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INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VERISIGN, INC., a Delaware corporation, Plaintiff, v. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation; DOES 1-50, Defendant. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a California corporation, Cross-Complainant and Defendant, v. VERISIGN, INC., a Delaware corporation, Cross-Defendant.	**CASE NO. BC 320763** Assigned for all purposes to Judge Rolf M. Treu Complaint Filed: August 27, 2004 **DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS' CROSS-COMPLAINT FOR DECLARATORY RELIEF**

LAI-2162120v1

Cross-Complainant Internet Corporation for Assigned Names and Numbers ("ICANN")

alleges against Cross-Defendant VeriSign Inc. ("VeriSign") as follows:

NATURE OF THE CASE

1. This Cross-complaint arises out of a dispute over obligations that VeriSign assumed under an agreement with ICANN in exchange for ICANN's appointment of VeriSign as the ".com" registry operator for the Internet. These disputes have arisen because VeriSign has refused to comply with its obligations under the parties' agreement and has taken actions that are inconsistent with those obligations. VeriSign's conduct threatens the secure and stable operation of the .com registry. VeriSign's actions and its assertions that it need not comply with those obligations are contrary to the terms of the parties' agreement.

2. ICANN is the internationally organized nonprofit corporation responsible for coordinating the global Internet's domain name system. The Internet domain name system consists of approximately 250 Top-Level Domains ("TLDs") (e.g., .com, .net, .org, .edu) and about 64.5 million registered domain names (e.g., www.register.com) for which TLD operators charge for registration. ICANN's mission is to protect the stability, integrity, and utility of this system on behalf of the global community. Among its many responsibilities, ICANN is charged with overseeing the delegation of TLDs to qualified applicants. ICANN has awarded contracts to a number of entities to operate one or more TLDs and to maintain the definitive registry of domain names for that TLD. VeriSign is one of those entities.

3. Pursuant to separate May 2001 registry agreements, VeriSign is the "registry" for, and thus has the responsibility for operating, two of the largest TLDs, ".com" and ".net." These two TLDs collectively contain nearly 90% of all registered domain names in the United States, and 53% of all registered domain names on the Internet throughout the world. This cross-complaint concerns only the 2001 .com Registry Agreement (".com agreement").[1]

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[1] Unlike the 2001 .com Registry Agreement, which allows either party to initiate litigation unless both parties agree to arbitration, the 2001 .net Registry Agreement (".net agreement") mandates dispute resolution via arbitration at the insistence of either party. On November 10, 2004, ICANN initiated arbitration under the .net agreement with respect to the very same issues raised herein. ICANN would welcome the opportunity to arbitrate the parties' disputes under the .com agreement, but VeriSign has chosen to pursue litigation instead.

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1   4.   The disputes between ICANN and VeriSign are causing serious contention

2   between the parties. VeriSign has, on multiple occasions, taken unilateral actions (with little or

3   no notice to ICANN or to affected users and operators of the Internet) contrary to its obligations

4   under the relevant agreements. For example, on September 15, 2003, VeriSign, with virtually no

5   notice whatsoever to ICANN or the Internet community, introduced a "wildcard" in the .com and

6   .net registries such that when an Internet user typed in a domain name address that did not exist,

7   that user, instead of receiving an error message, was re-directed to a special Internet page set up

8   and maintained by VeriSign (the "Wildcard service"). If, for example, a user accidentally typed

9   "www.regissster.com" instead of "www.register.com", the user would be sent to a VeriSign-

10   operated web page that contained links to paid advertisements. VeriSign's unilateral

11   implementation of the Wildcard service not only violated the .com agreement, but also provoked

12   serious concern and outcry across the Internet community.

13   5.   Within hours of its deployment, ICANN received numerous complaints and

14   comments from concerned members of the community. These individuals informed ICANN that

15   the Wildcard service was adversely affecting their systems by, among other things, overriding

16   various software programs widely used in connection with the DNS. The community urged

17   ICANN to take action and called on VeriSign to deactivate the wildcard. In response to the

18   outcry, ICANN requested that VeriSign voluntarily suspend the service so that ICANN and the

19   Internet community could study the service and make informed recommendations regarding its

20   future use. VeriSign refused. Following that refusal, on October 3, 2003, ICANN's chief

21   executive officer sent a letter to VeriSign stating that VeriSign's unilateral and unannounced

22   changes to the operation of the .com registry were not consistent with material provisions of the

23   agreement. He further warned that, if VeriSign did not return the .com registry to its pre-wildcard

24   state, ICANN would be forced to take the steps necessary under the .com agreement to compel

25   VeriSign's compliance. Only then did VeriSign elect to temporarily suspend the use of the

26   Wildcard service. VeriSign, however, has stated publicly that it plans to reintroduce the Wildcard

27   service at some point in the future and that it may do so at its discretion.

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1   6.   The Wildcard service is not the first time VeriSign has chosen to ignore its

2   contractual obligations to seek to gain some inappropriate financial advantage from its

3   stewardship of the .com and .net registries. In November 2000 and again in January 2003,

4   VeriSign violated both agreements by initiating two different fee-based services (International

5   Domain Name "IDN" service and "ConsoliDate" service) without obtaining the necessary

6   contractual amendments required by the agreements. For example, the .com agreement expressly

7   requires that VeriSign obtain written consent from ICANN to amend the agreement before it can

8   charge a fee for any "Registry Service" not already listed on Appendix G to the agreement.

9   VeriSign has refused to comply with its obligations under the agreements by continuing to offer

10   the services without the necessary amendments in place.

11   7.   VeriSign has taken the position that services like the Wildcard service,

12   ConsoliDate, and IDN, and a "wait listing" service that VeriSign has proposed to offer, are not

13   subject to the parties' agreement in any respect. Specifically, VeriSign has argued that these

14   services are not "Registry Services" as that term is defined in the agreement. However, the

15   definition provided in the contract, together with the accompanying examples, makes clear that

16   VeriSign's services do constitute "Registry Services" and, therefore, are governed by the

17   agreement.

