

COPY

1 JESSE W. MARKHAM, JR. (CA SBN 87788)
WILLIAM L. STERN (CA SBN 96105)
2 JENNIFER LEE TAYLOR (CA SBN 161368)
KEITH L. BUTLER (CA SBN 215670)
3 MORRISON & FOERSTER LLP
425 Market Street
4 San Francisco, California 94105-2482
Telephone: 415.268.7000
5 Facsimile: 415.268.7522
JMarkham@mofo.com

6 Attorneys for Plaintiff
7 Coalition For ICANN Transparency Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

13 COALITION FOR ICANN
TRANSPARENCY INC., a Delaware
14 Corporation,

15 Plaintiff,

16 v.

17 VERISIGN, INC., a Delaware
Corporation; INTERNET
18 CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, a
19 California Corporation,

20 Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF
THE ANTITRUST LAWS,
CALIFORNIA BUSINESS &
PROFESSIONS CODE SECTION
17200, AND THE LANHAM ACT;
INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE; AND
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiff Coalition for ICANN Transparency Inc. (“CFIT”) brings this action
2 against Internet Corporation for Assigned Names and Numbers (“ICANN”) and VeriSign, Inc.
3 (“VeriSign”), and alleges as follows:

4 NATURE OF THE ACTION

5 1. ICANN is responsible for coordinating the Internet domain name system (“DNS”)
6 and operates pursuant to a charter granted it by the United States Department of Commerce. Its
7 chief mandate is the promotion of competition in the Internet domain name system. ICANN is
8 prohibited from “unjustifiably or arbitrarily” injuring “particular persons or entities or particular
9 categories of persons or entities” and is required to “act in a non-arbitrary and reasonable manner
10 with respect to . . . any . . . activity related to the DNS project.” Unfortunately, ICANN has
11 strayed from its mission and, unless enjoined, is threatening to do the very things its charter
12 prohibits.

13 2. This is an action to preserve the status quo in markets related to Internet domain
14 names, and to prevent VeriSign from expanding its monopoly control over the .com and .net
15 domain name registries into downstream and adjacent markets. Plaintiff seeks an injunction
16 against the signing and implementation of a proposed .com Registry Agreement between ICANN
17 and VeriSign (the “2005 .com Agreement”); an injunction against VeriSign’s monopoly
18 leveraging conduct as specified herein; an injunction requiring ICANN to adhere to its
19 governmental mandate to maintain competition and prevent discrimination in markets related to
20 Internet domain names; and an injunction requiring VeriSign and ICANN to abide by the terms of
21 the current .com agreement (the “2001 .com Agreement”) until it expires and requiring ICANN to
22 entertain competing bids for the operation of the .com registry at that time. Plaintiff also requests
23 declaratory relief that the agreements and understandings between the defendants, as reflected in
24 the terms of the 2005 .com Agreement, as well as the similar “2005 .net Agreement,” constitute
25 violations of federal and state antitrust laws and state unfair competition laws, and ordering
26 appropriate relief to restore competitive conditions in affected markets.

27 3. As explained more fully below, ICANN has abrogated its government-mandated
28 obligation to maintain competition and prevent discrimination in markets related to Internet

1 domain names by acquiescing and colluding in VeriSign's strong-arm tactics to leverage its
2 limited-duration contractual monopoly over the .com and .net Internet domain name registries
3 into a permanent monopoly over those registries and over adjacent and downstream markets for
4 various domain name services. Specifically, in awarding VeriSign the contractual right to operate
5 the .com and .net registries, ICANN agreed to contract-renewal terms with VeriSign that have the
6 practical effect of installing VeriSign as the permanent operator of the .com and .net registries,
7 which permits VeriSign to extract supra-competitive prices from consumers transacting business
8 with the registries. Then, having acquiesced in VeriSign's consolidation of permanent registry
9 monopolies, ICANN agreed to contract terms with VeriSign that permit the extension of
10 VeriSign's monopoly control to the downstream market for the registration of expiring domain
11 names, which permits VeriSign to extract supra-competitive prices from consumers registering
12 domain names. ICANN has also agreed to contract terms with VeriSign that permit the extension
13 of VeriSign's monopoly control of the registries to the adjacent market for the provision of
14 domain name directory assistance, which permits VeriSign to charge supra-competitive prices for
15 advertising and other services offered through directory assistance sites, and to drive rivals out of
16 that line of business.

