
2 9. The Internet is a network of interconnected computers and computer
3 networks. Every computer connected directly to the Internet has a unique address.
4 These addresses, which are known as Internet Protocol (“IP”) numbers, are necessary
5 for computers to “communicate” with each other over the Internet. An example of an
6 IP number might be: 98.27.241.30.

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

12 11. Internet domain names consist of a string of “domains” separated by
13 periods. “Top-level” domains, or “TLDs”, are found to the right of the period and
14 include (among others) “.com,” “.gov,” “.net” and “.biz,” which are sometimes
15 referred to as “generic” TLDs (also known as “gTLDs”). Other top-level domains are
16 referred to as country code TLDs (also known as “ccTLDs”), and are represented by
17 two-letter abbreviations for each country, such as “.uk” (United Kingdom) and “.ca”
18 (Canada). For relevant purposes herein, gTLDs are functionally equivalent to
19 ccTLDs. There are approximately 250 top-level domains, which are administered
20 and operated by numerous entities, both in and outside of the United States.

21 12. “Second-level” domains (“SLDs”) are those domains immediately to the
22 left of the top-level domains, such as “uscourts” in the domain name “uscourts.gov.”
23 There are over 50 million second-level domains currently registered within the
24 various TLDs.

25 13. Because domain names are essentially “addresses” that allow computers
26 connected to the Internet to communicate with each other, each domain name must be
27 unique, even if it differs from another domain name by only one character (*e.g.*,
28

1 “uscourts.com” is different from “uscourt.com” or “us-courts.com”). A given domain
2 name, therefore, can be registered to only one entity.

3 14. VeriSign acts as the “registry” for domain names registered in the .com
4 gTLD in accordance with a written agreement with ICANN. As the “registry” for the
5 .com gTLD, VeriSign maintains the definitive directory that associates registered
6 domain names in this gTLD with the corresponding IP numbers of their respective
7 domain name servers. The domain name servers, in turn, direct Internet queries to
8 resources such as websites and email systems.

9 15. A domain name is created by an individual or organization that registers
10 the domain name and thereby includes it in the registry’s master database. The
11 individual or organization that registers a specific domain name is a “registrant.”
12 Registrants do not have direct access to the VeriSign registry. Instead, prospective
13 registrants must register domain names through any one of approximately 175
14 operational private companies located in the United States and throughout the world
15 that act as domain name “registrars” for the second-level domain names in the .com
16 gTLD.

17 **THE PARTIES**

18 16. From 1993 until November 1999, in accordance with Cooperative
19 Agreement NCR 92-18742 (“Cooperative Agreement”) entered into between NSI and
20 the National Science Foundation (“NSF”), NSI performed domain name registration
21 and registry functions for the .com and .net gTLDs, among others, in exchange for
22 financial and other support from the United States Government. The National
23 Telecommunications and Information Administration of the United States
24 Department of Commerce (“DOC”) assumed responsibility from NSF for
25 administering the Cooperative Agreement on or about October 1, 1998, pursuant to
26 Amendment 10 of the Cooperative Agreement. For a period of time subsequent to
27 November 1999, NSI continued to serve as a registrar of domain names, and
28

1 VeriSign has operated the registries for the .com and .net (among other) gTLDs, as
2 more specifically described below.

3 17. ICANN is a private corporation that was created in 1998 in response to a
4 plan by the DOC to introduce competition into the field of domain name registration,
5 among other objectives. ICANN is governed by and acts through an international
6 Board of Directors that is elected by members of various constituent groups and
7 supporting organizations within ICANN. As more specifically alleged below, among
8 the members of these groups are operators of gTLDs that compete with each other
9 and with VeriSign; domain name registrars that are present or potential competitors
10 of each other and of VeriSign for certain services; and foreign governments and
11 foreign registries that have ccTLDs that compete with the gTLD registries operated
12 by VeriSign. ICANN frequently carries out its activities, including the conduct
13 alleged herein, through the collective action of its supporting organizations (which, in
14 turn, are comprised of various constituent groups). In fact, in certain circumstances,
15 ICANN was bound by its By-Laws to follow the actions of its supporting
16 organizations.

17 18. In November 1998, the DOC entered into a Memorandum of
18 Understanding (“MOU”) with ICANN. In accordance with the MOU, ICANN was to
19 perform certain technical coordination functions in connection with the domain name
20 system. Among other things, ICANN was to study and develop procedures for the
21 transition from a system of one domain name registrar to a system of multiple
22 registrars of second-level domain names in the “.com,” “.net,” and “.org” gTLDs, and
23 for the creation of new gTLDs. The MOU established the promotion of competition
24 in the domain name system as one of its central principles. Furthermore, the MOU
25 explicitly prohibits ICANN from acting arbitrarily or unjustifiably to injure any
26 person or entity, or from “singl[ing] out any particular party for disparate treatment
27 unless justified by substantial and reasonable cause.”
28

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

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

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

24 26. Recognizing the potential for harm to VeriSign from ICANN’s
25 subsequent adoption of specifications or policies, the parties included in the 2001
26 .com Registry Agreement a provision entitled “Protection from Burdens of
27 Compliance With ICANN Policies.” That provision expressly provides: “ICANN
28 shall indemnify, defend, and hold harmless Registry Operator [VeriSign] . . . from

1 and against any and all claims, damages, liabilities, costs, and expenses, including
2 reasonable legal fees and expenses, arising solely from Registry Operator's
3 compliance as required by this Agreement with an ICANN specification or policy
4 (including a Consensus Policy) established after the Effective Date"

5 27. The 2001 .com Registry Agreement further sets forth the following
6 "General Obligations of ICANN." "With respect to all matters that impact the rights,
7 obligations, or role of Registry Operator," the agreement explicitly provides that
8 ICANN shall, among other obligations: (i) "exercise its responsibilities in an open
9 and transparent manner," (ii) "not unreasonably restrain competition and, to the
10 extent feasible, promote and encourage robust competition," and (iii) "not apply
11 standards, policies, procedures and practices arbitrarily, unjustifiably or inequitably
12 and not single out Registry Operator for disparate treatment unless justified by
13 substantial and reasonable cause." These and other obligations of ICANN to VeriSign
14 under the 2001 .com Registry Agreement are not limited to VeriSign's provision of
15 "Registry Services," but are owed by ICANN to VeriSign in connection with any
16 conduct of ICANN that impacts VeriSign's "rights, obligations, or role of Registry
17 Operator."

18 28. The 2001 .com Registry Agreement establishes affirmative obligations
19 of ICANN: (i) to establish and maintain "independent review policies" and "adequate
20 appeal procedures" to be available to VeriSign to the extent it "is adversely affected
21 by ICANN standards, policies, procedures or practices," and (ii) to take all reasonable
22 steps, and make substantial progress, towards entering into agreements, similar to the
23 2001 .com Registry Agreement, with registries competing with the .com gTLD
24 registry operated by VeriSign.

