

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 JMarkham@mof.com
MORRISON & FOERSTER LLP
4 425 Market Street
San Francisco, California 94105-2482
5 Telephone: 415.268.7000
Facsimile: 415.268.7522

6 Attorneys for Plaintiff
7 COALITION FOR ICANN TRANSPARENCY INC.

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

12 COALITION FOR ICANN TRANSPARENCY
INC., a Delaware corporation,

13 Plaintiff,

14 v.

15 VERISIGN, INC., a Delaware corporation;
16 INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, a California
17 corporation,

18 Defendants.

Case No.

**DECLARATION OF TARYN
NAIDU IN SUPPORT OF THE
COALITION FOR ICANN
TRANSPARENCY'S
APPLICATION FOR AN *EX*
PARTE TEMPORARY
RESTRAINING ORDER**

19
20 I, Taryn Naidu, hereby declare:

21 1. I am the president of Pool.com, Inc. ("Pool.com"). I have personal knowledge of
22 the facts stated herein and could testify competently to them if called to do so.

23 2. As president of Pool.com, I have responsibility for operations. Prior to working
24 for Pool.com, I worked as a web developer for Momentous.ca ("Momentous.ca") and as a
25 software consultant for Koni Ameri Tech Services Inc. (KATSI), a time-material consulting
26 practice. As a result of my work at Pool.com, Momentous.ca, and KATSI, I am very familiar with
27 the domain name registration system and the technical operation of the Internet in general.
28

1 3. Pool.com is the industry leader in the business of operating a back order service
2 for .com and .net domain names in the Internet registry system. Pool.com operates through a
3 network of registrars to compete for the opportunity to assist customers in the registration of
4 domain names that have not been renewed by the owner or owners of such names. Under the
5 current .com registry agreement, when a domain name has not been renewed by the registrant, the
6 domain is released by the registry operator, VeriSign, Inc. ("VeriSign"), and may be registered by
7 the first applicant. Where a domain name is perceived to have value within the Internet
8 community, numerous potential registrants may use back ordering services, such as Pool.com, to
9 try to register the domain name. There are more than a dozen companies offering back order
10 services similar to those offered by Pool.com, and the market for these services is very
11 competitive. Competition is based not only on price, but also on the quality of service provided.
12 If VeriSign and ICANN enter into the new proposed .com registry agreement, companies such as
13 Pool.com will be driven out of business because VeriSign has announced that it will use its
14 control over the registry to offer an alternative method of obtaining these domain name. Because
15 it will use its control over the registry to force consumers to bypass Pool.com and its competitors,
16 VeriSign will be positioned to build a new business model in which it will have no competition.
17 As soon as VeriSign launches such a program, Pool.com and other competing companies will
18 immediately be put out of business.

19 **Background**

20 4. The .com and .net domain name systems are entirely automated systems. ICANN
21 (the Internet Corporation for Assigned Names and Numbers) has contracts (registry agreements)
22 with VeriSign permitting VeriSign to operate the .com and .net registries. VeriSign must permit
23 any registrar that is accredited by ICANN to register .com and .net domain names through its
24 registry. Each accredited registrar is granted a limited number of batch connections to the
25 registry – currently seven. Pool.com and other domain name back ordering services partner with
26 registrars to offer services to their mutual customers – potential and actual registrants of domain
27 names. Through these partners, Pool.com is able to increase the number of connections that it has
28 available to the registry. For example, if a back order service provider has ten registrar partners,

1 each of whom has seven connections to the registry, it would be able to use simultaneously
2 seventy connections to the registry to register domain names.

3 5. When a potential registrant sees that a particular .com or .net domain name has not
4 been renewed and is about to expire and be released, the potential registrant can contact his or her
5 registrar and "back order" the domain name. The registrar will work with its back order service
6 provider to attempt to register the domain name when it is released by VeriSign. VeriSign's
7 system automatically releases the expired domain names daily, starting at 2:00 p.m. Eastern time
8 and continuing until all of the expired domain names are released. In the meantime, the back
9 order service providers who have orders for any of the domain names to be released on a
10 particular day will use all of their pooled registry connections to attempt to register the domain
11 name on behalf of the registrant. Back order service providers compete to maintain the most
12 extensive and effective connections to enhance their customers' prospects for winning ownership
13 of the domain names that they seek. Thus, if a back order service provider has seventy permitted
14 connections, all seventy connections will attempt to register the domain name as it is released by
15 VeriSign. The back order service provider that is successful in obtaining the domain name
16 through one of its registrar partners will then turn the domain name over to the interested
17 customer. If there is more than one back order placed on a particular domain name through
18 registrars partnered with a single back order service provider, the back order service provider
19 usually will put the domain name up for auction on its website. The auction is open to anyone
20 who placed an order on the domain name prior to the domain name being acquired by the back
21 order service provider.