18   8.   By initiating this cross-complaint, ICANN seeks a declaration of VeriSign's

19   obligations under the .com agreement and a determination that VeriSign has breached its

20   obligations under the agreement. These determinations are necessary to protect ICANN's ability

21   under the agreement to ensure that VeriSign's activities in operating the .com registry do not

22   endanger the stability or security of the Internet and are consistent with ICANN's goals in

23   coordinating the domain name system, including promoting competition in the provision of

24   registration services. They may also be relevant to the process of determining whether VeriSign

25   or some other entity should be chosen to operate the .net or .com registries when the existing

26   agreements expire.

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PARTIES TO CROSS-COMPLAINT

9.   Cross-Complainant INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS ("ICANN") is a not-for-profit corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 4676 Admiralty Way, Suite 330, Marina del Rey, CA 90292-6601.

10.   Cross-Defendant VERISIGN, INC. ("VeriSign") is a corporation, organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 487 East Middlefield Road, Mountain View, CA 94043.

VENUE

11.   Venue is proper in this Court pursuant to the Code of Civil Procedure, including, without limitation, Section 395.5.

PROCEDURAL HISTORY

12.   On February 26, 2004, VeriSign filed in the United States District Court for the Central District of California a complaint against ICANN for violation of antitrust laws, specific performance of contract, damages for breach of contract, interference with contractual relations, declaratory and injunctive relief.

13.   On May 19, 2004, the district court dismissed VeriSign's complaint without prejudice.

14.   On June 14, 2004, VeriSign filed in the United States District Court for the Central District of California a first amended complaint against ICANN seeking the same relief.

15.   On August 12, 2004, the district court again dismissed VeriSign's federal claims, this time with prejudice, and declined supplemental jurisdiction of VeriSign's state claims.

16.   On August 27, 2004, VeriSign filed the current complaint in this Court seeking relief for its state law claims.

17.   On September 24, 2004, VeriSign filed a Notice of Appeal to the Ninth Circuit Court of Appeals seeking review of the federal district court's August 12, 2004 order dismissing VeriSign's first amended complaint.

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GENERAL ALLEGATIONS

I. THE INTERNET DOMAIN NAME SYSTEM

18. The Internet is a "network of networks" that allows computers around the world to communicate with each other quickly and efficiently. These computers (and other devices) serve a variety of purposes, including hosting web sites, handling e-mail, and providing access points to the Internet for users. For the Internet to function effectively, computers connected to the Internet must have unique identifiers, or addresses, so that information can be routed to and from each computer, or set of computers using such identifiers.

19. The unique identifiers used by Internet computers to route traffic and establish connections among themselves are lengthy numerical codes known as Internet Protocol ("IP") addresses. For example, the IP address for the computer that hosts the Los Angeles Superior Court's web site is "216.55.67.34".

20. Because Internet users cannot easily remember IP address, most Internet computers also have a unique, user-friendly address, called a "domain name", which corresponds to the computer's IP address. The domain name for the Los Angeles Superior Court's web site computer is www.LASuperiorCourt.org.

21. However, user-friendly domain names would be useless without an effective way to translate domain names to the IP addresses that computers use to communicate among themselves. Such translation enables a user to access a service on the Internet (such as a web site) by typing the domain name rather than the IP address into a web browser.

22. Nearly all Internet computers translate domain names to IP addresses by using the Domain Name System ("DNS"), which the Internet engineering community devised in the early 1980s. The DNS is based on a hierarchical network of computers known as "nameservers." These computers receive queries from a user's computer, or its interface, for information about the domain name it is attempting to locate. The nameserver transmits information about that domain name to the user's computer in response. Currently, there are over 1,000,000 nameservers on the Internet.

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23.   At the top of the DNS hierarchy are 13 special nameservers, called "root servers." They are located at various sites around the world and identified by the letters A through M. The root servers contain the IP addresses for the nameservers of all top-level domain registries (i.e., .com, .net, .org). Also scattered across the Internet are millions of computers called "recursive nameservers" that routinely cache (store) the information they receive from queries to the root servers. These recursive nameservers are located strategically with Internet Service Providers ("ISPs") or institutional networks. They are used to respond to a user's request to resolve a domain name -- that is, to translate that domain name to the corresponding IP address.

24.   In addition to a hierarchical network of computers, the DNS also uses a hierarchical naming system. In order to read a domain name, a user must look from right-to-left. Thus, "www.register.com" consists of: "com" the top-level domain ("TLD"); "register" the second-level domain; and "www" the third-level domain. A "domain" includes the specified domain level and all levels under it. Hence, the domain "register.com" includes: "register.com"; "www.register.com"; and "email.register.com".

25.   This hierarchy allows responsibility for data maintenance to be allocated among many entities. Responsibility for maintenance of each hierarchical level is allocated by dividing the Internet into "zones." A DNS zone begins at the top of a domain and extends down until the zone administrator has chosen to delegate responsibility to someone else. For instance, the zone operator for "register.com" maintains control of that domain level and can delegate control of "www.register.com" to another operator.

26.   By combining both the hierarchical network with the hierarchical naming process, a user's computer is able to obtain the IP address corresponding to the requested domain name if that domain name exists. If the domain name does not exist, most users receive an error message.

II.   REGISTERING A DOMAIN NAME

27.   A consumer (or "registrant") who wishes to register a domain name in the .com TLD must contact one of the 350 competitive ICANN-accredited "registrars," which in turn contacts VeriSign, the .com Registry Operator, to see if the domain name is available. If the name is available, VeriSign delegates the domain name to the registrant through the registrar.

1 VeriSign, pursuant to the .com agreement, cannot deal directly with registrants but must work

2 through registrars that are accredited by ICANN.

3   28.   This system was developed to promote a competitive environment for domain

4 name registration services. Each Registry Operator, including VeriSign, is obligated by the

5 Registry Agreement to treat all ICANN-accredited registrars on equivalent and non-

6 discriminatory terms.