17 4. VeriSign's conduct makes it abundantly clear that it has no intention of reining in
18 its illegal monopolistic imperialism until it has conquered every market related to Internet domain
19 names. ICANN's conduct makes it clear that it is unable or unwilling to put a stop to VeriSign's
20 "monopoly-creep." In fact, ICANN is now colluding in the promotion of VeriSign's
21 monopolistic scheme in exchange for a share of the monopoly profits. Plaintiff, therefore, on
22 behalf of its members, requests that this Court intervene and prevent ICANN and VeriSign from
23 eliminating competition in the markets related to Internet domain names.

24 **PARTIES**

25 5. ICANN is a private not-for-profit corporation, organized and existing under the
26 laws of the State of California, and having its principal place of business in Marina Del Rey,
27 California. ICANN is responsible for providing technical coordination of the Internet domain
28 name system.

1 (c) The .com and .net Registration Markets are the markets in which
2 VeriSign, and VeriSign alone, sells .com and .net registrations to registrars
3 on behalf of their end-user customers. VeriSign is permitted to operate in
4 these markets solely by virtue of being a party to the .com and .net
5 agreements.

6 2. The market for services used by end users in the purchase and sale of
7 expiring domain name registrations (the “Expiring Names Registration Services
8 Market”). The Expiring Names Registration Services Market includes various
9 services that are bought by end users to register domain names when they expire
10 on the .com and .net registries. The relevant services include, without limitation,
11 “back order” services that assist registrars in acquiring expiring domain names for
12 registration on behalf of clients (potential and actual registrants), and auctions
13 through which expiring domain name registrations are released to the public for
14 bidding.

15 3. The market for Web address directory assistance services (the “Directory
16 Assistance Services Market”). The Directory Assistance Services Market includes
17 the market for provision of services to assist Internet users trying to find particular
18 web sites.

19 12. The relevant geographic market as to each relevant product market is the world.

20 **INTERSTATE COMMERCE**

21 13. The conduct of defendants VeriSign and ICANN complained of herein will take
22 place in and affect interstate trade and commerce of the United States in that the purchases and
23 sales of services in the relevant markets are transacted across state lines.

24 14. The conduct of defendants VeriSign and ICANN complained of herein will
25 directly, substantially, and foreseeably affect interstate trade and commerce in that defendants
26 will obstruct free and open competition in the .com and .net Registration Markets, the Expiring
27 Names Registration Services Market, and the Directory Assistance Services Market.

BACKGROUND

I. THE INTERNET DOMAIN NAME SYSTEM

15. The Internet is a network of interconnected computers and computer networks. Every computer connected directly to the Internet has a unique numerical address. These addresses, which are known as Internet Protocol (“IP”) addresses, are necessary for computers to “communicate” with each other over the Internet. An example of an IP address is 64.233.161.147.

16. Because numerical IP addresses can be cumbersome and difficult for Internet users to remember or to use, the numerical IP address system has been overlaid with a more “user-friendly” system of domain names, the DNS. Under this system, a single alphanumeric domain name is associated with a specific IP address. For example, the IP address 64.233.161.147 is more commonly known as google.com.

17. Internet domain names consist of “domains” separated by periods. “Top-level” domains, or “TLDs,” are found to the right of the period final and include (among others) “.com,” “.gov,” “.net,” and “.biz,” which are sometimes referred to as “generic” TLDs or “gTLDs.” “Second-level” domains are those domains immediately to the left of the top-level domains, such as “uscourts” in “uscourts.gov.”