22 6. 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 collects \$6.00 in the case of the .com registry fee and \$4.25 in the case of the .net registry fee,
27 which amount is set pursuant to the current .com and .net registry agreements that VeriSign has
28 with ICANN. The balance is retained by the new owner's registrar. When a domain name is

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

11 7. If a domain name has been placed up for auction because there was more than one
12 potential registrant that placed a back order, the back order service provider will indicate on its
13 website that the domain name is being auctioned. In addition, the back order service provider
14 will link a web page to the domain name while the auction is in process. The web page will
15 advise individuals who come across the website that the domain name is currently in an auction,
16 and will also include a variety of links to related websites that might be of interest to individuals
17 who came across the web page in the course of an online search.

18 8. These links are set up through agreements with Yahoo!, Google and other search
19 engines that offer sponsored links through their web sites to companies who are willing to pay the
20 search engines for increased traffic. A sponsored link is created as a result of an agreement
21 between a vendor and a search engine whereby the search engine agrees to display a link to the
22 vendor's website any time an Internet user searches for a particular term. For example, if one
23 searches for "shoes" on Google, one might find sponsored links to JCPenney, Overstock, and
24 Zappos.com. If the Internet user clicks on the sponsored link, the vendor will pay the search
25 engine a contracted fee. This service is called Pay Per Click, and has proven a very effective
26 advertising technique for vendors and very profitable for search engines. The Pay Per Click
27 service also aids Internet users to find their way to helpful and relevant websites by permitting
28

1 them to use generic terms in their searches rather than forcing them to memorize long domain
2 names.

3 9. The Pay Per Click service is growing market. According to VeriSign's August
4 2005 *The Domain Name Industry Brief*, which is available on its website, the Pay Per Click
5 advertising market is a driver of new domain name registrations. Recognizing the value in the
6 Pay Per Click market, domain name registrants are increasingly setting up parked web pages that
7 merely display sponsored links through which they receive revenue. These parked websites may
8 use common generic terms in their domain names, or may use misspellings of such terms, such as
9 www.asprin.com. Rather than wade through lengthy listings in search results for generic terms,
10 Internet users take advantage of the previously selected sponsored links found through parked
11 web pages that are accessible through generic or misspelled domain names. Each time an Internet
12 user clicks on a sponsored link through one of these websites, the domain name registrant
13 receives a portion of the fee that the vendor has agreed to pay to the search engine through which
14 the sponsored link was placed. Vendors are willing to pay these fees because the sponsored links
15 increase traffic to their websites, which may result in increased sales. According to VeriSign's
16 August 2005 *The Domain Name Industry Brief*, the average amount paid per click is about \$1.72,
17 but it can vary from pennies to \$15.00 or more. VeriSign recognizes the Pay Per Click market as
18 a growth opportunity for registrants. Attached hereto as Exhibit A is a true and correct copy of
19 VeriSign's August 2005 *The Domain Name Industry Brief*.

20 10. The Pay Per Click market is also a growth opportunity for back order service
21 providers. During the period when recently expired domain names are being auctioned as a result
22 of multiple back orders being placed for the same domain name, back order service providers
23 offer a Pay Per Click service by posting sponsored links on websites linked to the domain names
24 under auction. Through their agreements with search engines such as Yahoo!, Google, and other
25 providers, back order service providers receive a portion of the fee that the vendor has agreed to
26 pay to the search engine each time that an Internet user clicks on a sponsored link. For example,
27 if an Internet user was looking for computers and typed www.computers.com, it might receive a
28 web page indicating that the domain name was for sale and including sponsored links to a variety

1 of websites offering computer products for sale. If the Internet user clicks on one of the linked
2 websites, the back order service provider will receive a portion of the Pay Per Click fee from the
3 vendor.