7 **III.   ICANN'S ROLE IN THE MANAGEMENT OF THE DOMAIN NAME SYSTEM**

8   29.   ICANN is a not-for-profit corporation organized under California law. ICANN's

9 mission "is to coordinate, at the overall level, the global Internet's systems of unique identifiers,

10 and in particular to ensure the stable and secure operation of the Internet's unique identifier

11 systems." In 1998, ICANN entered into a Memorandum of Understanding ("MOU") with the

12 United States Department of Commerce ("DOC") in which they agreed to "jointly design,

13 develop and test the mechanisms, methods, and procedures that should be in place and the steps

14 necessary to transition management responsibility for DNS functions now performed by, or on

15 behalf of, the U.S. Government to a private-sector not-for-profit entity." The MOU has been

16 amended and extended on several occasions.

17   30.   ICANN seeks to develop consensus wherever possible, and the bulk of ICANN's

18 activity occurs either on the Internet or in meetings open to the public. ICANN maintains open

19 and transparent processes, and it regularly posts on the Internet its minutes, transcripts of its

20 meetings, and other important information and correspondence.

21   31.   One of ICANN's functions has been to enter into contracts with the operators of

22 various Internet "registries." Those companies maintain the "zone" or "master" file for the TLDs

23 of the Internet (e.g., .com, .net, and .org). TLD registries are, in some senses, similar to phone

24 books in that the registry operators maintain a list (and a variety of other relevant information)

25 about each of the domains within the TLD. ICANN presently has contracts with a number of

26 registry operators, including VeriSign, which operates the ".com" and ".net" registries. The

27 current .com registry agreement between VeriSign and ICANN was entered into in May 2001.

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1 Absent grounds for termination, the .com agreement is currently set to expire on November 10,

2 2007.

3 **IV.   THE 2001 .COM REGISTRY AGREEMENT**

4   32.   Under the .com agreement, ICANN has appointed VeriSign as the sole Registry

5 Operator of the .com TLD. The .com agreement allows VeriSign to charge registrars certain fees.

6 In exchange, VeriSign has agreed to comply with a number of obligations under the .com

7 agreement.

8   33.   One of those obligations is to provide Registry Services. "Registry Services"

9 generally are defined in the .com agreement as including "services provided as an integral part of

10 the Registry TLD, including all subdomains."

11   34.   The agreement also provides a non-exhaustive list of potential categories of

12 Registry Services that "include: receipt of data concerning registrations of domain names and

13 nameservers from registrars; provision to registrars of status information relating to the Registry

14 TLD zone servers, dissemination of TLD zone files, operation of the Registry zone servers,

15 dissemination of contact and other information concerning domain name and nameserver

16 registrations in the Registry TLD, and such other services required by ICANN through the

17 establishment of Consensus Policies...."

18   35.   This particular listing of services was included to: (a) identify particular services

19 that are necessarily Registry Services, and (b) illustrate the types of services that fall within the

20 general definition of "Registry Services." The list was not intended to be exhaustive. A service

21 that is provided as an integral part of the .com TLD is a Registry Service even though that service

22 is not expressly listed.

23   36.   Registry Services generally must meet the performance and functional

24 specifications established by ICANN and initially set forth in Appendices C (functional

25 specifications) and D (performance specifications) to the .com agreement, although those

26 specifications are not exhaustive.

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37.   Additionally, any Registry Service introduced by VeriSign must comply with all new and revised specifications and policies established by ICANN pursuant to Section I.1 of the .com agreement.

38.   The .com agreement further requires, among other things, that VeriSign:

i.   obtain ICANN's written consent to amend Appendix G before charging a fee to anyone for Registry Services not already listed on Appendix G;

ii.   obtain ICANN's written consent before using hyphens in the third and fourth character positions of a domain name;

iii.   maintain only those means of public, query-based access to domain name registrations that comply with the ICANN-prescribed protocol;

iv.   not register all otherwise unregistered domain names;

v.   take reasonable steps to protect Personal Data from loss, misuse, unauthorized disclosure, alteration, or destruction; and

vi.   not exploit its position to the detriment of the Internet community.

39.   VeriSign has other obligations as well, including an obligation to treat all registrars equally and not discriminate against any registrar. VeriSign's conduct, as described below, indicates that VeriSign is willing to ignore a number of its obligations.

40.   The .com agreement sets forth detailed requirements for how VeriSign provides Registry Services. But because it was contemplated that changes in technology may lead to additional Registry Services, the agreement contains mechanisms for VeriSign to request and ICANN to approve the terms under which additional Registry Services may be provided.

41.   Upon receipt of a court judgment declaring VeriSign to be in violation of the .com agreement, ICANN may terminate the .com agreement pursuant to Section II.16(A) of the .com agreement.

V.   **VERISIGN REFUSES TO RECOGNIZE ITS OBLIGATIONS UNDER THE 2001 .COM REGISTRY AGREEMENT.**

42.   VeriSign refuses to recognize its contractual commitments under the .com agreement. VeriSign has taken the position that the Wildcard service it introduced and threatens

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1   to reintroduce, as well as three other services that it presently operates in the .com registry --

2   ConsoliDate, the International Domain Name service, and the Wait Listing Service -- are not

3   Registry Services and are not subject to *any* of the terms and conditions of the .com agreement.

4   43.   VeriSign's position and actions taken in furtherance of that position are

5   inconsistent with material provisions of the .com agreement and collectively demonstrate that

6   VeriSign is willing to exploit its role as the monopoly Registry Operator of the .com registry to

7   the detriment of the Internet community, including consumers of name registration services.

8   **1.   VERISIGN'S WILDCARD SERVICE**

9   **A.   <u>Wildcards In The Domain Name System</u>**

10   44.   When most web users type in an address that has not been registered in the

11 registry, the user's computer receives an "error" message or a "page cannot be displayed"

12 message that states in effect that the Internet web site does not exist. Some users will see a search

13 results page generated by their browser or ISP. If, instead, a Registry Operator wanted to redirect

14 the Internet user to an Internet page containing content supplied by the Registry Operator, the

15 Registry Operator can insert what is known as a "wildcard" into the zone file, which contains,

16 among other things, the domain names specifically registered by Internet users. The wildcard

17 causes an Internet user who types in an address that is not specifically registered to be redirected

18 to an Internet page established and controlled by the Registry Operator.

