

1 RONALD L. JOHNSTON (State Bar No. 057418)  
2 LAURENCE J. HUTT (State Bar No. 066269)  
3 SUZANNE V. WILSON (State Bar No. 152399)  
4 JAMES S. BLACKBURN (State Bar No. 169134)  
5 ARNOLD & PORTER LLP  
6 777 South Figueroa Street, 44th Floor  
7 Los Angeles, California 90017-5844  
8 Telephone: (213) 243-4000  
9 Facsimile: (213) 243-4199

10 Attorneys for Plaintiff and  
11 Cross-Defendant VeriSign, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

14 VERISIGN, INC., a Delaware corporation, )  
15 )  
16 Plaintiff, )

17 v. )

18 INTERNET CORPORATION FOR )  
19 ASSIGNED NAMES AND NUMBERS, a )  
20 California corporation; DOES 1-50, )  
21 Defendants. )

Case No. BC 320 763

[Assigned for all purposes to  
Judge Rolf M. Treu]

**ANSWER OF CROSS-DEFENDANT  
VERISIGN, INC. TO CROSS-  
COMPLAINT FOR DECLARATORY  
RELIEF OF INTERNET CORPORATION  
FOR ASSIGNED NAMES AND  
NUMBERS**

Complaint Filed: August 27, 2004  
Cross-Complaint Filed: November 12, 2004

22 INTERNET CORPORATION FOR  
23 ASSIGNED NAMES AND NUMBERS, a  
24 California corporation

25 Cross-Complainant  
26 and Defendant,

27 v.

28 VERISIGN, INC., a Delaware corporation,  
Cross-Defendant.

1 Plaintiff and Cross-Defendant VERISIGN, INC. ("VeriSign") responds to the unverified  
2 Cross-Complaint for Declaratory Relief ("Cross-Complaint") of Defendant and Cross-Complainant  
3 Internet Corporation for Assigned Names and Numbers ("ICANN") as follows:

4 **GENERAL DENIAL**

5 1. Pursuant to the provisions of Code of Civil Procedure section 431.30, VeriSign  
6 denies each and every material allegation of the Cross-Complaint and, further, denies that ICANN  
7 is entitled to all or any portion of the judicial declarations requested or to any other relief  
8 whatsoever.

9 **AFFIRMATIVE DEFENSES**

10 2. The matters set forth in paragraphs 5 through 21, inclusive, of this Answer are  
11 alleged and asserted based upon VeriSign's information and belief. By alleging these Affirmative  
12 Defenses, and the matters set forth herein, VeriSign does not thereby concede or admit that it bears  
13 the burden of proof on any matter or element related to any of the Affirmative Defenses asserted.

14 3. Each defense is asserted as to all purported causes of action against VeriSign.

15 4. VeriSign hereby incorporates into this Answer, and into each and every one of the  
16 following Affirmative Defenses, as though fully set forth therein, the allegations contained in  
17 paragraphs 1 to 95, inclusive, of the Complaint filed in this action by VeriSign on August 27, 2004.

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Failure to State a Cause of Action)**

20 5. The Cross-Complaint fails to state facts sufficient to constitute any cause of action  
21 against VeriSign.

22 **SECOND AFFIRMATIVE DEFENSE**

23 **(Laches)**

24 6. The Cross-Complaint, and each purported cause of action therein, is barred, in whole  
25 or in part, by the doctrine of laches in that, *inter alia*, ICANN, with full knowledge of VeriSign's  
26 development or operation of new services, or versions or specifications relating to such services,  
27 and with full knowledge of its processing of newly accredited registrars, has engaged in  
28 unreasonable delay, resulting in significant prejudice to VeriSign.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 7. The Cross-Complaint, and each purported cause of action therein, is barred, in whole  
4 or in part, by the doctrine of unclean hands in that, *inter alia*, ICANN has acted in such a fashion as  
5 to have acquiesced in, or to have reasonably appeared to acquiesce in, VeriSign's development or  
6 operation of new services, or versions or specifications relating to such services, as well as its  
7 processing of newly accredited registrars; failed promptly to complain about the development or  
8 operation of such services and the processing of such newly accredited registrars, even though it  
9 had full knowledge of them; and ICANN has accredited new registrars that are not bona fide  
10 registrars primarily in an effort to raise and collect revenues for its own purposes and to the  
11 detriment of VeriSign.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 **(Estoppel)**

14 8. The Cross-Complaint, and each purported cause of action therein, is barred, in whole  
15 or in part, by the doctrine of equitable estoppel in that, *inter alia*: ICANN has acted in such a  
16 fashion as to have acquiesced in, or to have reasonably appeared to acquiesce in, VeriSign's  
17 development or operation of new services, or versions or specifications relating to such services,  
18 and VeriSign's processing of newly accredited registrars; and, conversely, ICANN has failed  
19 promptly or at all to take issue with the development or operation of such services and the  
20 processing of such newly accredited registrars. As a result, ICANN is legally estopped to challenge  
21 VeriSign's development and operation of such services and its processing of such newly accredited  
22 registrars, and ICANN's purported causes of action are accordingly barred thereby.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 **(Waiver)**

25 9. The Cross-Complaint, and each purported cause of action therein, is barred, in whole  
26 or in part, by the doctrine of waiver in that, *inter alia*: ICANN has acted in such a fashion as to  
27 have acquiesced in, or to have reasonably appeared to acquiesce in, VeriSign's development or  
28 operation of new services, or versions or specifications relating to such services, and VeriSign's