4 VeriSign's Proposed New Services

5 11. Under the terms of the new .com and .net registry agreements, VeriSign will be
6 permitted to offer additional services that may affect the services offered by registrars, registrants,
7 and back order service providers. Two such services have already been identified by VeriSign:
8 the Central Listing Service ("CLS") and the SiteFinder service. As a result of numerous
9 conversations I have had with individuals at VeriSign and in the industry, including at a VeriSign
10 engineering conference a few weeks ago in Washington, D.C., and my attendance at discussions
11 about the CLS service at the ICANN conferences held earlier this year in Argentina and in
12 December 2004 in Cape Town, South Africa, I am familiar with the CLS service. I am familiar
13 with the SiteFinder service from having reviewed it when VeriSign launched it last year and from
14 my knowledge of how the domain name industry works. Both of these services will affect the
15 ability of registrars, registrants, back order service providers and even browsers to compete in the
16 marketplace. The CLS service in particular will eliminate the back order service provider market,
17 which is Pool.com's primary business. Attached hereto as Exhibit B is a copy of a VeriSign
18 WebEx presentation describing the CLS service.

19 1. VeriSign's CLS Service

20 12. The CLS service will affect the manner in which expired .com and .net domain
21 names are released to the public and will eliminate the back order service market. Under the
22 current system, when a .com or .net domain name is not renewed by the registrant it enters the
23 "expiry period." The expiry period is designed to protect registrants from the accidental deletion
24 of a domain name. Although a registrant may have no more interest in a domain name and may
25 have decided not to renew it, the registry automatically renews all domain names upon expiration
26 and gives the registrar up to forty-five days to inform the registry that the domain name is to be
27 deleted. Once the registrar confirms with the registry that the domain name is to be deleted, the
28 domain name enters the redemption grace period. During this period, a registrant who failed to

1 renew its domain name may do so upon payment of a fee above the standard \$6.00 or \$4.25
2 registry fee. At the end of the redemption grace period, the domain name is added to the pending
3 delete file and all of the registrars are notified that it is pending deletion. At that point, they may
4 use their back order service providers to try to register the domain name on behalf of their
5 registrants, as discussed above in paragraph 5.

6 13. Under the proposed CLS service, the pending delete period, as well as the daily
7 release of deleted domain names, will be eliminated. Instead, VeriSign will notify all registrars
8 who have signed the CLS service agreement of the domain names to be deleted, and will hold a
9 five-day auction for all of the domain names. If there are no bids on a particular domain name, it
10 will be released by VeriSign and can be registered as with any other previously unused domain
11 name. If there is a successful bid for the domain name, VeriSign will deduct the bid amount (plus
12 the \$6.00 or \$4.25 registry fee) from the successful registrars' account and the domain name will
13 enter a ten-day grace period. This grace period is designed to permit the registrars to collect the
14 bid amount from the successful registrant to complete the auction. If the auction is completed,
15 the domain name will be transferred to the registrar of the successful registrant. If the auction is
16 not completed, perhaps because the bid amount is not paid, the domain name will be relisted for
17 auction for another five-day period.

18 14. Although a registrar has no ownership interest in a domain name, if the registrar
19 that released the domain name has signed the CLS agreement, then the registrar will receive 90%
20 of the auction bid. VeriSign will receive the remaining 10%. If the registrar that released the
21 domain name has not signed the CLS agreement, then VeriSign will place 90% of the bid amount
22 in a fund to be used for marketing. Neither the prior registrant nor the registrar for the successful
23 bidder will receive any portion of the bid amount, and the back order service provider market will
24 be eliminated.