19   45.   Wildcards are instructions to the nameservers for recognizing queries for domain

20 names within the nameserver's zone that are not listed with that nameserver. A wildcard works

21 by entering a record labeled "*" in a specified zone. The "wildcard" will then direct the

22 nameserver to positively return any query by a user's computer that is within that zone but not

23 matched by any specifically registered domain name.

24   46.   Without a wildcard, the reply from the nameserver would be positive (RCODE =

25 0) if a specifically registered domain name exists. For a non-existent domain name, or a domain

26 name the nameserver refuses to provide for any other reason, the reply would be negative

27 (RCODE = 1 through 5), and an error message would be transmitted back to the user's computer.

28 By implementing a wildcard, however, the non-existent domain names now return a positive

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1 answer (RCODE = 0) with the IP address of the wildcard Internet page. In fact, with a wildcard

2 all queries to the nameserver will return a positive answer (RCODE = 0) because wildcards

3 cannot discern between different protocols, transports, or services (i.e., web, e-mail, TCP, UDP).

4   47.   Without substantial communication with the Internet community, including open

5 and transparent testing and evaluation, the introduction of a wildcard into a widely-used TLD

6 would have a negative effect on a number of Internet functions and could potentially have adverse

7 effects on the TLD, the DNS, and the Internet. This is particularly true where a wildcard has

8 never been implemented.

9   **B.   VeriSign Deploys A Wildcard Service In The .Com Zone.**

10   48.   From its inception in 1985, the .com zone has never used a wildcard. However, on

11 September 15, 2003, VeriSign, with virtually no warning to the Internet community and without

12 seeking the approval from ICANN required under the .com agreement, inserted a wildcard in the

13 .com zone.

14   49.   Where once a user received an error page, VeriSign's wildcard instead returned the

15 domain name address of a VeriSign-operated web site called "Site Finder" (the "Wildcard

16 service") that linked the Internet user to alternative choices, a search engine, and paid-for

17 advertisements. The effect of this wildcard was that any computer that requested a domain name

18 not otherwise present in the .com zone (including reserved names, names in non-hostname or

19 "improper" format, unregistered names, and registered but inactive names) was directed to the

20 Wildcard service.

21   50.   Upon implementation of the Wildcard service, there was immediate widespread

22 expression of concern about the impact these changes would have on the security and stability of

23 the Internet, the DNS, and the .com TLD.

24   51.   As a result, ICANN asked VeriSign to voluntarily suspend the Wildcard service

25 until more information could be gathered on the impact of these changes. On September 21,

26 2003, VeriSign refused to honor ICANN's request.

27   52.   Following VeriSign's refusal, the ICANN Security and Stability Advisory

28 Committee ("SSAC"), consisting of approximately 20 technical experts from industry and

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academia, preliminarily confirmed the Internet communities concerns and issued a statement concluding that:

> VeriSign's change appears to have considerably weakened the stability of the Internet, introduced ambiguous and inaccurate responses in the DNS, and has caused an escalating chain reaction of measures and countermeasures that contribute to further instability.

53.   In addition to the SSAC statement, ICANN continued to be bombarded with letters, comments, and e-mails, all expressing concerns about the impact and appropriateness of these changes and calling for VeriSign to voluntarily suspend its Wildcard service.

54.   On October 3, 2003, after determining that VeriSign's actions were inconsistent with material provisions of the .com agreement, ICANN issued a formal demand to VeriSign, stating that: "[g]iven the magnitude of the issues that have been raised, and their potential impact on the security and stability of the Internet, the DNS and the .com and .net top level domains, VeriSign must suspend the changes to the .com and .net top-level domains introduced on 15 September 2003 by 6:00 PM PDT on 4 October 2003. Failure to comply with this demand by that time will leave ICANN with no choice but to seek promptly to enforce VeriSign's contractual obligations."

55.   Within hours of ICANN's demand letter, VeriSign agreed to suspend its Wildcard service temporarily, but VeriSign informed the Internet community that it would reintroduce the service at its discretion.

56.   Following VeriSign's temporary suspension of its Wildcard service, various public meetings were initiated, notwithstanding VeriSign's protest, to evaluate the implementation of the wildcard in the .com TLD. A number of organizational and corporate users also listed specific technical issues that they faced with the implementation of the Wildcard service. Although presented with harsh criticism, VeriSign "made clear … that it had no intention of turning Site Finder off for good." When asked by Stephen Crocker, one of the Internet's original architects and the SSAC committee's chairman, why the wild card was introduced in the first place without giving network operators any warning, Verisign failed to provide an answer, but simply hinted to "concerns of proprietary information and competitive advantage."

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  C. <u>VeriSign's Wildcard Service Violates The 2001 .Com Registry</u>

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      <u>Agreement.</u>

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  57. VeriSign's Wildcard service is a "Registry Service" and its introduction is

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constrained by VeriSign's contractual commitments under the .com agreement.

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  58. Should VeriSign choose to reintroduce its Wildcard service, as VeriSign has

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publicly stated it intends to, the Wildcard service would be inconsistent with several material

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provisions in the .com agreement, including but not limited to the following:

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    i. Section II.20 and Appendix C of the .com agreement;

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    ii. Section II.3(A)(i) and Appendix G of the .com agreement;

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    iii. Sections II.23(C), II.23(D), and II.24 and Appendix X of the .com

11

      agreement;

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    iv. Section II.10 of the .com agreement;

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    v. Section II.11 of the .com agreement; and

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    vi. Section II.23(D) and Appendix I of the .com agreement.

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  2. **VERISIGN'S CONSOLIDATE SERVICE**

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  A. <u>**ConsoliDate Timeline of Events**</u>

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  59. At or about the beginning of 2003, VeriSign informed ICANN that it was

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interested in implementing "ConsoliDate" in the .com registry. For a fee, ConsoliDate allows a

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registrant (such as a company with a large portfolio of domain names) to add from 1 to 364 days

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to an existing domain name registration term in order to create a single anniversary date for its

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entire .com domain name registration portfolio.