18. Because domain names are essentially “addresses” that allow computers connected to the Internet to communicate with each other, each domain name must be unique, even if it differs from another domain name by only one character (*e.g.*, cook.com is different from cooks.com). A given domain name, therefore, can be registered to only one entity.

19. To ensure that each domain name is associated with the correct IP address, each TLD has a single “registry” that maintains a central database of domain names and associated IP addresses within the TLD. VeriSign maintains the registry for .com and .net domain names. A domain name is created by an individual or organization that registers the domain name, thereby causing the registry’s database to associate the domain name with the individual or organization’s IP address.

1 20. The .com and .net domain names are the dominant domain names in their
2 categories in the United States. The .com domain names are the primary commercial domain
3 names and dominate the market for such names used for purposes of United States commerce.
4 Similarly, the .net domain names are the dominant names used for general networking purposes,
5 such as personal web sites. Other common domain names, such as .gov and .edu, are not
6 permitted for commercial or general networking purposes.

7 21. The individual or organization that registers a specific domain name is a
8 “registrant.” Registrants do not have direct access to the registry’s database. Instead, prospective
9 registrants must register a domain name through a “registrar,” of which there are hundreds.
10 Registrars handle the technical details of registering domain names in the registry.

11 22. The process through which registrars acquire the registration rights in .com and
12 .net domain names is automated: Qualified registrars are granted a limited number of connections
13 to VeriSign’s registry computers. To register a domain name, a registrar sends an “add”
14 command to VeriSign’s registry computer; if the name is available, the “add” command is
15 accepted, and the registrar may register the name on behalf of a registrant.

16 23. Because there is competition for many .com domain names that have already been
17 registered, registrars typically send rapid-fire “add” commands through their several connections
18 hoping to be the lucky one to have an “add” command accepted in the event that the registration
19 for that domain name expires and is released. The system functions, in essence, like a lottery; one
20 of the potentially millions of “add” commands sent to the registry by registrars will be the lucky
21 one – the lottery winner.

22 24. Because the probability of successfully adding a domain name increases with the
23 number of “add” commands sent, and the number of “add” commands that can be sent increases
24 with the number of connections to VeriSign’s computers, the industry quickly recognized that the
25 more registrars participating in the domain name lottery on behalf of a client, the greater the
26 chance of success. A number of “back order service providers” emerged whose function in the
27 marketplace is to partner with several registrars so that when one of the registrars receives an
28 order from a client, the back order provider can arrange to have all its partner-registrars

1 participate in the lottery on behalf of the client and increase the likelihood of winning the domain
2 name lottery. If successful, the back order service provider and its partner-registrars all share
3 appropriately in the registration fee charged to the client.

4 25. In the United States, .com domain names are essential for a vast majority of
5 businesses. Recognizable (and hence usable) .com domain names are in limited supply. Web site
6 owners who want a particular domain name that is already registered typically monitor a list of
7 registered names that will soon expire. When a potential registrant sees that a particular domain
8 name has not been renewed and is about to expire and be released, the potential registrant can
9 contact his or her registrar and "back order" the domain name. The registrar will work with its
10 back order service provider to attempt to register the domain name when it is released by
11 VeriSign. VeriSign's system automatically releases the expired domain names daily, starting at
12 2:00 p.m. Eastern time and continuing until the expired domain names are all released. In the
13 meantime, the back order service providers who have orders for any of the domain names to be
14 released on a particular day will use all of their pooled registry connections to attempt to register
15 the domain names on behalf of registrants. Thus, if a back order service provider has seventy
16 permitted connections, all seventy connections will attempt to register the domain names their
17 registrants want as they are released by VeriSign. The back order service provider that is
18 successful in obtaining a domain name sought by a registrant will then turn the domain name over
19 to the registrar through which the potential registrant placed the back order. If there is more than
20 one back order placed on a particular domain name through a particular back order service
21 provider, the back order service provider may put the domain name up for auction on its web site.