25 15. In addition, under the current system, a registrar is permitted to return a newly
26 registered domain name within five days of registration and be refunded the full \$6.00 or \$4.25
27 registry fee. Under the proposed CLS service, this "grace period" will be eliminated, although it
28 is an important feature for operators in the Pay Per Click market. As mentioned above, domain

1 name registrants are increasingly setting up parked web pages that merely display sponsored links
2 through which they receive revenue and guide internet users to targeted websites. This is one of
3 the primary and innovative new forms of advertising permitted on the Internet. Each time an
4 Internet user clicks on a sponsored link through one of these websites, the domain name registrant
5 receives a portion of the fee that the vendor has agreed to pay to the search engine through which
6 the sponsored link was placed. Numerous Pay Per Click service providers currently use the five-
7 day grace period to test domain names to see if they are suitable for use in the Pay Per Click
8 market. If they do not generate sufficient traffic, the registrants are permitted to return the
9 domain names to the registry within five days to receive a full refund of the registry fee. The
10 CLS service will eliminate this grace period, curtailing this service that has been successful in the
11 competitive marketplace as it currently exists.

12 2. VeriSign's New SiteFinder Service

13 16. VeriSign has also announced a new service that it calls SiteFinder. VeriSign has
14 the unique position of being able to control the content for all unregistered .com and .net domain
15 names. Under the current system, if an Internet users types in a domain name that is not
16 registered, a standard error page will be returned. Under the proposed SiteFinder service, the
17 standard error page will not be returned. Instead, VeriSign will have use of the entire untapped
18 domain name market to display targeted marketing sponsored links to all Internet users.

19 17. Under the SiteFinder service, VeriSign is proposing to replace the standard error
20 page with a customized VeriSign page that states that the desired page could not be found and
21 offers some links to domain names with similar spellings (the "VeriSign SiteFinder page"). For
22 example, if an Internet user types in www.bokkstore.com and the domain name is not registered,
23 the user will be directed to a VeriSign SiteFinder page at www.bokkstore.com listing links such
24 as www.bookstore.com or www.bkstore.com. If VeriSign has an agreement with the owners of
25 these websites, either directly or through a search engine, it might be paid a Pay Per Click fee for
26 anyone who clicks through from the VeriSign SiteFinder page. This VeriSign SiteFinder page
27 would be displayed as an active website. Thus, when an Internet user tries to access
28

1 www.bokkstore.com through a web browser, the web browser will return the VeriSign SiteFinder
2 page.

3 18. Because of VeriSign's unique position as the depository of all unregistered .com
4 and .net domain names, only VeriSign will be able to offer consumers a "sitefinder" service, and
5 only VeriSign (and its search engine partner) will receive revenue from sponsored links offered
6 through "sitefinder" services. Moreover, VeriSign's proposed price increase will drive some of
7 those who are currently active in the Pay Per Click market out of the market, resulting in more
8 unregistered domain names that VeriSign can use for its SiteFinder service. As mentioned above,
9 domain name registrants are increasingly setting up parked web pages that merely display
10 sponsored links through which they receive revenue. These parked web pages are profitable only
11 if they derive more revenue than they cost (with the primary cost being the registration fees). If
12 the registry fees payable to VeriSign increase by 7% a year, as proposed under the new .com
13 registry agreement, registrants will permit a number of previously profitable domain names to
14 expire because they will no longer be profitable. Once they expire, VeriSign, which will not have
15 to pay registry fees, will be able to use these domain names to derive revenue under its new
16 SiteFinder service. Thus, VeriSign's new pricing structure, combined with its SiteFinder service,
17 will put VeriSign in the unique position where it can take domain names that were previously
18 profitable to third parties and use them to derive a profit for VeriSign.

19 19. In addition, because VeriSign has eliminated the five-day grace period described
20 above in paragraph 15, VeriSign will be in the unique position of being able to test .com and .net
21 domain names to see if they are suitable for use in the Pay Per Click market without paying a
22 registry fee. If they generate sufficient traffic, VeriSign can use this information (which is solely
23 available to VeriSign as the registry) to select .com and .net domain names that it might want to
24 retain or to offer to an associated entity. No one will be able to compete with VeriSign in this
25 market because every other registrant will have to pay the nonrefundable \$6.00 or \$4.25 registry
26 fee even to test traffic on an expiring domain name.