25 29. In addition to such express obligations not unreasonably or inequitably
26 to interfere with VeriSign's registry business, ICANN is subject to an implied
27 covenant of good faith and fair dealing not to take actions unfairly or in bad faith to
28 deprive VeriSign of the intended benefits of the 2001 .com Registry Agreement.

1 Further, at all times relevant hereto it was understood and agreed between the parties
2 that ICANN would not unreasonably withhold or delay consent to reasonable
3 updates, upgrades or other changes in the operation of or specifications for the
4 registry.

5 30. Nothing in the 2001 .com Registry Agreement authorizes ICANN to do
6 any of the following: (i) prohibit, regulate, or restrict VeriSign's provision of
7 services that are not defined Registry Services governed by the agreement;
8 (ii) regulate or fix the prices at which VeriSign may offer such services; or
9 (iii) regulate, restrict, or prohibit the marketing methods or promotions VeriSign uses
10 to promote its services.

11 **ICANN'S CONDUCT WITH RESPECT TO VERISIGN'S PROPOSED**
12 **NEW SERVICES HAS RESTRAINED COMPETITION AND VIOLATED**
13 **THE 2001 .COM REGISTRY AGREEMENT**

14 31. As the operator of the registry for the .com gTLD, VeriSign competes
15 with the operators of registries for other gTLDs and ccTLDs. VeriSign's commercial
16 and competitive success in operating the .com registry depends in substantial part on
17 its ability to offer services that are attractive to its customers, which include the
18 registrars of second-level domain names and the domain name registrants who are
19 customers of those registrars. In order to serve its customers and preserve its
20 competitive position, VeriSign has attempted to provide a variety of new innovative
21 value-added services to its customers to enhance the value and attractiveness of
22 second-level domain names registered in the .com gTLD. These services have been
23 blocked, delayed and/or restricted by ICANN's wrongful conduct. This conduct of
24 ICANN, which was undertaken in combination with, and through the capture and
25 control of, VeriSign's competitors, has injured competition and restrained trade in the
26 relevant markets in violation of the antitrust laws, as more specifically alleged in
27 paragraphs 84 through 187 below, and has violated the terms and provisions of the
28 2001 .com Registry Agreement.

Site Finder

1
2 32. VeriSign created and, on or about September 15, 2003, implemented a
3 new service known as Site Finder. Site Finder provided an Internet user who makes
4 an error in typing a web address, such that the second-level domain name of the
5 address does not appear in the .com gTLD's zone files, with a list of alternative web
6 addresses to which the user may choose to navigate. For example, if a user typed
7 www.bokkstore.com into his Internet browser and no such web address existed, Site
8 Finder would respond with a message that the address entered could not be found and
9 asking whether the user meant www.bookstore.com or www.bookstores.com.

10 33. Prior to the introduction of Site Finder, when a user mistyped a web
11 address, the user typically would receive a message (known as a "404 error
12 message") that simply told the user that the web page he or she is seeking is "not
13 found," without any other assistance. With the Site Finder service, however, the user
14 receives a user-friendly help screen that includes not only a clear message that what
15 was entered could not be found but also such information as: (i) alternative web
16 addresses the user may have been seeking; (ii) a search engine, and (iii) links to
17 contextually popular categories of websites the user can search. Thus, the Site Finder
18 screen provides the user with helpful information and options beyond a simple error
19 message.

20 34. Other gTLD and ccTLD registries that compete with the .com gTLD
21 registry, including the .museum gTLD registry, with which ICANN has a registry
22 agreement, and ccTLD registries, many of which have no agreements with ICANN,
23 are currently offering services similar to Site Finder for domain names within their
24 TLDs, and the operators of other gTLD and ccTLD registries have stated that they
25 intend to launch similar services. ICANN has never objected to the offering of such
26 services by these other gTLD and ccTLD registries, and ICANN facilitated the
27 offering of a service similar to Site Finder by the .museum gTLD.
28

1 35. The Site Finder service is not integral to the operation of the .com gTLD
2 registry nor a Registry Service within the meaning of the 2001 .com Registry
3 Agreement. All actions by VeriSign, including services provided by VeriSign in
4 connection with Site Finder, are fully compliant with all specifications provided in
5 the 2001 .com Registry Agreement.

6 36. Nonetheless, on October 3, 2003, ICANN demanded that VeriSign
7 suspend its Site Finder service, wrongly asserting, *inter alia*, that Site Finder is a
8 Registry Service within the meaning of the 2001 .com Registry Agreement and that
9 ICANN has the right to restrict or prohibit the offering of Site Finder and/or establish
10 the terms and conditions upon which the service may be offered (“Suspension
11 Ultimatum”). In its Suspension Ultimatum, ICANN further asserted that the
12 operation of Site Finder by VeriSign constituted a breach of VeriSign’s obligations
13 under the 2001 .com Registry Agreement and threatened VeriSign that, unless Site
14 Finder was suspended forthwith, ICANN would initiate legal proceedings against
15 VeriSign. ICANN’s further performance of its obligations under the 2001 .com
16 Registry Agreement was conditioned upon VeriSign’s compliance with ICANN’s
17 demands with respect to Site Finder, thereby threatening VeriSign’s continuing
18 operation of the .com registry under the 2001 .com Registry Agreement. In
19 connection with the Suspension Ultimatum, ICANN also issued false public
20 statements that VeriSign was violating its obligations as registry operator and
21 interfering with the stability of the Internet. In contrast, with respect to other
22 registries offering services similar to Site Finder, ICANN made no such threats or
23 public statements.

24 37. ICANN’s demands upon VeriSign were made in conjunction with and at
25 the behest of various constituent groups within ICANN and other businesses that
26 compete with VeriSign, as more fully alleged in paragraphs 84 through 187 of this
27 Complaint. Operation of the .com registry pursuant to the 2001 .com Registry
28 Agreement constitutes a material portion of VeriSign’s business. As a direct result of

1 the Suspension Ultimatum and related actions by ICANN, VeriSign had no
2 reasonable, present and existing choice under the circumstances but to submit to
3 ICANN's threats and to suspend Site Finder to the detriment of VeriSign and millions
4 of Internet users.

5 38. ICANN's conduct regarding Site Finder prior to the commencement of
6 this action constituted present and existing breaches of the 2001 .com Registry
7 Agreement in the following respects, among others:

- 8 • ICANN acted to regulate and control Site Finder, even though Site
9 Finder was not a "registry service" and was not subject to ICANN
10 regulation or control;
- 11 • ICANN treated VeriSign in an unequal and disparate manner compared
12 to other gTLD and ccTLD registries offering services similar to Site
13 Finder as to which ICANN never issued any Suspension Ultimatum,
14 never made disparaging or untrue public statements, and never imposed
15 regulation or control;
- 16 • ICANN did not act openly and transparently regarding Site Finder,
17 instead refusing meetings with and evidence from VeriSign in the course
18 of the events leading to ICANN's issuance of the Suspension
19 Ultimatum;
- 20 • ICANN did not have independent review policies in effect when the
21 Suspension Ultimatum was issued or at any time prior to VeriSign's
22 filing of this action; and
- 23 • ICANN unreasonably restrained competition, and did not promote and
24 encourage competition, by regulating and controlling Site Finder and by
25 forcing the suspension of Site Finder.