22 26. The back order service is a robust and competitive business, with millions of
23 dollars in revenue and hundreds of registrars competing in the market. In some instances, no
24 back order service is required, and in those transactions recent prices have ranged approximately
25 between \$6.95 and \$7.50 to register a new or previously released domain name. Of this, VeriSign
26 and ICANN collect \$6.25 (\$6.00 to VeriSign and \$0.25 to ICANN) for the registration of each
27 .com domain name and \$4.25 (\$3.50 to VeriSign and \$0.75 to ICANN) for each .net domain
28 name, which amount is set pursuant to the current .com and .net registry agreements that VeriSign

1 has with ICANN. The balance is retained by the new owner's registrar. When a domain name is
2 considered valuable, it is likely to be registered through use of a back order service. Recent
3 competitive prices for these services have been in the range of \$60. Of this, VeriSign collects
4 \$6.00 for the registry fee for .com domain names and \$4.25 for .net domain names. The
5 remaining amount is split between the back order service provider and all of its registrar partners.
6 Under current competitive conditions, it is common for the back order service provider to retain
7 (after deducting VeriSign's fee) 50% of the amount and for the registrar partners to split the
8 remaining 50%. If a domain name is auctioned by a back order service, the amounts are split in
9 the same fashion. VeriSign still receives its set \$6.00 or \$4.25 registry fee, the back order service
10 provider still receives 50% of the auction price (after deducting \$6.00 or \$4.25) and the registrar
11 partners still split the remaining 50% of the auction price (after deducting \$6.00 or \$4.25).

12 **II. ICANN'S ROLE IN THE INTERNET DOMAIN NAME SYSTEM**

13 27. ICANN was established pursuant to a Department of Commerce ("DOC")
14 initiative to provide technical coordination of the Internet's domain name system. ICANN
15 operates under a Memorandum of Understanding (the "MOU") with the DOC. The MOU is
16 effectively ICANN's charter, an enabling regulation that established ICANN. The promotion of
17 competition in the domain name system is one of the MOU's central principles. The MOU states
18 in pertinent part:

- 19 1. "This Agreement promotes the management of the DNS in a manner that
20 will permit market mechanisms to support competition and consumer choice in the
21 technical management of the DNS. This competition will lower costs, promote
22 innovation, and enhance user choice and satisfaction."
- 23 2. Section V. D.2 of the MOU prohibits ICANN from "unjustifiably or
24 arbitrarily" injuring "particular persons or entities or particular categories of
25 persons or entities."
- 26 3. Section V. D.3 of the MOU requires ICANN to "act in a non-arbitrary and
27 reasonable manner with respect to ... any ... activity related to the DNS project."
28

1 28. The original MOU was scheduled to terminate on September 30, 2000, and has
2 been amended six times. The most recent amendment, which was entered into on or around
3 September 17, 2003, is scheduled to terminate on September 30, 2006. In this amendment, the
4 DOC reaffirmed “its policy goal of privatizing the technical management of the DNS in a manner
5 that promotes stability and security, competition, coordination, and representation.” Additionally,
6 ICANN reaffirmed “its commitment to maintaining security and stability in the technical
7 management of the DNS, and to perform as an organization founded on the principles of
8 competition, bottom up coordination, and representation.”

9 29. ICANN’s bylaws also explicitly recognize “core values,” which “should guide the
10 decisions and actions of ICANN,” including:

- 11 1. “Where feasible and appropriate, depending on market mechanisms to
12 promote and sustain a competitive environment.”
- 13 2. “Introducing and promoting competition in the registration of domain
14 names where practicable and beneficial in the public interest.”

15 **III. ICANN’S CONTRACTS WITH VERISIGN**

16 **A. The 2001 .com and .net Agreements**

17 30. VeriSign has been awarded by ICANN the exclusive contractual right to maintain
18 the registries for the two most important domain names – .com and .net. VeriSign operates these
19 registries under contractual authorization from, and with oversight by, ICANN, consistent with
20 the DOC mandate that in turn governs ICANN. The 2001 .com and .net Agreements carefully
21 balance the needs and interests of ICANN, VeriSign, and other members of the Internet
22 community.