1 **Pool.com's Irreparable Harm**

2 20. VeriSign has stated that it intends to offer its new CLS service in early December,
3 after the new .com registry agreement is signed. If VeriSign does so, the harm to Pool.com and
4 other back order service providers will be immediate and irreparable. In the case of Pool.com, we
5 derive approximately 90% to 95% of our revenue from the back order services that we provide.
6 If VeriSign launches the CLS service, the CLS service will displace (and shut down) the back
7 order services offered by Pool.com and we will immediately lose nearly our entire revenue
8 stream. Pool.com has certain financial obligations, such as rent, internet connectivity and co-
9 location costs associated with our servers, that we would likely not be able to meet without any
10 revenue from our core back order service business. This will result in the immediate layoff of
11 trained and skilled employees, the termination of beneficial contracts between Pool.com and
12 numerous registrars, and possible insolvency.

13 21. Even a temporary offering of the CLS service will irreparably harm Pool.com. A
14 temporary launch of CLS by VeriSign will force Pool.com to cease generating revenue from its
15 core back order service business and result in layoffs and a possible inability to meet our financial
16 obligations. We will not be able simply to restart our back order services after a temporary
17 offering of CLS. Before we can resume offering back order services, we will need to
18 renegotiate contracts with registrars and hire employees. We may be able to rehire some of our
19 former employees, but some of the most valuable employees will likely have found alternative
20 employment and will no longer be available. It would take Pool.com a significant amount of time
21 to reestablish our position from even a short temporary shut down of our core back order service
22 business. If the shut down lasted more than a month, I am doubtful that we would be able to wait
23 out the period and restart the business.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct.

26 Executed this ^{25th} day of November, 2005, in Ottawa, Canada.

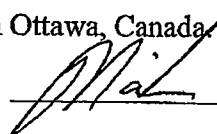
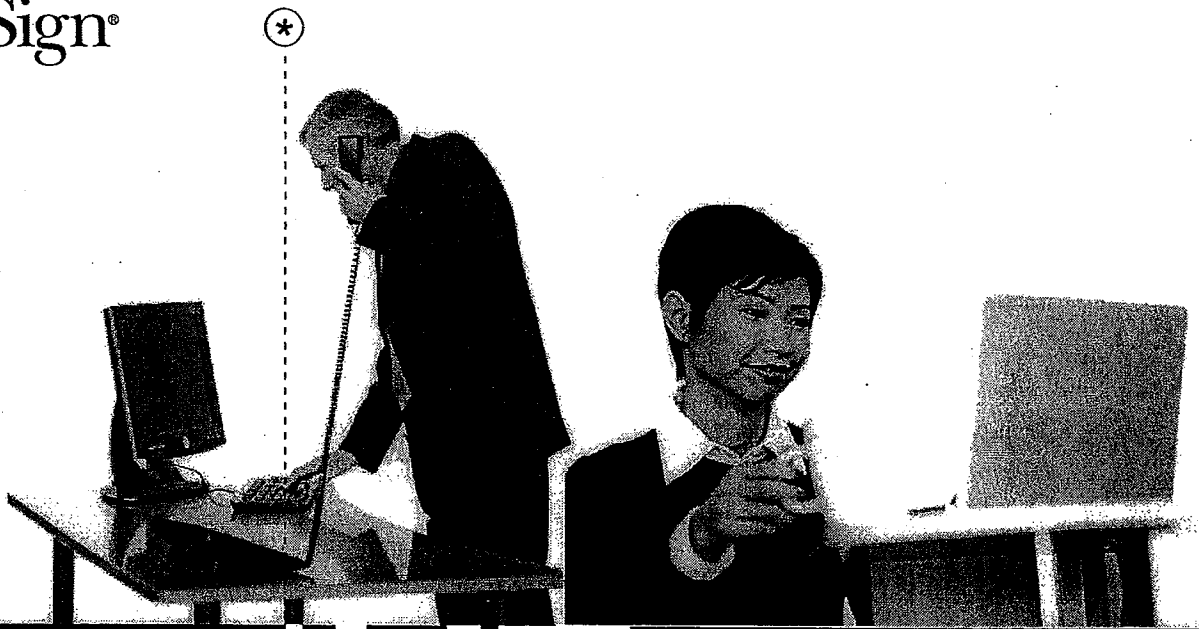
27 
28 _____
Taryn Naidu

EXHIBIT A



The Domain Name Industry Brief

Volume 2 - Issue 3 - August 2005

The VeriSign Domain Report

As the global registry operator for .com and .net, VeriSign closely monitors the state of the domain name industry through a variety of statistical and analytical research. As the leading provider of intelligent infrastructure for the Internet, VeriSign provides these key trends to educate industry analysts, media, and businesses on important trends in domain registrations. This brief details current trends in the industry, highlighting key performance indicators and growth opportunities.