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  60. ICANN informed VeriSign that ConsoliDate was a Registry Service. VeriSign did

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not dispute this assertion.

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  61. ICANN provisionally supported the introduction of ConsoliDate and designated a

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maximum price that VeriSign could charge for ConsoliDate.

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  62. On February 25, 2003, the ICANN Board approved amendments to Appendices C

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and G of the .com agreement and allowed ICANN's General Counsel to negotiate and approve

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additional conforming amendments in order to incorporate ConsoliDate.

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1   63.   Before any amendment becomes effective, VeriSign must agree in writing to the

2   amendment and it must be approved by the DOC. ICANN requested on various occasions that

3   VeriSign begin discussions to change the current language of the .com agreement to incorporate

4   ConsoliDate.

5   64.   VeriSign failed to do so. Instead, VeriSign has chosen to operate ConsoliDate

6   without contractual authorization.

7   **B.   VeriSign's Continued Operation Of ConsoliDate Violates The 2001**

8   **.Com Registry Agreement.**

9   65.   ConsoliDate is a "Registry Service" and its introduction is constrained by

10   VeriSign's contractual commitments under the .com agreement.

11   66.   VeriSign has breached Section II.22 and Appendices G and F of the .com

12   agreement because VeriSign is charging a fee for ConsoliDate without executing the necessary

13   amendments to Appendices G and F.

14   67.   VeriSign has breached Section II.20 and Appendix C of the .net agreement

15   because ConsoliDate uses a "SYNC" command, and fails to support a grace period to renew

16   domain names, without executing the necessary amendments to Appendix C.

17   **3.   VERISIGN'S INTERNATIONAL DOMAIN NAMES SERVICE**

18   **A.   International Domain Names Service Timeline of Events**

19   68.   In or about November 2000, VeriSign began offering multilingual domain names

20   that were later stored in a third-level domain testbed environment created in concert with an

21   Internet Engineering Task Force ("IETF") working group. Multilingual domain names allowed

22   users of the Internet to use non-ASCII (non-English) character sets to register domain names.

23   69.   VeriSign charged users for registration of multilingual domain names in this

24   environment and approximately thirty registrars signed-up to be a part of this testbed.

25   70.   Shortly thereafter, VeriSign changed the name of the service from multilingual

26   domain names to International Domain Names ("IDN").

27   71.   On March 1, 2001, ICANN and VeriSign announced a proposal to modify the

28   existing Registry Agreement (which then combined com/net/org). Part of the discussion relating

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1   to this modification was that the then-existing Registry Agreement did not have a provision

2   constraining the use of IDNs. VeriSign agreed that ICANN could place such constraints, and

3   these constraints are now present in Appendix K of the current .com agreement.

4   72.   One of these constraints is reserving domain names having labels with hyphens in

5   the third and fourth character positions from initial registration within the .com TLD without

6   ICANN's express written consent. IDN necessarily requires the use of hyphens in these positions

7   in order for the DNS to decipher whether the computer is referring to IDN names or regular

8   ASCII (English) names.

9   73.   Controversy quickly emerged in East Asia with regard to VeriSign's testbed, based

10 in part on the large numbers of inappropriate Chinese, Japanese, and Korean domain names

11 registered within the testbed. For example, one user had registered the domain name of the

12 Japanese Emperor (which is considered blasphemous by traditional Japanese cultural standards).

13 Registration of inappropriate domain names was one of a number of growing problems that IDNs

14 were creating. As a result, from the beginning of 2001 to approximately June 2003, there were

15 discussions on various ways to institute procedures that would avoid these types of problems.

16   74.   An ICANN working group was initially formed to aid this process, and in late

17 2001, a broader committee was formed within the Internet community to develop appropriate

18 procedures for implementation of IDN.

19   75.   In March 2003, at an ICANN Board meeting, the committee presented six points

20 (four mandatory and two advisory) for implementation of IDN. VeriSign agreed with these

21 points but took the position that ICANN should not require VeriSign to commit to them.

22   76.   On June 20, 2003, ICANN published revisions of the committee's six points with

23 VeriSign's participation. The publication was entitled "Guidelines for the Implementation of

24 Internationalized Domain Names." VeriSign again stated that it agreed with the guidelines but

25 believed that it should not have to commit to them. All other Registry Operators seeking to

26 implement IDN (.cn, .jp, .tw, .info, .org, and .museum) agreed to abide by the guidelines and were

27 authorized in writing by ICANN to use IDN. VeriSign never formally agreed to the guidelines.

28

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

1   77.   IDN is currently functioning in the .com TLD without ICANN's formal written

2 approval.

3   **B.   VeriSign's Continued Operation Of the International Domain Names**

4   **Service Violates The 2001 .Com Registry Agreement.**

5   78.   IDN is a "Registry Service" and its introduction is constrained by VeriSign's

6 contractual commitments under the .com agreement.

7   79.   Under Appendix K of the .com agreement, VeriSign is obligated to reserve domain

8 names having labels with hyphens in the third and fourth character positions ("Tagged Domain

9 Names") from initial (i.e., other than renewal) registration within the .com TLD, except to the

10 extent that ICANN otherwise expressly authorizes in writing.   .

11   80.   Subject to the requirements of Section II.4 of the .com agreement, ICANN is

12 entitled to establish conditions on any authorization it may have for VeriSign to accept initial

13 registrations of Tagged Domain Names.

14   81.   In operating IDN, VeriSign has accepted initial registrations of Tagged Domain

15 Names without, and beyond the extent of, ICANN's express written authorization because

16 VeriSign refuses to be bound by the "Guidelines for the Implementation of Internationalized

17 Domain Names" created through the Internet community consensus building process.

18   82.   As such, VeriSign's current introduction of IDNs in the .com TLD is in breach of

19 Section II.3(A)(i) and Appendix K of the .com agreement.

20   83.   Additionally, VeriSign has breached Section II.3(A)(i) and Appendix G of the

21 .com agreement because VeriSign is charging a fee for IDNs not listed on Appendix G.

