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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**

25  
26  
27 Plaintiff VERISIGN, INC. ("VeriSign") alleges, upon information and belief,  
28 as follows:

1 **PRELIMINARY STATEMENT**

2 1. This is an action for declaratory relief, specific performance, damages,  
3 and preliminary and permanent injunctive relief arising out of improper and unlawful  
4 actions by the Internet Corporation for Assigned Names and Numbers (“ICANN”)  
5 designed to: (1) prohibit or otherwise restrict VeriSign from offering services  
6 valuable to Internet users, (2) impose improper conditions on the offering of such  
7 services by VeriSign, (3) regulate and set the prices at which such services may be  
8 offered, and/or (4) delay the introduction of new services. The conduct of ICANN as  
9 alleged herein constitutes actual and threatened violations of the federal antitrust laws  
10 and state law, and breaches of ICANN’s registry agreement with VeriSign.

11 2. ICANN was originally established to assist in the transition of the  
12 Internet domain name system from one of a single domain name registrar to one with  
13 multiple companies competing to provide domain name registration services to  
14 Internet users “in a manner that will permit market mechanisms to support  
15 competition and consumer choice in the technical management of the [domain name  
16 system].” ICANN’s ongoing role is to provide technical coordination of the  
17 Internet’s domain name system by encouraging coordination among various  
18 constituent groups using the Internet.

19 3. VeriSign serves as the Internet registry for second-level domain names  
20 registered in the “.com” and “.net” global top-level domains. Notwithstanding the  
21 narrow purposes for which ICANN was established, and ICANN’s clear and express  
22 mandate to promote competition, ICANN has purported to assert progressively  
23 broader authority to “regulate” the services VeriSign may offer and the price at which  
24 they may be offered. Through this course of conduct, ICANN repeatedly has  
25 blocked, delayed and/or restricted VeriSign’s introduction of new and valuable  
26 Internet services, or has attempted to do so, in violation of the terms of the registry  
27 agreement between the parties and applicable federal and state law.  
28

1           4.     Among other specific acts of ICANN in derogation of VeriSign’s rights,  
2 shortly before the filing of this action, ICANN wrongfully demanded that VeriSign  
3 shut down an important and valuable new service for Internet users, VeriSign’s Site  
4 Finder service, which is a type of service contemplated and allowed by the parties’  
5 registry agreement. This brazen attempt by ICANN to assume “regulatory power”  
6 over VeriSign’s business, in collaboration with VeriSign’s competitors, is a serious  
7 abuse of ICANN’s technical coordination function, a blatant breach of the registry  
8 agreement, and an interference with VeriSign’s contractual relations and prospective  
9 economic relationships. The suspension of the Site Finder service as a consequence  
10 of ICANN’s arbitrary and anticompetitive actions, as well as the other actions alleged  
11 in this Complaint, are subjecting VeriSign to ongoing irreparable injury.

12   **JURISDICTION AND VENUE**

13           5.     Plaintiff VeriSign is a corporation, duly organized and existing under the  
14 laws of the State of Delaware, with its principal office and place of business located  
15 in Mountain View, California. Since 1992, VeriSign or its predecessor, Network  
16 Solutions, Inc. (“NSI”), has acted as the exclusive registry for the “.com” top-level  
17 domain, among others.

18           6.     Defendant ICANN is a nonprofit corporation, organized and existing  
19 under the laws of the State of California, with its principal office and place of  
20 business located in Marina del Rey, California.

21           7.     This Court has subject matter jurisdiction over this action under 28  
22 U.S.C. §§ 1331 and 1337, and 15 U.S.C. §§ 15 and 26; the Declaratory Judgment  
23 Act, 28 U.S.C. § 2201; and the principles of supplemental jurisdiction under  
24 28 U.S.C. § 1367.

25           8.     Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) and (c)  
26 and 15 U.S.C. § 22, in that defendant resides, transacts business and is found in this  
27 district.

## 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           19. Following execution of the MOU, ICANN has entered into registry  
2 agreements with VeriSign for the “.com” and “.net” (among other) gTLDs. In  
3 addition to these registry agreements, ICANN has entered into forms of registry  
4 agreements with the registries of other gTLDs, such as “.biz” and “.info,” and with  
5 the registries of certain ccTLDs that have come into existence since the MOU was  
6 executed. These other registries compete with the .com and .net gTLD registries. In  
7 addition to the registries with which ICANN has entered agreements, there are  
8 numerous TLD registries, including the vast majority of the more than 240 ccTLD  
9 registries, that compete with the .com gTLD registry operated by VeriSign and that  
10 have not entered into any form of registry agreement with ICANN.

11   **THE 2001 .COM REGISTRY AGREEMENT**

12           20. On or about November 10, 1999, NSI and ICANN entered into a written  
13 Registry Agreement (the “1999 Registry Agreement”) with respect to NSI’s operation  
14 of the registry for the .com gTLD.

15           21. On or about May 25, 2001, VeriSign, which succeeded to the registry  
16 business of NSI, entered into a new written .com Registry Agreement (the “2001  
17 .com Registry Agreement”) with ICANN, which superseded the 1999 Registry  
18 Agreement with NSI. Subject to certain extension rights provided for therein, the  
19 2001 .com Registry Agreement expires on November 10, 2007.

20           22. In accordance with the 2001 .com Registry Agreement, VeriSign  
21 undertook to operate the .com gTLD registry and to pay certain registry-level fees to  
22 ICANN. Since a registry maintains the authoritative database of second-level domain  
23 names and IP addresses within a TLD, there necessarily can be only one registry for  
24 each TLD. VeriSign is that sole registry for the .com gTLD.

25           23. Under the 2001 .com Registry Agreement, VeriSign is required to  
26 provide “Registry Services” to ICANN-accredited registrars in a manner meeting the  
27 performance and functional specifications attached to the agreement. “Registry  
28 Services” generally are defined in the agreement as follows:

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



- 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