23 31. On or about May 25, 2001, VeriSign and ICANN entered into the 2001 .com
24 Agreement with respect to VeriSign’s operation of the .com registry and the 2001 .net Agreement
25 with respect to VeriSign’s operation of the .net registry.

26 32. The 2001 .com Agreement is set to expire on November 10, 2007, but provides
27 that VeriSign may submit a written proposal to extend the agreement between November 10,
28 2005, and May 10, 2006. ICANN is required to consider this proposal for a period not to exceed

1 six (6) months “before deciding whether to call for competing proposals from potential successor
2 registry operators.” VeriSign “shall be awarded a four-year renewal term” unless ICANN
3 determines that VeriSign is in material breach of the 2001 .com Agreement, or the proposal to
4 extend the agreement contains a maximum price that exceeds the price allowed under Section 22
5 of the 2001 .com Agreement or certain other conditions apply. This four-year renewal term, if
6 granted, would expire on November 10, 2011. As discussed more fully below, VeriSign has
7 engaged in conduct that ICANN claimed breached the 2001 .com Agreement. Therefore, absent
8 the 2005 .com Agreement, ICANN could refuse to grant VeriSign the four-year renewal and
9 require competitive bidding for operation of the .com registry in 2007. Furthermore, if VeriSign
10 offered the 2005 .com Agreement as a renewal proposal in 2007, it would allow ICANN to
11 require competitive bidding for operation of the .com registry at that time because the 2005 .com
12 Agreement’s price provision exceeds the maximum price under the 2001 .com Agreement.

13 33. The 2001 .net agreement expired on June 30, 2005. The agreement established a
14 procedure by which ICANN was to select as a successor operator of the .net registry “the eligible
15 party that it reasonably determines is best qualified to perform the registry function . . . taking
16 into account all factors relevant to the stability of the Internet, promotion of competition, and
17 maximization of consumer choice”

18 34. Under both the 2001 .com Agreement and the 2001 .net Agreement, VeriSign is
19 required to provide “Registry Services” to ICANN-accredited registrars in a manner meeting the
20 performance and functional specifications attached to the agreement. “Registry Services” are
21 defined in the 2001 .com Agreement as follows:

22 “Registry Services” means services provided as an integral part of
23 the Registry TLD, including all subdomains. These services
24 include: receipt of data concerning registrations of domain names
25 and nameservers from registrars; provision to registrars of status
26 information relating to the Registry TLD zone servers,
27 dissemination of TLD zone files, operation of the Registry zone
28 servers, dissemination of contact and other information concerning
domain name and nameserver 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.

1 The 2001 .net Agreement contains a substantially similar definition of “Registry Services.”

2 35. Under both the 2001 .com Agreement and the 2001 .net Agreement, VeriSign is
3 also obligated to comply with “Consensus Policies,” which consist of specifications and policies
4 established on the basis of a consensus among Internet stakeholders represented in the ICANN
5 process, as demonstrated by compliance with detailed procedures prescribed in the agreement.

6 36. Appendix G to both the 2001 .com Agreement and the 2001 .net Agreement sets
7 forth the maximum prices VeriSign can charge for specified services. Among other things,
8 Appendix G sets a maximum price of six dollars (\$6.00) per year for registration of a domain
9 name and six dollars (\$6.00) per year for renewal or extension of the registration of a domain
10 name. In addition, for each one-year domain name registration a “registry-level transaction fee”
11 of \$0.25 is charged and paid to ICANN. Under the 2001 .com Agreement, a registrar currently
12 pays \$6.00 per year to register each domain name registered with VeriSign. The registrar also
13 pays \$0.25 to ICANN for the registry-level transaction fee. Any amount above \$6.25 that is
14 charged to the registrant is kept by the registrar. Although the same fee structure was used in the
15 2001 .net Agreement, these fees have now changed for .net domain names pursuant to the 2005
16 .net Agreement, discussed below.