22   **4.   VERISIGN'S WAIT LISTING SERVICE**

23   **A.   Wait Listing Service Timeline of Events**

24   84.   Domain name subscriptions typically are for one or two years. At the end of that

25 term, some domain name registrants elect not to renew their subscriptions, which causes those

26 names to be deleted from the registry and permits others to register those names.

27   85.   Some time ago, VeriSign proposed to offer a Wait Listing Service ("WLS") which

28 allows a prospective domain name registrant to submit a request for an expired domain name on a

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first-come, first-serve basis through any of the more than 350 ICANN-accredited registrars for a domain name currently registered in the .com registry. If the domain name is deleted (for example, because the current registrant of the domain name elected not to renew his or her registration), VeriSign would automatically register the domain name in the name under the sponsorship of the registrar that placed the WLS subscription. Internet registrars could elect to offer WLS to consumers if they wished but would be under no obligation to do so.

86.   In making its WLS proposal, VeriSign's Vice President of Internet Relations and Compliance, Registry, acknowledged on March 21, 2002, that an amendment to the .com agreement would be required in order for VeriSign to offer WLS because WLS was a "Registry Service."

87.   After VeriSign submitted its WLS proposal to ICANN, ICANN solicited comment on the proposal from the Internet community. In August 2002, after receipt of those comments, ICANN's Board of Directors adopted a resolution authorizing ICANN's president and general counsel to negotiate amendments to its agreements with VeriSign to permit WLS to proceed. After various procedural reviews of that decision – including reconsideration at the requests of both registrars and VeriSign – the ICANN Board passed a resolution approving the results of the negotiations and authorized ICANN staff to seek the approval of the DOC (as required by ICANN's MOU with that agency) to amend the VeriSign registry agreements to permit WLS to be offered.

88.   To complete WLS deployment without violating the .com agreement, VeriSign must further secure approval from the DOC and enter into formal written amendments to the .com agreement with ICANN. VeriSign has refused to do so, apparently because VeriSign now contends that WLS is not a Registry Service.

B.   VeriSign's Wait Listing Service Violates The 2001 .Com Registry Agreement As Currently In Effect.

89.   WLS is a "Registry Service" and its introduction is constrained by VeriSign's contractual commitments under the .com agreement.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

90.   VeriSign's proposed implementation of WLS would violate Section II(3)(A)(i) and Appendix G of the .com agreement as currently in effect, in that it would involve VeriSign charging for a Registry Service not specified in that Appendix.

91.   VeriSign's proposed implementation of WLS would violate Section II.20 and Appendix C of the .com agreement as currently in effect, in that it would be contrary to functional specifications contained in that Appendix.

92.   VeriSign has refused to proceed with WLS because it does not want to acknowledge that WLS is a Registry Service, even though VeriSign has specifically acknowledged that an amendment to the. com agreement would be necessary because WLS would be a Registry Service.

5.   VERISIGN'S NOVEMBER 2001 VOLUME DISCOUNT PROGRAM

A.   November 2001 Volume Discount Program Timeline of Events

93.   In or about November 2001, VeriSign initiated a "volume discount" program without giving prior notice to ICANN.

94.   The program included payment of volume-based rebates to registrars of a portion of the price of domain-name registrations.

95.   The rebates were calculated based on the percentage increase in domain names registered by the registrar as compared to the preceding month's registrations. As a result, smaller registrars were able to achieve larger rebates (e.g., if a registrar registered 50 domain names the first month and 100 domain names the following month, that would be a 100% increase, whereas a registrar who registered 1,000 domain names the first month and 1,500 domain names the next month would only demonstrate a 50% increase).

96.   The equivalent access provisions of the .com agreement prohibit VeriSign from having different thresholds for different registrars.

97.   ICANN raised the concern with VeriSign that the program violated the equivalent access provisions of the .com agreement and suggested that VeriSign change the program accordingly.

98.   VeriSign subsequently ended its volume discount program after three months.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

B. **VeriSign's November 2001 Volume Discount Program Violated The 2001 .Com Registry Agreement.**

99. VeriSign's November 2001 Volume Discount Program violated Sections II.19, II.22, and II.23 and Appendix W of the .com agreement.

6. VERISIGN'S THROTTLING OF REGISTRY-REGISTRAR AGREEMENTS

A. **Timeline Of Events**

100. In or around September 2004, VeriSign began restricting the ability of ICANN-accredited registrars to gain access to the Shared Registration System (the "SRS") operated by VeriSign under the .com agreement. This conduct violates Section II.19 and Appendix F of the agreement.

101. Section II.19 of the .com agreement requires VeriSign to enter into Registry-Registrar Agreements (RRAs) and promptly provide accredited registrars with access to the SRS. Specifically, the RRA, which is attached as Appendix F to the .com agreement, states:

> 2.1 System Operation and Access. Throughout the Term of this Agreement, [VeriSign] shall operate the System and provide Registrar with access to the System enabling Registrar to transmit domain name registration information for the Registry TLD to the System . . . .

102. This obligation to provide ICANN-accredited registrars with access to the SRS is absolute and unqualified and arises immediately upon VeriSign reasonably assuring itself that the applying entity in fact has been accredited. The .com agreement does not allow VeriSign unilaterally to restrict or constrain the ability of accredited registrars to gain such access for any reason.

103. Notwithstanding this obligation, VeriSign has publicly announced that it will limit the rate at which newly-accredited registrars are allowed access to the SRS. ICANN has received reports that in fact a large number of registrars already have been blocked in their efforts to gain access to the SRS.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

B. **VeriSign's Throttling of Registry-Registrar Agreements Violates The 2001 .Com Registry Agreement.**

104. VeriSign's unilateral action to limit the rate at which ICANN-accredited registrars are allowed access to the SRS is inconsistent with Section II.19 and Appendix F of the .com agreement and amounts to a material breach of that agreement.