26 These breaches have deprived consumers of a beneficial new service and VeriSign of
27 revenues and profits it would generate from and in connection with Site Finder. In
28 addition, by unjustifiably imposing improper conditions on the Site Finder service,

1 ICANN has deprived VeriSign of the ability to formulate and offer a service in the
2 manner best designed to meet the needs of customers and the competitive and
3 financial goals of VeriSign.

4 Wait Listing Service

5 39. In or about December 2001, VeriSign informed ICANN of the details of
6 a proposed Wait Listing Service (“WLS”) that VeriSign intended to begin offering.
7 VeriSign designed WLS to meet a market demand for an orderly and reliable, open
8 and transparent, way for domain name registrants, through their selected,
9 participating registrars, to submit a subscription to register a currently registered
10 domain name in the event the current registration is deleted.

11 40. Using WLS, a prospective domain name registrant, through any of the
12 approximately 175 operational ICANN-accredited registrars, could submit a
13 subscription on a first-come, first-served basis for a domain name currently registered
14 in the .com gTLD registry. In the event that a registered domain name in the .com
15 gTLD registry, on which a WLS subscription is placed, is thereafter deleted from the
16 registry, and thereby becomes available for creation and registration – and more than
17 25,000 domain names are deleted each day – the holder of the WLS subscription
18 would become the registrant of the domain name.

19 41. If there is no WLS subscription for a domain name in the .com gTLD
20 registry, upon the deletion of the domain name registration by the sponsoring
21 registrar, the domain name is deleted from the VeriSign registry’s database and
22 becomes available for creation and registration through any ICANN-accredited
23 registrar, on a first-come, first-served basis.

24 42. As proposed by VeriSign, WLS is not integral to the operation of the
25 .com gTLD registry and is not a Registry Service within the meaning of the 2001
26 .com Registry Agreement.

27 43. Nevertheless, ICANN discussed VeriSign’s proposed offering of WLS
28 with, and sought agreements with respect to WLS from, ICANN’s Registrar

1 Constituency, the members of which are in competition or potential competition with
2 VeriSign and potential customers of VeriSign for WLS. Based upon opposition to
3 WLS from its Registrar Constituency, ICANN announced to the Internet community
4 that WLS is a Registry Service within the meaning of the 2001 .com Registry
5 Agreement. In addition, ICANN has asserted against VeriSign the authority to: (i)
6 prevent the offering of WLS, (ii) set the price at which it may be offered, (iii)
7 establish the terms and conditions of the service, and (iv) restrict when WLS can be
8 introduced. The intended and inevitable effect of ICANN's conduct has been to
9 delay VeriSign's offering of WLS, if not to preclude the offering of WLS altogether.

10 44. VeriSign would have been ready and able to begin offering WLS to
11 registrars and their customers in or before August 2002, and would have done so, but
12 for ICANN's conduct alleged herein. As a condition purportedly to approving WLS,
13 ICANN insisted that VeriSign must, among other things: (i) introduce new
14 procedures not required by the 2001 .com Registry Agreement; (ii) delay offering
15 WLS at least until approximately October 2003, and then indefinitely; (iii) reduce the
16 price at which VeriSign intended to offer WLS based on input from competitors; and
17 (iv) accept other "conditions" of ICANN suggested by and intended to benefit various
18 ICANN constituent groups to the detriment of VeriSign, competition, and the
19 proposed service. These conditions were imposed by ICANN in combination and
20 conspiracy with and at the behest of members of the Registrar Constituency within
21 ICANN who would compete with VeriSign's WLS, as more fully alleged in
22 paragraphs 90 through 127 of this Complaint. While VeriSign's offering of WLS is
23 being delayed by ICANN's conduct, members of ICANN's Registrar Constituency
24 who have objected to WLS, and others, are free, and have been free, without these or
25 other impediments and conditions by ICANN, to offer similar services that are
26 competitive with but inferior to WLS, and some have done so. Numerous registrars
27 have offered and are offering such services, including registrars who initially
28

1 supported WLS but, during the period of ICANN's delay, have begun offering
2 services competitive with WLS themselves.

3 45. Furthermore, ICANN has imposed conditions on VeriSign, changed
4 conditions, and imposed new conditions for offering WLS arbitrarily, unjustifiably,
5 and inequitably, delaying and preventing introduction of WLS, and ICANN has done
6 so in a manner that is not open or transparent.

7 46. ICANN's conduct regarding WLS prior to the commencement of this
8 action constituted present and existing breaches of the 2001 .com Registry Agreement
9 in the following respects, among others:

- 10 • ICANN acted to regulate and control WLS, even though WLS was not a
11 "registry service" and was not subject to ICANN regulation or control;
- 12 • ICANN did not act openly and transparently in its consideration of WLS
13 and in the imposition of numerous and changing conditions on WLS;
- 14 • ICANN did not have independent review policies in effect when ICANN
15 imposed conditions on VeriSign's offering of WLS or at any time prior
16 to VeriSign's filing of this action;
- 17 • ICANN unreasonably restrained competition in collaboration with
18 VeriSign's competitors, and did not promote and encourage competition,
19 by regulating and delaying VeriSign's offering of WLS, which would
20 compete with inferior unguaranteed "backorder" services offered by
21 registrars and which, as even ICANN contemporaneously recognized,
22 would give consumers a greater choice;
- 23 • ICANN treated VeriSign in an unequal and disparate manner compared
24 to registrars offering competitive "backorder" services as to which
25 ICANN has never sought to exercise any regulation or control and has
26 never imposed conditions similar to those imposed on WLS; and
27
28

- 1 • ICANN conditioned further performance of its obligations under the
2 2001 .com Registry Agreement upon VeriSign's acceptance of ICANN's
3 control over non-registry services such as WLS.

4 These breaches by ICANN have deprived consumers of a beneficial new service and
5 have deprived VeriSign of the revenues and profits it would have generated from and
6 in connection with WLS. In addition, by unjustifiably imposing other conditions on
7 the service and purporting to restrict its price, ICANN has deprived VeriSign of the
8 ability to formulate and offer a service in the manner best designed to meet the needs
9 of customers and the competitive and financial goals of VeriSign. At the same time,
10 the delay in offering WLS has benefited other businesses that offer similar or
11 competitive services, including businesses who have combined and conspired with
12 ICANN and caused ICANN to delay and obstruct VeriSign's offering of WLS.