17 37. Appendix I to both the 2001 .com Agreement and the 2001 .net Agreement
18 includes a Code of Conduct. Under the Code of Conduct, VeriSign is obligated to “at all times
19 strive to operate as a trusted and neutral third-party provider of Registry Services.” Among other
20 obligations, the Code of Conduct requires VeriSign to treat all ICANN-accredited registrars
21 equally and to give them equivalent access to the registry and prohibits VeriSign from
22 warehousing or registering domain names in its own right other than through an ICANN-
23 accredited registrar.

24 38. Appendix W to both the 2001 .com Agreement and the 2001 .net Agreement
25 provides that VeriSign will expend a minimum of two hundred million dollars (\$200,000,000)
26 “for research, development, and infrastructure improvements to the .com, .net, and .org
27 Registries” between May 25, 2001, and December 31, 2010. VeriSign is also required to “ensure
28 that a substantial portion of expenditures for the Improvements occurs prior to November 10,

1 2007.” VeriSign is further required to provide ICANN with an annual report on this research and
2 development activity. These annual reports, if they exist, have not been made public.

3 39. Under both the 2001 .com Agreement and the 2001 .net Agreement, ICANN is
4 obligated to “not unreasonably restrain competition and, to the extent feasible, promote and
5 encourage robust competition.” Under the 2001 .com and .net Agreements, VeriSign makes a
6 handsome profit from its operation of the .com and .net registries. ICANN, for its part, receives
7 steady revenue from transaction fees on these registration transactions. The Internet community
8 also enjoys benefits from this arrangement in the form of a stable registration infrastructure, and a
9 competitive registration market. This stable and competitive environment has permitted the
10 development of a delicate balance between registries, registrars, back order service providers, and
11 registrants.

12 **B. The 2005 .com Agreement**

13 40. Defendants have agreed to terminate the 2001 .com Agreement and 2001 .net
14 Agreement and replace them with the 2005 .com Agreement and 2005 .net Agreement, which
15 destroy the competitive balance of the domain name registration industry.

16 41. On or about October 24, 2005, VeriSign and ICANN agreed to submit the 2005
17 .com Agreement for public comment and subsequent approval by ICANN’s Board of Directors.
18 On information and belief, the Board of Directors is scheduled to vote on the proposed agreement
19 during an ICANN meeting in Vancouver, Canada, that is scheduled for November 30, 2005,
20 through December 4, 2005.

21 42. The initial expiration date of the 2005 .com Agreement is November 30, 2012.
22 The 2005 .com Agreement also provides that it will be renewed “upon the expiration of the
23 [initial term] and each later term” unless an arbitrator or court has issued a final ruling stating that
24 VeriSign “has been in fundamental and material breach of [its [the] Registry Operator’s]
25 obligations” as set forth in various Sections of the 2005 .com Agreement and VeriSign has failed
26 to cure the breach within ten (10) days of the decision of the arbitrator or the court.

27 43. The 2005 .com Agreement increases significantly the maximum price for each
28 year for new or renewal domain name registration. Until December 31, 2006, the maximum price

1 is set at \$6.00. Beginning in 2007, the 2005 .com Agreement would increase the maximum price
2 by seven percent (7%) each year.

