

APR 01 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PHILIP R. MCNEIL,

Plaintiff - Appellant,

v.

VERISIGN, INC.; ICANN, Internet
Corporation For Assigned Names and
Numbers; THE STANLEY WORKS,

Defendants - Appellees.

No. 03-16946

D.C. No. CV-02-04534-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted March 17, 2005**
San Francisco, California

Before: THOMAS, FISHER, Circuit Judges, and ROBART, District Judge.***

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Hon. James L. Robart, United States District Judge for the District of Western Washington, sitting by designation.

Philip R. McNeil appeals the district court's dismissal of his complaint against Internet Corporation For Assigned Names and Numbers ("ICANN") for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). We affirm the district court. Because the parties are familiar with the factual and procedural history of this case, we will not recount it here.

The district court correctly held that McNeil cannot assert a First Amendment claim against ICANN because ICANN, a non-profit public benefit corporation established by agencies of the United States government to administer the Internet domain name system, is not a government actor. *See Single Moms, Inc. v. Montana Power Co.*, 331 F.3d 743, 747 (9th Cir. 2003). For the same reason, we hold that McNeil failed to state a claim against ICANN under the Fifth Amendment. *See Geneva Towers Tenants Org. v. Federated Mortgage Investors*, 504 F.2d 483, 487 (9th Cir. 1974) ("The Due Process Clause of the Fifth Amendment applies to and restricts only the federal government and not private persons."). Because he failed to state a claim against ICANN, McNeil has no cause of action on which to request declaratory or injunctive relief.

McNeil's contention that the district court erroneously dismissed his claims without permitting leave to amend is without merit because McNeil did not seek

leave to amend his complaint against ICANN in the district court. *See Alaska v. United States*, 201 F.3d 1154, 1163-64 (9th Cir. 2000).

AFFIRMED.