13 ConsoliDate

14 47. In or about January 2003, VeriSign began offering a new domain name
15 registration expiration date ("anniversary date") synchronization service known as
16 "ConsoliDate." ConsoliDate was designed to make it easier for domain name
17 registrants, through any of the approximately 175 operational ICANN-accredited
18 registrars, to manage the registration and renewal of multiple domain names, by
19 adjusting and synchronizing the anniversary dates of their various domain name
20 registrations.

21 48. The average domain name registrant maintains from 10 to 15 domain
22 names in the .com gTLD registry. Large corporations maintain hundreds or even
23 thousands of domain name registrations. Different domain name registrations usually
24 have different anniversary dates for purposes of renewal of the registrations.
25 Registrants therefore receive multiple renewal notices; must keep track of multiple
26 renewal dates; and pay renewal fees on multiple dates throughout the year.

27 49. ConsoliDate allows domain name registrants in the .com gTLD to add
28 from 1 to 364 days to an existing domain name registration term. For example, a

1 registrant with one domain name registration with an anniversary date of June 13,
2 2005, and another with an anniversary date of October 4, 2005, could use
3 ConsoliDate to synchronize these expiration dates by adding 113 days to the term of
4 the first domain name registration period, so that it will also have an anniversary date
5 of October 4, 2005. ConsoliDate thereby allows domain name registrants to create a
6 single anniversary date for their entire domain name registration portfolio in the .com
7 gTLD, reducing registrant errors and permitting registrants to streamline their
8 payment processes.

9 50. ConsoliDate is not integral to the operation of the .com gTLD registry
10 and is not a Registry Service within the meaning of the 2001 .com Registry
11 Agreement.

12 51. While ICANN provisionally supported the introduction of ConsoliDate,
13 it has claimed that ConsoliDate is a Registry Service and has purported to condition
14 permanent approval of ConsoliDate on VeriSign's entering into certain amendments
15 to the 2001 .com Registry Agreement.

16 52. ICANN has made statements and engaged in conduct that presuppose
17 ConsoliDate is a Registry Service within the meaning of the 2001 .com Registry
18 Agreement, and ICANN has asserted authority to: (i) restrict the offering of
19 ConsoliDate, (ii) set the price at which it may be offered, and (iii) establish the terms
20 and conditions of the service. ICANN's actions have threatened, among other
21 adverse effects on competition, a future interruption in the offering of ConsoliDate.

22 53. Further, ICANN has imposed conditions, and then imposed new
23 conditions for Consolidate arbitrarily, unjustifiably, and inequitably, and ICANN has
24 done so in a manner that was not open and transparent.

25 54. By improperly purporting to impose conditions on ConsoliDate and
26 control its price and other terms, ICANN has deprived VeriSign of the ability to
27 formulate and offer a service in the manner best designed to meet the needs of
28 customers and the competitive and financial goals of VeriSign, and has deprived

1 VeriSign of revenues and profits it would have generated from and in connection
2 with ConsoliDate.

3 Internationalized Domain Names

4 55. In or about November 2000, VeriSign began an internationalized domain
5 name service (“IDN”) in a third-level domain testbed environment. IDN allows
6 Internet users to use non-ASCII (that is, non-English) character sets to register and
7 use domain names in the .com gTLD. In other words, a speaker of Mandarin
8 Chinese, for example, could type a web address including a registered second-level
9 domain name within the .com gTLD, using the non-ASCII character set of her native
10 language. IDN would permit a translation of that address to the appropriate
11 registered domain name within the .com gTLD. VeriSign intended thereafter to offer
12 IDN on a permanent basis with respect to second-level domain names within the .com
13 gTLD.

14 56. In the early days of the Internet, the vast majority of users and domain
15 name registrants spoke English as their native language and used ASCII (English)
16 character sets on their computers. However, there are Internet users worldwide
17 whose native languages are represented in non-ASCII character sets. Currently or in
18 the near future this group will comprise the majority of Internet users.

19 57. Languages represented in non-ASCII character sets are not widely
20 supported in the global domain name system. IDN meets the important need for a
21 global multilingual DNS solution, supporting the billions of people who require or
22 want Internet access in their native languages. IDN would significantly increase
23 Internet availability and e-commerce opportunities for this group and for those who
24 do business with them, and it would increase the value and attractiveness of second-
25 level domain names in the .com gTLD, thereby stimulating competition among TLD
26 registries.

27 58. IDN is not integral to the operation of the .com registry and is not a
28 “Registry Service” within the meaning of the 2001 .com Registry Agreement.

1 59. While IDN makes possible the use of non-ASCII character sets in users'
2 native languages, the registered second-level domain name within the .com gTLD
3 must be in ASCII characters. To trigger the translation of the domain name from
4 ASCII characters to the corresponding non-ASCII characters, these domain names
5 include the prefix "bq--" in the testbed, and now include the prefix "xn--".

6 60. An appendix to the 2001 .com Registry Agreement purports to "reserve"
7 to ICANN all "tagged domain names" with "hyphens in the third and fourth
8 characters." VeriSign therefore sought ICANN's authorization to use domain names
9 with an "xn--" prefix to enable the .com gTLD registry to provide IDN service, as
10 other competing gTLD registries, and ccTLD registries that are not under contract
11 with ICANN, are already doing or have publicly announced they intend to do.
12 ICANN had an obligation under the 2001 .com Registry Agreement not to withhold
13 its consent to such request unreasonably or in bad faith.

14 61. Contrary to that obligation, ICANN unreasonably and in bad faith
15 conditioned its approval of the release of domain names with hyphens in the third and
16 fourth characters from reserved status, however, on VeriSign's formal agreement to
17 abide by certain "Guidelines for the Implementation of Internationalized Domain
18 Names," among other conditions. These "Guidelines" and other conditions ICANN
19 has sought to impose would require costly and burdensome procedures not within the
20 contemplation of the 2001 .com Registry Agreement. Even though VeriSign
21 operated the IDN testbed for nearly three years and maintained IDN registrations for
22 nearly one million names in that testbed, ICANN arbitrarily and unreasonably
23 withheld its consent to the new service. These conditions were imposed by ICANN
24 in conjunction with and at the behest of various constituent groups within ICANN
25 and other businesses that compete with VeriSign's .com gTLD registry but, in many
26 instances, are not themselves bound by the same conditions, as more fully alleged in
27 paragraphs 157 through 187 of this Complaint.
28

1 62. ICANN's conditions for giving consent are not consistent with the
2 requirements of the 2001 .com Registry Agreement or covenants of good faith and
3 fair dealing therein, and they impose arbitrary, long-term, fixed obligations on
4 VeriSign with respect to a rapidly emerging technology.

5 63. ICANN's actions have caused, among other adverse affects on
6 competition, a delay in VeriSign's offering of IDN (other than on a third-level testbed
7 environment) with consequent loss of volume and market share of, and loss of
8 revenues from, IDN registrations in the .com gTLD compared to what they would
9 have been absent ICANN's wrongful conduct alleged herein.