3 44. Further, the maximum price would be defined in the 2005 .com Agreement so that
4 it does not include the “registry-level transaction fees.” Therefore, the true maximum cost of
5 registering a domain name would be the maximum price plus these fees. For example, in 2006,
6 the registry fee would remain at \$6.00; however, the “registry-level transaction fees” that are
7 charged by VeriSign and paid to ICANN would be added to this amount, and would be \$0.37 plus
8 \$0.15 for a total of \$0.52 (rather than the current \$0.25) from January 1 until July 1. On July 1,
9 2006, the “registry-level transaction fees” would further increase to \$0.60. Thus, the total fee in
10 calendar-year 2006 would be \$6.52 and then \$6.60 for each registered domain name, compared
11 with the \$6.25 (including fees) under the 2001 .com Agreement. On July 1 2007, the “registry-
12 level transaction fees” would further increase to \$0.65. The increase in the “registry-level
13 transaction fees” allows ICANN to share in the monopoly profit generated by VeriSign’s and
14 ICANN’s entry into the 2005 .com Agreement. Approval of “registry-level transaction fee”
15 increases was previously part of ICANN’s budget process, and registrars and other Internet
16 stakeholders had input into that process. Under the 2005 .com Agreement, the “registry-level
17 transaction fees” go up automatically without any input from registrars and other Internet
18 stakeholders.

19 45. Unlike the 2001 .com Agreement, the 2005 .com Agreement would allow
20 VeriSign to use commercially valuable traffic data for its own commercial benefit, including
21 promoting the sale of domain names. The 2005 .com Agreement provides as follows:

22 Nothing in this Agreement shall preclude Registry Operator from
23 making commercial use of, or collecting, traffic data regarding
24 domain names or non-existent domain names for purposes such as,
25 without limitation, the determination of the availability and health
26 of the Internet, pinpointing specific points of failure, characterizing
27 attacks and misconfigurations, identifying compromised networks
28 and hosts, and promoting the sale of domain names

26 46. The 2005 .com Agreement would provide a new definition of “Registry Services.”
27 Registry Services would be defined as: (a) services that both are offered by VeriSign on the
28 effective date of the agreement and are “operations of the registry critical to” specified tasks; (b)

1 other products or services that VeriSign is required to provide because of the establishment of a
2 “Consensus Policy”; (c) any other products or services that only a registry operator is capable of
3 providing, by reason of its designation as the registry operator; and (d) material changes to any
4 registry services in categories (a), (b), or (c). Registry services that fall within categories (c) and
5 (d) would be excluded from the provision that sets the maximum price VeriSign can charge for
6 registry services.

7 47. The 2005 .com Agreement would also dispense with any pretense of ICANN’s
8 compliance with its governmental mandate to oversee a self-regulated marketplace to assure
9 competitive and nondiscriminatory conditions. The 2005 .com Agreement would create a new
10 process for consideration of proposed registry services under which ICANN would consider
11 whether the proposed registry service “(i) could raise significant Security or Stability issues or (ii)
12 could raise significant competition issues.” If ICANN determines that the proposed registry
13 service “might raise significant competition issues, ICANN shall refer the issue to the appropriate
14 governmental competition authority.” The agreement further provides that “[f]ollowing such
15 referral, ICANN shall have no further responsibility, and [VeriSign] shall have no further
16 obligation to ICANN, with respect to any competition issues relating to” the proposed registry
17 service.

18 48. Appendix 9 of the 2005 .com Agreement explicitly frees VeriSign to offer many
19 services in markets that are downstream and adjacent to the Domain Name Registration Market.
20 ICANN previously opposed some or all of these services as not permitted under the 2001 .com
21 Agreement, at least without approval from Internet stakeholders through the “Consensus Policy”
22 process. In colluding to allow VeriSign to leverage its monopoly power into these other
23 downstream and adjacent markets, ICANN has abdicated its duty to support competition, and
24 through the increase in fees paid to ICANN, stands to share in VeriSign’s monopoly profits.