7. **VERISIGN'S COLLECTIVE ACTIONS HAVE VIOLATED THE CLEAR MEANING AND SPIRIT OF THE 2001 .COM REGISTRY AGREEMENT CODE OF CONDUCT.**

105. The .com agreement obligates VeriSign to comply with the Code of Conduct, attached as Appendix I to the .com agreement.

106. The clear meaning of the Code of Conduct, as demonstrated in its preamble, requires VeriSign to carry out its duties as registry operator in a manner that will not compromise the Internet community's trust in VeriSign. This obligation, when construed in light of the agreement as a whole, necessarily includes a general requirement that VeriSign will refrain from exploiting its position as the sole monopoly operator of the .com registry by using its position to secure financial benefits to the detriment of the Internet community.

107. The manner in which VeriSign has chosen to implement the Wildcard service, ConsoliDate, IDN, WLS, and the 2001 Volume Discount Program, as well as VeriSign's deliberate failure to immediately process Registry-Registrar Agreements, all demonstrate that VeriSign has ignored this obligation.

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF

108. Cross-Complainant hereby incorporates and adopts by reference each and every allegation set forth in the preceding paragraphs of this cross-complaint as though fully set forth herein.

109. The .com agreement constitutes a valid and binding contract between ICANN and VeriSign.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

1   110.   All of the terms of the .com agreement are just and reasonable to VeriSign, and the

2   consideration for VeriSign's obligations under the .com agreement, to the extent relevant to this

3   action, is fair and adequate to VeriSign.

4   111.   ICANN has duly and properly performed, and continues to duly and properly

5   perform, all if its obligations under the .com agreement, except for any terms that it is prevented

6   or otherwise excused from performing.

7   112.   An actual controversy has arisen and now exists between ICANN and VeriSign

8   relating to the parties' rights and obligations under the .com agreement in that ICANN contends,

9   and VeriSign disputes, the following:

10   **1.   REGISTRY SERVICES DEFINITION**

11   113.   "Registry Services", as defined in Section I.9 of the .com agreement, means all

12   services provided as an integral part of the .com TLD, other than those services excluded from the

13   definition by the last sentence of Section I.9 of the agreement.

14   114.   A service that is provided as an integral part of the .com TLD is a Registry Service

15   even though that service may not be expressly listed in the second sentence of Section I.9 of the

16   .com agreement. In listing particular services that are included in the definition, the second

17   sentence of Section I.9 of the agreement serves: (a) to identify particular services that are

18   necessarily Registry Services within the definition of Section I.9, and (b) to illustrate the types of

19   services that fall within the general definition of "Registry Services" stated in the first sentence of

20   Section I.9.

21   115.   A service that is provided as an integral part of the .com TLD is a Registry Service

22   even though that service may not be subject to the specifications and functionality provisions of

23   Appendices C and D to the agreement.

24   **2.   ADDITIONAL OBLIGATION**

25   116.   Appendix G of the .com agreement prohibits VeriSign from charging for any

26   Registry Service not specified in Appendix G.

27

28

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

3. WILDCARD SERVICE

117. VeriSign's Wildcard service, as implemented on September 15, 2003, is a Registry Service within the meaning of the .com agreement.

118. VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates Section II.20 and Appendix C of the .com agreement.

119. In charging a fee for its referrals from its Wildcard service, as implemented on September 15, 2003, VeriSign violates Section II.3(A)(i) and Appendix G of the .com agreement.

120. VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates Sections II.23(C), II.23(D), and II.24 and Appendix X of the .com agreement.

121. VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates Section II.10 of the .com agreement.

122. VeriSign's operation of its Wildcard service, as implemented on September 15, 2003, violates Section II.11 of the .com agreement.

4. CONSOLIDATE

123. VeriSign's ConsoliDate service is a Registry Service within the meaning of the .com agreement.

124. VeriSign has implemented the ConsoliDate service in violation of Section II.20 and Appendix C of the .com agreement because ConsoliDate is contrary to functional specifications contained in that Appendix.

125. VeriSign's ConsoliDate service violates Section II.22 and Appendix G of the .com agreement because VeriSign is charging a fee for ConsoliDate without executing the necessary amendment to Appendix G.

126. VeriSign's ConsoliDate service violates Section II.22 and Appendix F of the .com agreement because ConsoliDate is charging a fee for ConsoliDate without executing the necessary amendment to Appendix F.

5. INTERNATIONAL DOMAIN NAME

127. VeriSign's IDN registration service is a Registry Service within the meaning of the .com agreement.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

1

128. Under Appendix K of the .com agreement, VeriSign is obligated to reserve domain

2 names having labels with hyphens in the third and fourth character positions ("Tagged Domain

3 Names") from initial (i.e. other than renewal) registration within the .com TLD, except to the

·4 extent that ICANN otherwise expressly authorizes in writing.

5 129. Subject to the requirements of Section II.4 of the .com agreement, ICANN is

6 entitled to establish conditions on any authorization it may give for VeriSign to accept initial

7 registrations of Tagged Domain Names.

8 130. In operating its IDN registration service, VeriSign has accepted initial registrations

9 of Tagged Domain Names without, and beyond the extent of, ICANN's express written

10 authorization.

11 131. In operating its IDN registration service, VeriSign has violated the requirements of

12 Section II.3(A)(i) and Appendix K of the .com agreement.

13 132. In charging a fee for its IDN registration service, VeriSign has violated

14 Section II.3(A)(i) and Appendix G of the .com agreement by charging for a Registry Service not

15 specified in that Appendix.

16 **6. WAIT LISTING SERVICE**

17 133. VeriSign's WLS is a Registry Service within the meaning of the .com agreement.

18 134. VeriSign's proposed implementation of WLS would breach Section II.3(A)(i) and

19 Appendix G of the .com agreement as currently in effect, in that it would involve VeriSign

20 charging for a Registry Service not specified in that Appendix.

21 135. VeriSign's proposed implementation of WLS would violate Section II.20 and

22 Appendix C of the .com agreement as currently in effect, in that would be contrary to functional

23 specifications contained in that Appendix.