10 64. ICANN's conduct regarding IDN prior to the commencement of this
11 action constituted present and existing breaches of the 2001 .com Registry Agreement
12 in the following respects, among others:

- 13 • ICANN acted to regulate and control IDN, even though IDN was not a
14 "registry service" and was not subject to ICANN regulation or control;
- 15 • ICANN did not act openly and transparently in its consideration of IDN,
16 including in the imposition of numerous conditions on VeriSign's
17 offering of IDN and in the evaluation of VeriSign's satisfaction of those
18 conditions;
- 19 • ICANN treated VeriSign in an unequal and disparate manner compared
20 to other gTLD and ccTLD registries seeking to offer IDN, by approving
21 other registries' offering of IDN and not approving, or delaying
22 approval, of VeriSign's offering of IDN, even though VeriSign and such
23 other registries were similarly situated with respect to their support for
24 and implementation of the substance of ICANN's IDN "guidelines";
- 25 • ICANN did not have independent review policies in effect when ICANN
26 imposed conditions on VeriSign's offering of IDN or at any time prior to
27 VeriSign's filing of this action;

- 1 • ICANN unreasonably restrained competition (in collaboration with
2 VeriSign's competitors), and did not promote and encourage
3 competition, by authorizing other similarly situated registries to
4 commence offering IDN while prohibiting or delaying VeriSign's
5 offering of IDN; and
- 6 • ICANN conditioned further performance of its obligations under the
7 2001 .com Registry Agreement upon VeriSign's acceptance of ICANN's
8 control over non-registry services such as IDN.

9 These breaches by ICANN deprived consumers of a beneficial new service and have
10 deprived VeriSign of the revenues and profits it would have generated from and in
11 connection with IDN. In addition, by unjustifiably imposing other conditions on the
12 service, ICANN has attempted to deprive VeriSign of the ability to formulate and
13 offer a service in the manner best designed to meet the needs of customers and the
14 competitive and financial goals of VeriSign. At the same time, the delay of
15 VeriSign's IDN has benefited other businesses that offer similar or competitive
16 services, including those who have acted in concert with ICANN to cause ICANN to
17 impose the foregoing conditions and impediments on VeriSign.

18 **ICANN'S CONDUCT WITH RESPECT TO VERISIGN'S INCENTIVE**
19 **MARKETING PROGRAM HAS RESTRAINED COMPETITION**
20 **AND VIOLATED THE 2001 .COM REGISTRY AGREEMENT**

21 65. In or about November 2001, VeriSign launched an incentive promotion
22 program that encouraged domain name registrars to promote the sale of second-level
23 domain names in the .com gTLD on their web sites. Under the promotion,
24 participating webmasters were offered an incentive on non-discriminatory terms to
25 display an advertisement for .com domain names on their site. The promotion
26 required participants to display a VeriSign advertisement prominently on every web
27 page on which a participating registrar offered domain names for registration. In
28 exchange for such advertisements, VeriSign would pay placement fees and provide

1 other consideration to participants in the promotional program. The impetus for and
2 purpose of this marketing program was to enable VeriSign to meet the increased
3 competition for domain name registrations from new and rapidly growing ccTLDs
4 and from newly established gTLDs.

5 66. Nonetheless, within days of the launch of VeriSign's marketing
6 program, ICANN improperly demanded that VeriSign cease the program on the
7 ground that it had not been approved by ICANN, even though nothing in the 2001
8 .com Registry Agreement or elsewhere required ICANN's approval therefor, and
9 ICANN threatened to declare VeriSign in formal breach of the 2001 .com Registry
10 Agreement unless the program was suspended. ICANN refused to withdraw its threat
11 to declare VeriSign in breach of the agreement, until VeriSign committed to modify
12 its marketing program to conform to ICANN's arbitrary and improper dictates. In so
13 doing, ICANN conditioned further performance of its obligations under the 2001
14 .com Registry Agreement upon VeriSign's acceptance of ICANN's control over non-
15 registry services such as VeriSign's marketing program.

16 67. ICANN has no right to approve, or jurisdiction over, VeriSign's
17 marketing practices. By unjustifiably imposing improper conditions on VeriSign's
18 marketing practices, ICANN has deprived VeriSign of the ability to promote and
19 market its services in the manner best designed to enhance its business. Moreover,
20 the ccTLD registries with which VeriSign competes can implement similar or other
21 promotional programs freely, without ICANN's approval or involvement. ICANN's
22 unauthorized and wrongful interference with VeriSign's business has improperly
23 restrained VeriSign's ability to compete for domain name registrations and deprived
24 it of revenues and profits it would generate from, and as a result of, its intended
25 marketing program. ICANN's actions also have harmed competition among TLD
26 registries by unreasonably restricting VeriSign's ability to promote registrations in
27 the .com gTLD.
28

1 **ICANN’S BREACHES OF THE REGISTRY AGREEMENT**

2 68. By its course of conduct commencing in 2001 and continuing through
3 the date of commencement of this action, ICANN repeatedly breached and repudiated
4 its express and implied obligations to VeriSign under and in connection with the 2001
5 .com Registry Agreement, and the implied covenant of good faith and fair dealing
6 therein, as more fully alleged in paragraphs 31 through 67, above, and in paragraphs
7 188 through 200 and 207 through 230, below.

8 **Issuing Improper Ultimatum to Shut Down Site Finder**

9 69. Prior to the suspension of Site Finder as alleged above, Site Finder
10 provided a helpful service to users of the Internet; enabled VeriSign to compete more
11 effectively with operators of competitive gTLD and ccTLD registries that are offering
12 or intend to offer a similar service; made the registration of domain names within the
13 .com gTLD more desirable and attractive, to the benefit of .com gTLD registrars and
14 registrants; and generated additional revenues for VeriSign.

15 70. No proper basis existed for ICANN’s issuance of the Suspension
16 Ultimatum, which was a violation of the 2001 .com Registry Agreement. The
17 Suspension Ultimatum was issued, and ICANN acted to terminate Site Finder.
18 despite the facts that: (i) Site Finder was fully compliant with all applicable
19 specifications and standards; (ii) Site Finder did not destabilize the operation of the
20 .com gTLD registry, the DNS, or the infrastructure of the Internet; and (iii) other
21 competing gTLD and ccTLD registries continue to offer services similar to Site
22 Finder. In taking this action, ICANN singled VeriSign out for arbitrary and disparate
23 treatment, failed to act in an open and transparent manner, referred the matter to a
24 committee controlled by VeriSign’s competitors and relied on its “report” for its
25 decision, and acted without having in place a functional mechanism for independent
26 review of its action, all as required by the 2001 .com Registry Agreement. In
27 addition, the Suspension Ultimatum was undertaken without ICANN’s compliance
28 with the procedural and substantive safeguards necessary to adopt a valid Consensus

1 Policy. Further, by this conduct, ICANN conditioned further performance of its
2 obligations under the 2001 .com Registry Agreement upon VeriSign's acceptance of
3 ICANN's control over non-registry services such as Site Finder.