25 49. One of the services listed in Appendix 9 of the 2005 .com Agreement is called the
26 Wait List Service, a service that ICANN previously contended was a breach of the 2001 .com
27 Agreement. On information and belief, VeriSign has announced its intention to launch a
28 modified and expanded version of the Wait List Service, which it has renamed the Central Listing

1 Service ("CLS"), in December 2005. The CLS service will affect the manner in which expired
2 .com domain names are released to the public. Under the current system, when a .com domain
3 name is not renewed by the registrant, VeriSign automatically renews it upon expiration and gives
4 the registrar up to forty-five days to inform the registry that the domain name is to be deleted.
5 Once the registrar confirms with the registry that the domain name is to be deleted, the domain
6 name enters the redemption grace period. During this period, a registrant who failed to renew its
7 domain name may do so upon payment of a fee above the standard registry fee. At the end of the
8 redemption grace period, the domain name is added to the pending delete file and all of the
9 registrars are notified that it is pending deletion. At that point, the registrars may use their back
10 order service providers to try to register the domain name on behalf of their registrants.

11 50. Under the proposed CLS service, the pending delete period, as well as the daily
12 release of deleted domain names, will be eliminated. Instead, VeriSign will notify all registrars
13 who have signed the CLS service agreement of the domain names to be deleted, and will hold a
14 five-day auction for all of the domain names. If there are no bids on a particular domain name, it
15 will be released by VeriSign and can be registered as with any other previously unused domain
16 name. If there is a successful bid for the domain name, VeriSign will deduct the bid amount (plus
17 the registry fee and any ICANN fees) from the successful registrar's account and the domain
18 name will enter a ten-day grace period designed to permit the registrar to collect the bid amount
19 from the successful registrant to complete the auction. Although a registrar has no ownership
20 interest in a domain name, if the registrar that released the domain name has signed the CLS
21 agreement, then the registrar will receive 90% of the auction bid. VeriSign will receive the
22 remaining 10%.

23 51. In addition, under the current system, a registrant is permitted to return a newly
24 registered domain name within five days of registration and be refunded the full registry fee.
25 Under the proposed CLS service, this "grace period" will be eliminated.

26 52. The 2005 .com Agreement would create a new definition of "Consensus Policies,"
27 including new limitations on what policies can be "Consensus Policies." The effect of the new
28

1 limitations on "Consensus Policies" is to restrict the ability of internet stakeholders other than
2 VeriSign to require VeriSign to act in the interest of the entire Internet community.

3 53. The 2005 .com Agreement does not contain a provision that requires VeriSign to
4 fulfill its obligation under the 2001 .com Agreement to expend a minimum of two hundred
5 million dollars (\$200,000,000) "for research, development, and infrastructure improvements to
6 the .com, .net, and .org Registries" between May 25, 2001, and December 31, 2010.

7 54. The 2005 .com Agreement does not contain the Code of Conduct in Appendix I to
8 the 2001 .com Agreement.

9 55. On the execution date of the 2005 .com Agreement, VeriSign is required to make a
10 one-time lump sum payment of \$1.25 million to ICANN, which, according to the agreement, will
11 be used to meet the costs of implementing the agreement.

12 **C. The 2005 .net Agreement**

13 56. On or about June 29, 2005, VeriSign and ICANN entered into a written agreement
14 (the 2005 .net Agreement) with respect to VeriSign's operation of the .net registry.

15 57. Although the 2005 .net Agreement states that it expires six years from the effective
16 date, it has virtually the same automatic renewal provision as the 2005 .com Agreement. Further,
17 the 2005 .net Agreement contains the same provisions as the 2005 .com Agreement that are
18 alleged in paragraphs 46-54, above, which advance VeriSign's monopolies and allow ICANN and
19 VeriSign to share in monopoly profits at the expense of consumers and other Internet
20 stakeholders.

21 58. In addition, the 2005 .net Agreement provides for a maximum price for each year
22 of new or renewal domain name registration. Until December 31, 2006, the maximum price is set
23 at \$4.25, which includes a \$0.75 Registry-Level Transaction Fee that is paid to ICANN.
24 Beginning in 2007, the price controls set forth in the 2005 .net Agreement will be eliminated, and
25 the only restriction will be that VeriSign is required to charge the same price to all registrars and
26 to offer a volume discount only if the same opportunities to participate are offered to all ICANN-
27 accredited registrars. Six months' prior notice is also required for any price adjustments.
28