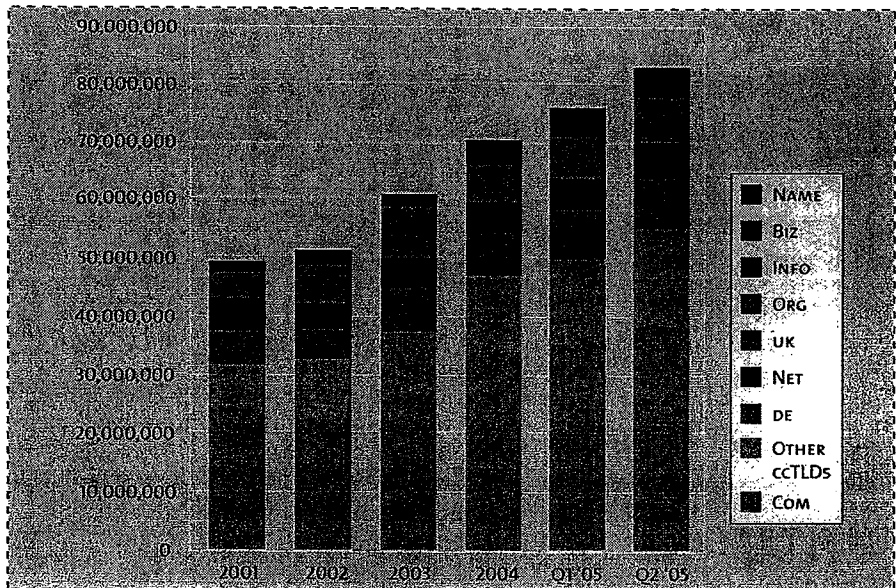


Where it all comes together.™

+ Executive Summary

The number of domain names worldwide reached a record 82.9 million at the end of the second quarter 2005. This reflects an eight percent growth in the base over the first quarter of 2005 and a 28 percent increase year over year. The quarter over quarter growth has remained at about eight percent since the fourth quarter of 2004. In terms of the total registrations, .com remained the largest Top Level Domain (TLD). The German Country Code TLD (ccTLD), .de, was the second largest with .net and the British ccTLD, .uk, taking the next two spots. These rankings have remained unchanged since second quarter 2004 when .net surpassed .uk.

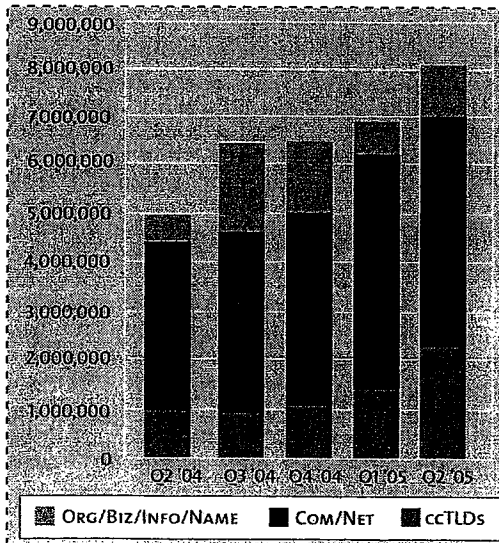
Total Domain Name Registrations



Total Domain Name Registrations

Sources: Zooknic, July 2005; VeriSign, July 2005

New Registration Growth



+ Industry Growth and Composition

Growth
As measured by the number of new registrations, the domain name industry experienced continued strong growth. More than 8.1 million new domain names were registered in the second quarter of 2005. This is an increase of 16 percent over the first quarter of 2005 and a 63 percent increase year over year. The continued acceleration of using domain names to generate Pay-Per-Click advertising revenues was a big driver of the new unit growth.

New Registration Growth

Sources: Zooknic, July 2005; VeriSign, July 2005; Cyveillance, August 2005; ICANN Monthly Reports