4 71. Since the Suspension Ultimatum is not authorized by, and was issued in
5 violation of, the 2001 .com Registry Agreement, the Suspension Ultimatum has the
6 effect of a new ICANN policy or specification adopted subsequent to the effective
7 date of said agreement. As such, in addition to VeriSign's other rights under the
8 agreement, VeriSign is entitled to indemnity from ICANN for the costs and injury to
9 VeriSign resulting from the Suspension Ultimatum.

10 **Improperly Purporting to Broaden the Definition of Registry Services**

11 72. ICANN's unjustified and overreaching attempt over a three-year period
12 to regulate services that VeriSign offers to registrars and to domain name registrants,
13 in breach of the parties' registry agreement, has delayed and otherwise impeded the
14 introduction of new services by VeriSign. ICANN has also attempted improperly to
15 regulate and to fix the prices at which those services may be offered by VeriSign. As
16 a result, ICANN's conduct has harmed competition and caused injury to VeriSign,
17 and threatens to continue to cause such harm and injury to VeriSign in the future, as
18 more specifically alleged below.

19 73. ICANN has asserted the authority to "regulate" as Registry Services
20 governed by the agreement, new services of VeriSign that, in fact, do not fall within
21 the definition of "Registry Services" and are not properly the subject of the .com
22 Registry Agreement or any proper restriction by ICANN. Furthermore, ICANN has
23 purported to assert the authority to fix the price at which such services may be
24 offered.

25 74. As alleged in more detail above with respect to specific new services of
26 VeriSign, the effect of ICANN's improper attempt to broaden the definition of
27 Registry Services governed by the agreement has been: (i) to prohibit, delay and
28 impede the introduction of beneficial new services by VeriSign, (ii) to impose

1 conditions on the offering of these services, (iii) improperly to set or regulate the
2 prices of those services, (iv) unreasonably to restrain competition for such services
3 and interfere with VeriSign's business, and (v) unfairly to prevent VeriSign from
4 securing the benefits contemplated by the Registry Agreement.

5 75. ICANN further has asserted the authority to "regulate" VeriSign's
6 marketing practices, even though they do not fall within the definition of "Registry
7 Services" and are not properly the subject of the .com Registry Agreement or any
8 proper restriction by ICANN. As a result, ICANN's conduct has harmed competition
9 and caused injury to VeriSign, and threatens to continue to cause such harm and
10 injury to VeriSign in the future.

11 76. The improper conduct of ICANN has been facilitated by, and has inured
12 to the benefit of, competitors and potential competitors of VeriSign who have
13 misused ICANN's processes, often with the active and knowing encouragement and
14 participation of ICANN, to impede VeriSign's offering of new services and to fix,
15 and attempt to fix, the prices for services offered by VeriSign.

16 **Failing to Promote Competition and**
17 **Unreasonably Restraining Competition**

18 77. The foregoing course of conduct places VeriSign at a competitive
19 disadvantage in comparison to other gTLDs and ccTLDs under contract with ICANN
20 that have been allowed to offer and market similar, competitive services without the
21 same restrictions, delays, and impediments that ICANN has placed on VeriSign. This
22 conduct is a breach of ICANN's obligations under the 2001 .com Registry Agreement
23 "not [to] apply standards, policies, procedures and practices arbitrarily, unjustifiably
24 or inequitably and not single out Registry Operator for disparate treatment," as well
25 as a breach of ICANN's affirmative obligation in the 2001 .com Registry Agreement
26 "not unreasonably to restrain competition and, to the extent feasible, promote and
27 encourage robust competition."
28

1 78. In addition, the foregoing course of conduct by ICANN has placed
2 VeriSign at a competitive disadvantage in comparison to ccTLDs as to which ICANN
3 has no agreements and claims no power to regulate. The latter registries are free to
4 offer, and are offering, new and improved services to registrars and registrants, and to
5 market their services to the public, while VeriSign's offering and marketing of
6 similar and other services for the .com gTLD is being unreasonably and arbitrarily
7 prevented, delayed, regulated and impeded by ICANN.

8 **Failure to Reach Agreements with Other Registry Operators**

9 79. At the time VeriSign and ICANN entered into the 2001 .com Registry
10 Agreement, the parties understood and intended, and ICANN committed to VeriSign,
11 that ICANN would use all reasonable efforts, and make substantial progress, toward
12 signing agreements similar to the 2001 .com Registry Agreement with registries,
13 particularly the over 240 ccTLD registries, that compete with the .com gTLD registry
14 operated by VeriSign. The mutually understood purpose of this commitment was to
15 assure that, to the maximum extent feasible, competitive registries would be
16 competing on an equal footing with the .com gTLD registry. This obligation on the
17 part of ICANN was carried over from the 1999 Registry Agreement with NSI.

18 80. Notwithstanding this obligation, ICANN has failed to make substantial
19 progress toward entering into any agreements, much less agreements similar to the
20 2001 .com Registry Agreement, with competing registries, thereby severely and
21 adversely affecting VeriSign from a competitive perspective.

22 81. In fact, only 11 of the approximately 240 competing ccTLD registries
23 have entered into Registry Agreements with ICANN, and ICANN has publicly
24 admitted making little or no effort to have ccTLD registries do so. Moreover, of the
25 11 competing ccTLD registries with which ICANN does have agreements, those
26 agreements are not similar to the 2001 .com Registry Agreement, and do not impose
27 on the competing registries the obligations and restrictions that ICANN imposes, and
28 seeks to impose, on VeriSign based upon the 2001 .com Registry Agreement. As a

1 result, ICANN's failure in this regard has exacerbated the harm to competition from
2 ICANN's actions as alleged herein and the losses and damages VeriSign has incurred
3 and will continue to incur in the future.

4 **Other Breaches by ICANN**

5 82. ICANN has additionally breached its obligations to VeriSign under the
6 2001 .com Registry Agreement by, among other actions and omissions, and as more
7 fully alleged in this Complaint, consistently failing to exercise its responsibilities in
8 an open and transparent manner; applying its standards, policies, procedures, and
9 practices arbitrarily, inequitably, and in bad faith, and repeatedly and unjustifiably
10 singling VeriSign out for disparate treatment; and failing to establish any meaningful,
11 adequate, and independent review policies and procedures.

12 **FIRST CLAIM FOR RELIEF FOR**
13 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT**

14 83. Plaintiff repeats and realleges the averments of paragraphs 1 through 82
15 above as though fully set forth herein.