24 **7. NOVEMBER 2001 VOLUME DISCOUNT PROGRAM**

25 136. VeriSign's November 2001 Volume Discount Program, which included payment

26 of volume-based rebates to registrars of a portion of the price of domain-name registrations on

27 terms not equally available to all registrars, violates Sections II.19, II.22, and II.23 and Appendix

28 W of the .com agreement.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

8. THROTTLING OF REGISTRY-REGISTRAR AGREEMENTS

137.   VeriSign's unilateral action to limit the rate at which ICANN-accredited registrars are allowed access to the SRS is inconsistent with Section II.19 and Appendix F of the .com agreement and amounts to a material breach.

9. CODE OF CONDUCT

138.   VeriSign's collective actions to date, as demonstrated in this Cross-complaint, have violated the Code of Conduct, attached as Appendix I to the .com agreement.

10. ICANN'S COMPLIANCE WITH THE 2001 .COM REGISTRY AGREEMENT

139.   ICANN's obligations under Section II.4 of the .com agreement are limited to ICANN's activities that impact VeriSign's rights, obligations, and role as Registry Operator under the agreement in providing Registry Services and other duties as expressly provided for in the 2001 .com agreement

140.   In matters that impact VeriSign's rights, obligations, and role as Registry Operator under the .com agreement, ICANN has exercised its responsibilities in an open and transparent manner.

141.   In matters that impact VeriSign's rights, obligations, and role as Registry Operator under the .com agreement, ICANN has not unreasonably restrained competition and has, to the extent feasible, encouraged robust competition.

142.   In matters that impact VeriSign's rights, obligations, and role as Registry Operator under the .com agreement, ICANN has established adequate appeal procedures for VeriSign, to the extent it has been adversely affected by ICANN standards, policies, procedures or practices.

143.   In matters that impact VeriSign's rights, obligations, and role as Registry Operator under the .com agreement, ICANN has not applied standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and has not singled out VeriSign for disparate treatment unless justified by substantial and reasonable cause.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

11. INDEMNITY

144.   Section II.6 of the .com agreement is a standard third-party indemnity provision and does not afford VeriSign any right of indemnity for this or any other litigation brought against ICANN under the .com agreement.

12. NON-RENEWAL OF REGISTRY AGREEMENT

145.   ICANN will not be obligated under Section II.25 of the .com agreement to award VeriSign a four-year renewal of the agreement in the event that ICANN demonstrates that VeriSign is in violation of the .com agreement.

146.   ICANN will not be obligated under Section II.25 of the .com agreement to award VeriSign a four-year renewal of the agreement in the event that ICANN demonstrates that VeriSign has not provided and will not provide a substantial service to the Internet community under the .com agreement.

147.   ICANN will not be obligated under Section II.25 of the .com agreement to award VeriSign a four-year renewal of the agreement in the event that ICANN demonstrates that the maximum price for initial and renewal registrations proposed in the Renewal Proposal submitted by VeriSign under Section II.25(A) exceeds the price permitted under Section II.22 of the .com agreement. ConsoliDate is a service under which registrations are renewed. The maximum price charged by VeriSign for renewal of registrations using the ConsoliDate service exceeds the price permitted for renewal registrations under Section II.22 of the .com agreement.

148.   The WLS, as proposed by VeriSign, provides for the initial registration made by registrars on behalf of customers for a price that exceeds the price permitted for initial registrations under Section II.22 of the .com agreement.

13. TERMINATION OF REGISTRY AGREEMENT

149.   ICANN has the right to terminate the .com agreement, in accordance with Section II.16(A) of the .com agreement, if VeriSign proceeds to offer Registry Services, including its Wildcard service, ConsoliDate, IDN, and WLS, without complying with the requirements of the agreement, including obtaining ICANN's approval.

DEFENDANT'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

150. ICANN has the right to terminate the .com agreement, in accordance with Section II.16 of the .com agreement, if the Court determines that VeriSign is in violation of the .com agreement.

151. Cross-Complainant desires a judicial determination and declaratory judgment of the respective rights and obligations of Cross-Complainant and Cross-Defendant with respect to matters alleged in this Cross-complaint.

SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT

152. Cross-Complainant hereby incorporates and adopts by reference each and every allegation set forth in the preceding paragraphs of this cross-complaint as though fully set forth herein.

153. VeriSign's conduct, as alleged above, constitutes multiple breaches of the .com agreement. ICANN has performed all of its obligations under the .com agreement except for those that are excused by virtue of VeriSign's conduct.

154. ICANN has suffered injury as a result of VeriSign's breaches in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, ICANN prays for judgment as follows:

155. For a declaration of the respective rights and obligations of the parties with respect to the .com agreement;

156. For a declaration and determination that VeriSign has breached the .com agreement;

157. For its costs of suit; and

158. For such other and further relief as the Court may deem just and proper.

Dated: November 12, 2004

JONES DAY

By: _____
Jeffrey A. LeVee

Attorneys for Defendant and Cross-Complainant
INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

     I am employed 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 555 West Fifth Street, Suite 4600, Los Angeles, California 90013.

     On November 12, 2004, I caused to be served the document described as:

DEFENDANT ICANN'S CROSS-COMPLAINT FOR DECLARATORY RELIEF

     on the interested parties in this action.

_____ **BY (U.S. MAIL).** I placed _____ the original __X__ a true copy thereof enclosed in sealed envelope(s) to the addressee(s) as follows:

__X__ **BY PERSONAL SERVICE.** I placed ___ the original __X__ true copies thereof enclosed in sealed envelope(s) and caused such envelope to be hand delivered via messenger to the offices of the addressee(s) as follows:

     LAURENCE HUTT, ESQ.
     ARNOLD & PORTER
     777 S. Figueroa, 44th Fl.,
     Los Angeles, CA 90017

     I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit of mailing in affidavit.

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

__X__ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction this service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

     Executed on November 12, 2004, at Los Angeles, California.

Elba Alonso de Ortega	
Type or Print Name	Signature