1 processing of newly accredited registrars; and, conversely, ICANN has failed promptly or at all to  
2 take issue with the development or operation of such services and the processing of such newly  
3 accredited registrars. As a result, ICANN is legally deemed to have waived any challenge to  
4 VeriSign's development and operation of such services and its processing of such newly accredited  
5 registrars, and ICANN's purported causes of action are accordingly barred thereby.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Consent)**

8 10. The Cross-Complaint, and each purported cause of action therein, is barred, in whole  
9 or in part, by ICANN's consent in that, *inter alia*: ICANN has acted in such a fashion as to have  
10 acquiesced in, or to have reasonably appeared to acquiesce in, VeriSign's development or operation  
11 of new services, or versions or specifications relating to such services, and VeriSign's processing of  
12 newly accredited registrars; and, conversely, ICANN has failed promptly or at all to take issue with  
13 the development or operation of such services and the processing of such newly accredited  
14 registrars. As a result, ICANN is legally deemed to have consented to VeriSign's operation of such  
15 services and the processing of such newly accredited registrars, and ICANN's purported causes of  
16 action are accordingly barred thereby.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **(Ratification)**

19 11. The Cross-Complaint, and each purported cause of action therein, is barred, in whole  
20 or in part, by the doctrine of ratification in that, *inter alia*: ICANN has acted in such a fashion as to  
21 have acquiesced in, or to have reasonably appeared to acquiesce in, VeriSign's development or  
22 operation of new services, or versions or specifications relating to such services, and VeriSign's  
23 processing of newly accredited registrars; and, conversely, ICANN has failed promptly or at all to  
24 take issue with the development or operation of such services and the processing of such newly  
25 accredited registrars. As a result, ICANN is legally deemed to have ratified VeriSign's  
26 development and operation of such services and its processing of such newly accredited registrars,  
27 and ICANN's purported causes of action are accordingly barred thereby.



1 limitation, among other acts and omissions, ICANN has engaged in the conduct more fully alleged  
2 in VeriSign's Complaint in this action.

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

4 **(Failure of Performance)**

5 17. ICANN has failed timely, fully, and adequately to perform all necessary conditions  
6 under the 2001 .com Registry Agreement in that, without limitation, among other acts and  
7 omissions, ICANN has engaged in the conduct more fully alleged in VeriSign's Complaint in this  
8 action.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 **(Material Breach)**

11 18. ICANN has materially breached its obligations under the 2001 .com Registry  
12 Agreement in that, without limitation, among other acts and omissions, ICANN has engaged in the  
13 conduct more fully alleged in VeriSign's Complaint in this action.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 **(No Breach of Duty)**

16 19. In all of its dealings with ICANN, VeriSign has fully complied with and fully  
17 performed all of its contractual, legal, and other duties and obligations, if any, toward ICANN.

18 **SIXTEENTH AFFIRMATIVE DEFENSE**

19 **(Failure to Mitigate)**

20 20. To the extent ICANN may be seeking an award of damages based upon the Cross-  
21 Complaint, ICANN has failed, adequately or at all, to mitigate its alleged damages, if any.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(Additional Defenses)**

24 21. VeriSign hereby gives notice that it intends to rely upon any other, additional  
25 affirmative defenses that may become available or appear during the discovery and pretrial  
26 proceedings in this case, and VeriSign hereby reserves the right to amend its Answer to assert any  
27 such other or additional affirmative defenses herein.

**PRAYER**

WHEREFORE, VeriSign prays for judgment on the Cross-Complaint as follows:

1. That ICANN take nothing and obtain no relief whatsoever on the Cross-Complaint and that the Cross-Complaint be dismissed with prejudice;
2. For its costs of suit incurred herein;
3. For its reasonable attorneys' fees pursuant to contract; and
4. For such other and further relief as the Court deems just and proper.

DATED: December 28, 2004.

ARNOLD & PORTER LLP  
RONALD L. JOHNSTON  
LAURENCE J. HUTT  
SUZANNE V. WILSON  
JAMES S. BLACKBURN

By: 

RONALD L. JOHNSTON  
Attorneys for Plaintiff and  
Cross-Defendant VeriSign, Inc.

#341725v5

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES ) ss

I am employed by First Legal Support Services in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1511 W. Beverly Blvd., Los Angeles, California 90026. On **December 28, 2004**, I served a document described as **ANSWER OF CROSS-DEFENDANT VERISIGN, INC. TO CROSS-COMPLAINT FOR DECLARATORY RELIEF OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS** on the following interested party in this action by personally delivering a copy to:

by placing true copies thereof enclosed in sealed envelopes addressed as stated below:

Jeffrey A. LeVee  
John S. Sasaki  
Christina Coates  
Sean W. Jaquez  
JONES DAY  
555 West Fifth Street, Suite 4600  
Los Angeles, California 90013-1025

**BY PERSONAL SERVICE** I caused such envelope to be delivered by hand to the office of the addressee. Executed on **December 28, 2004** at Angeles, California.


**BY MAIL** I placed such envelope with postage thereon prepaid in the United States Mail at 777 South Figureoa Street, 44<sup>th</sup> Floor, Los Angeles, California 90017-5844. Executed on at Los Angeles, CA.

**BY ELECTRONIC TRANSMISSION** The above-referenced document (together with all exhibits and attachments thereto) was transmitted via electronic transmission to the addressee(s) as indicated on the attached mailing list on the date thereof. The transmission was reported as completed and without error. Executed on Los Angeles, California.

**STATE** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

ALEX RUBIO  
\_\_\_\_\_  
Type or Print Name

  
\_\_\_\_\_  
Signature