16 84. The conduct of ICANN in restricting and purporting to "regulate" non-
17 Registry Services offered or proposed to be offered by VeriSign, and in delaying the
18 introduction and setting the prices or terms of those services, represents the collective
19 and conspiratorial acts of ICANN and existing and potential competitors of VeriSign,
20 including competitors who are members of the constituent groups and supporting
21 organizations of ICANN, in the relevant markets and submarkets as defined below.

22 85. The constituent groups and supporting organizations of ICANN engaged
23 in the conduct alleged in this Complaint are substantially controlled by existing and
24 potential competitors of VeriSign and others sharing similar economic interests with
25 VeriSign's competitors. As ICANN has acknowledged, its processes are especially
26 subject to control or capture by small groups of competitive interests for, among other
27 reasons, that competitors have strong interests directly affected by particular actions
28 of ICANN while other members of ICANN's constituent groups and supporting

1 organizations, generally part time volunteers, are not interested in or directly affected
2 by such actions and/or lack time or resources fully to participate in the ICANN
3 processes, therefore not attending meetings of or voting on issues presented to the
4 supporting organizations. The result is that a small number of highly motivated
5 competitors can and do control actions and decisions of ICANN's constituent groups
6 and supporting organizations.

7 86. As described by ICANN's President in his February 2002 Report: "The
8 current ICANN concept is based on the notion of "bottom-up" policy development,
9 with the Supporting Organizations responsible for the development of policy and *the*
10 *Board theoretically just the implementing device* for those policies. In hindsight, the
11 notion of truly "bottom-up" consensus decision-making simply *has not proven*
12 *workable, partly because the process is too exposed to capture by special interests*
13 and partly because ICANN relies entirely on volunteers to do all the work." Indeed,
14 as more specifically alleged below, at times relevant hereto, the Board of ICANN was
15 required by ICANN's Bylaws to accept the recommendations of the relevant
16 supporting organizations. In testimony before a Congressional committee in June
17 2002, ICANN's President testified that members of ICANN's supporting
18 organizations push ICANN "to perform *only* those policy functions that *hamstring*
19 *their competitors.*"

20 87. In reports leading to the establishment of ICANN, the United States
21 Department of Commerce ("DOC") admonished: "The new corporation's processes
22 should be fair, open and pro-competitive, protecting against *capture by a narrow*
23 *group of stakeholders.*" The DOC further stated that ICANN "can face antitrust
24 liability if it is dominated by an economically interested entity, or if standards are set
25 in secret by a few leading competitors."

26 88. ICANN unlawfully has combined and conspired with VeriSign's
27 competitors, and others sharing similar economic interests with them, to restrain trade
28 with respect to the WLS, Site Finder service and IDN service. VeriSign's

1 competitors have captured or controlled ICANN's processes with respect to each of
2 these beneficial new services, using those processes improperly to "regulate"
3 VeriSign's business and to block, delay or impose unwarranted and burdensome
4 conditions on the offering of competitive services by VeriSign. Furthermore, ICANN
5 has failed to act with transparency or accountability in doing the things alleged
6 herein, thereby encouraging, facilitating, and contributing to the capture and control
7 of its processes by VeriSign's competitors, and the promotion of these competitors'
8 economic interests to the detriment of competition.

9 89. ICANN possesses market power in relevant markets and submarkets
10 alleged herein. ICANN has asserted the power to prevent VeriSign from offering the
11 WLS, SiteFinder and IDNs, and through its actions has prevented VeriSign from
12 doing so. ICANN has authority with respect to technical coordination functions for
13 the Internet's DNS, including the development of standards and policies. ICANN's
14 standards, policies and actions are influential among certain providers of Internet
15 services, governmental bodies and users of the Internet, among others. Furthermore,
16 ICANN has authority for contracting for the operation of all of the gTLDs, including
17 for choosing registry operators and for the renewal of registry agreements; ICANN
18 has contracts with the operators of a number ccTLDs; and ICANN has other powers
19 with respect to certain actions (*e.g.*, changes of registry operators) of all Internet
20 registries. ICANN also accredits and enters into contracts with all registrars for the
21 registration of domain names in the gTLDs, including all of VeriSign's customers.
22 ICANN exercises such authority and powers over registries and registrars to
23 implement its standards and policies. Non-compliance with ICANN's standards and
24 policies can place a provider of DNS and certain other Internet services at a great
25 disadvantage in the marketplace.

1 The Wait Listing Service

2 The Conspiracy to Restrain Competition

3 90. ICANN and existing and potential competitors of VeriSign have
4 conspired to use, and have in fact used, ICANN's processes improperly to regulate
5 VeriSign's attempted introduction of the WLS and to delay and impose anti-
6 competitive conditions on the WLS. The existing or potential competitors of
7 VeriSign who, at times relevant hereto, have actively combined with ICANN to
8 restrain competition with respect to the WLS include, among others, the operators of
9 the following registrars or competitive services: GoDaddy Software, Inc.; Alice's
10 Registry, Inc.; eNom Inc.; Dotster, Inc.; Pool.com, Inc.; and TuCows, Inc. (the "WLS
11 co-conspirators"). As ICANN's President recently testified before a Congressional
12 committee, such registrars or operators of related services had a "direct competitive
13 interest" in the WLS, "the availability of the WLS (with its guarantee of
14 performance) to consumers would reduce the demand for their services (which were
15 not able to offer a comparable guarantee), and thus they strongly opposed approval of
16 the WLS."

17 91. At all times relevant hereto, ICANN was comprised of a board of
18 directors, supported by three "supporting organizations," each of which had primary
19 responsibility for policy development in its area of expertise. The Domain Name
20 Supporting Organization ("DNSO") had primary responsibility for developing policy
21 relating to domain names. The Address Supporting Organization and Protocol
22 Supporting Organization had responsibilities in other areas.

23 92. The policymaking body of the DNSO is known as the Names Council.
24 As formally organized, the Names Council includes representatives from each of
25 seven constituencies, including registrars, gTLD registries, and ccTLD registries.
26 The constituencies are self-organized and determine their own criteria for
27 participation. The Names Council has appointed certain Task Forces composed of
28 volunteers to carry out the substantive policy development work of the DNSO. As a

1 practical matter, for the reasons alleged above, a very few highly interested or highly
2 motivated representatives can easily capture, dominate and control the work of a Task
3 Force, Names Council, and DNSO, as in fact occurred with respect to consideration
4 of WLS.

5 93. At all times relevant hereto, the members of the Registrar Constituency
6 of ICANN, including the WLS co-conspirators, have provided the single largest
7 source of ICANN's funding. The President of ICANN concluded in his February
8 2002 Report that ICANN has been seriously underfunded and its dependence on
9 registrars for a significant portion of its funding leaves ICANN "overly vulnerable."
10 As a result, he noted, there have been "deficiencies" in ICANN's decision-making
11 resulting from ICANN's budget being dependent on the "consent of those subject to
12 its policy control." One or more of the WLS co-conspirators have offered to fund
13 expenses of ICANN in defense of the claims made in this litigation.

14 94. Indeed, the representative of the Registrar Constituency, and a WLS co-
15 conspirator, on the task force concerned with the WLS, has publicly stated: "[*W*]e
16 *are ICANN...* Work doesn't need to get to the [Domain Name Supporting
17 Organization (the "DNSO")] or the Board before ICANN officially gets involved."

18 95. At times relevant hereto, ICANN's Bylaws provided that the DNSO had
19 "primary responsibility" for developing and recommending policies pertaining to
20 domain names, and, except for a few narrowly defined exceptions, the Board was
21 *bound to accept the DNSO's recommendations*, notwithstanding control of the DNSO
22 by existing and potential competitors of VeriSign. The President of ICANN
23 concluded in his February 2002 Report that the Board's dependence on the decisions
24 of the supporting organizations freed these groups from having to support their
25 decisions. In fact, as the President of ICANN observed at other times, such a
26 structure for ICANN's processes has allowed competitors to use those processes for
27 anti-competitive purposes, including to "hamstring their competitors."
28

1 96. Following VeriSign's announcement of the WLS in December 2001, the
2 operators of certain registrars and related services, who are existing or potential
3 competitors of VeriSign with respect to the WLS (as more specifically alleged
4 below), formed a conspiracy to control ICANN's processes and use them to delay,
5 block or impose anti-competitive conditions on VeriSign's offering of WLS.
6 Pursuant to this conspiracy, on or about March 10, 2002, the Registrar Constituency
7 of the DNSO, which, with respect to the WLS was controlled by the WLS co-
8 conspirators, issued a purported Position Paper asserting that ICANN should exercise
9 control over the WLS and limit or block its introduction by VeriSign. The Registrar
10 Constituency undertook these actions for anti-competitive purposes, despite the fact
11 that there was no proper basis for ICANN to assert control over the WLS and despite
12 the fact that the WLS would not adversely affect the technical operation or stability of
13 the Internet.

14 97. The head of the Registrar Constituency has admitted that the result of the
15 Position Paper was that the ICANN Board had to deem WLS to be "policy related
16 and thus subject to the current DNSO quagmire," which was "subject to capture." In
17 fact, by causing the Registrar Constituency to issue the Position Paper, when no such
18 formal statement of position was required or called for, the WLS co-conspirators
19 ensured that they would keep control of the process of review of the WLS within
20 ICANN and could thereby "hamstring their competitor" VeriSign. The WLS co-
21 conspirators did assert control over and captured the DNSO proceedings, including
22 the Names Counsel, with respect to the WLS.

23 98. Based on the purported Position Paper and a desire to avoid the adverse
24 impact of the WLS on the competitive position of WLS co-conspirators, the Board of
25 Directors of ICANN agreed with the WLS co-conspirators to assert control over
26 WLS, substantially delay its implementation by VeriSign, and allow the ICANN
27 process to be controlled by VeriSign's competitors. Pursuant to this concerted action
28 of the Board and the WLS co-conspirators, the Board purported to initiate a

1 Consensus Review Process and referred the review process of the WLS to the DNSO.
2 As alleged above, the DNSO was controlled, as relevant hereto, by the Registrar
3 Constituency and the WLS co-conspirators. An employee of one of the WLS
4 co-conspirators in the Registrar Constituency has publicly acknowledged that the
5 Registrar Constituency controls the adoption of domain name registration policies by
6 the DNSO and ICANN.

7 99. Pursuant to the 2001 .com Registry Agreement between VeriSign and
8 ICANN, the Consensus Review Process is a specific, defined process through which
9 ICANN can, under certain limited circumstances, adopt policies concerning *non-*
10 *Registry Services*, but only where necessary to protect the technical stability of the
11 Internet and only where those policies do not unreasonably restrain competition. In
12 fact, ICANN's actions in purporting to invoke the Consensus Review Process were
13 part of a combination designed unreasonably to restrain competition; as ICANN has
14 admitted, the WLS did not implicate the technical stability of the Internet; and, as
15 alleged below, ICANN has incorrectly asserted at other times that the WLS *is a*
16 *Registry Service*. Contrary to ICANN's actions, the Consensus Review Process had
17 no proper application to the WLS, and ICANN never did complete the process or
18 adopt a Consensus Policy regarding the WLS under the 2001 .com Registry
19 Agreement. ICANN's purported invocation of the Consensus Review Policy served
20 as a pretext to keep the review of WLS in the hands of the DNSO, the Names
21 Counsel and its Task Force, which ICANN knew were controlled by the WLS co-
22 conspirators.

23 100. Pursuant to the Board action, the DNSO referred consideration of the
24 WLS to a Task Force that had previously been created for other purposes and was
25 controlled in proceedings related to WLS by VeriSign's competitors, including the
26 WLS co-conspirators. The Task Force included a leading representative of the
27 Registrar Constituency, who had been an active and vocal critic of WLS and a
28 supporter of the Position Paper, and who worked for one of the WLS co-conspirators.

1 Like all of ICANN's constituent groups and supporting organizations, the members
2 of the Task Force are volunteers and have other jobs. For most of the members, WLS
3 affected neither their own businesses nor those of the members of the constituencies
4 they represented. In contrast, the WLS was perceived as an important competitive
5 issue for registrars, some of whom, including the WLS co-conspirators, were then
6 offering or planning to offer a competing service. As a result, a small number of
7 highly motivated competitors and those sharing similar economic interests were able
8 to capture and control the work, report and recommendations of the Task Force.

9 101. In response to ICANN's action in delaying WLS and referring its
10 consideration to a known group of VeriSign's existing and potential competitors,
11 VeriSign objected to ICANN on the grounds that ICANN had no basis or authority to
12 conduct such a "process." ICANN turned a deaf ear to VeriSign's objections.

13 102. On or about July 14, 2002, the Task Force issued a Report seeking to
14 delay, block and/or place anti-competitive conditions on the implementation by
15 VeriSign of WLS. As part of the conspiracy between ICANN and the WLS co-
16 conspirators, the DNSO, which was controlled by the WLS co-conspirators as
17 relevant hereto, adopted the position of the Registrar Constituency and Task Force.
18 Due to the requirements of the then existing ICANN Bylaws, the Board of ICANN
19 had to adopt and approve the substance of the DNSO's position, and, in furtherance of
20 the conspiracy, it did so.

21 103. By adopting the position of the DNSO, ICANN, which was captured and
22 controlled by VeriSign's competitors, improperly asserted control over WLS and
23 imposed anti-competitive conditions on its implementation by VeriSign. The
24 conditions imposed by ICANN in concert with the WLS co-conspirators substantially
25 restricted the operation and value of WLS, diminished the features and attractiveness
26 of WLS for consumers, delayed the implementation of WLS, and made the
27 implementation of WLS more costly and potentially impractical or infeasible. To
28 comply with those conditions, among other things, VeriSign would have had to incur