

1 PATRICK A. CATHCART (CA Bar No. 65413)  
pcathcart@AlvaradoSmith.com  
2 BRET A. FAUSETT (CA Bar No. 139420)  
bfausett@AlvaradoSmith.com  
3 REGINALD ROBERTS, JR. (CA Bar No. 216249)  
rroberts@AlvaradoSmith.com  
4 IMANI GANDY (CA Bar No. 223084)  
igandy@AlvaradoSmith.com  
5 ALVARADOSMITH  
A Professional Corporation  
6 633 W. Fifth Street, Suite 1100  
Los Angeles, CA 90071  
7 Tel. (213) 229-2400  
Fax. (213) 229-2499  
8

9 Attorneys for Plaintiff  
COALITION FOR ICANN TRANSPARENCY INC.

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**

13  
14 COALITION FOR ICANN TRANSPARENCY  
INC., a Delaware Corporation,  
15  
Plaintiff,  
16  
v.  
17 VERISIGN, INC., a Delaware Corporation,  
18  
Defendant.  
19

Case No. 05-4826 (RMW) PVT  
Honorable Ronald M. Whyte

**FOURTH AMENDED COMPLAINT FOR  
VIOLATION OF THE ANTITRUST LAWS  
AND DECLARATORY AND INJUNCTIVE  
RELIEF**

**TRIAL JURY DEMANDED**

DISC. CUT-OFF: June 24, 2011  
TRIAL DATE: December 5, 2011

20  
21  
22  
23  
24 Plaintiff Coalition for ICANN Transparency Inc. ("CFIT") brings this action against  
25 Verisign, Inc. ("Verisign"), and alleges as follows:

26 **I. NATURE OF THE ACTION**

27 1. This action is brought to (a) enjoin and prevent defendant Verisign, Inc. (hereafter  
28 "Verisign") from carrying out an unlawful scheme to establish a permanent monopoly over the

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1 relevant markets as alleged herein, for declaratory relief and damages; (b) enjoin and prevent  
 2 defendant Verisign from furthering an unlawful agreement with the Internet Corporation for  
 3 Assigned Names and Numbers (hereafter "ICANN").

4 2. The unlawful schemes and agreement described herein give Verisign a permanent  
 5 monopoly over all the ".COM" and ".NET" domain name registrations and permits Verisign to  
 6 increase prices above the fair market price in a normally competitive market.<sup>1</sup>

7 3. This action seeks to restore competitive conditions in markets for ".COM" and  
 8 ".NET" Internet domain names.

9 4. CFIT seeks an injunction against the defendant and its management personnel  
 10 preventing them from taking further steps to implement their unlawful schemes and agreement,  
 11 including without limitation preventing the implementation of certain terms of a new .COM Registry  
 12 Agreement between ICANN and Verisign (the "2006 .COM Agreement") (available on the ICANN  
 13 website at <http://www.icann.org/en/registries/agreements.htm>). Plaintiff also requests declaratory  
 14 relief that the agreements and understandings between the defendant and ICANN, as reflected in the  
 15 terms of the 2006 .COM Agreement and the 2005 .NET Agreement constitute violations of federal  
 16 and state antitrust laws, and ordering appropriate relief, including disgorgement of Verisign's ill-  
 17 gotten gains, to restore competitive conditions in affected markets.<sup>2</sup>

18 5. Through a pattern of both strong-arm conduct and deceptive acts and practices,  
 19 Verisign has undermined ICANN's legal authority and financial stability continually since the non-  
 20 profit corporation was founded in 1998.

21 6. Most recently, in order to consolidate its monopoly power over the .COM and .NET  
 22 markets, Verisign filed a spurious legal action against ICANN which taxed ICANN's financial and  
 23 personnel resources, placed its Directors and advisors in personal financial jeopardy, and threatened  
 24 the legal underpinnings on which ICANN has based.

25  
 26 <sup>1</sup> On Friday, February 11th, the Court dismissed CFIT's .NET allegations. CFIT believes the  
 27 allegations dismissed stated valid claims for relief but, without discovery, CFIT cannot provide more  
 detailed factual allegations. CFIT intends to appeal the dismissal of its causes of action based on .NET.

28 <sup>2</sup> On Friday, February 11th, the Court dismissed CFIT's disgorgement prayer for relief. CFIT  
 intends to appeal the dismissal of its disgorgement remedy.



1           16.     CFIT was incorporated in 2005 by three founding supporters, Trammel & Co.,  
2 Pool.com and Momentous.ca. Each of the founding members was a registrant of a .COM domain  
3 name. In addition, Momentous.ca was the parent company of a family of domain name services  
4 companies, including domain name registrars and back-order services providers (including fellow-  
5 CFIT member Pool.com).

6           17.     On the same day that the present litigation was filed, the World Association of  
7 Domain Name Developers, Inc. ("WADND") also filed suit in this same court seeking substantially  
8 similar relief as sought by CFIT here. After learning of the present litigation, WADND voluntarily  
9 dismissed its separate litigation without prejudice and joined CFIT as a Supporter. WADND is the  
10 registrant of numerous .COM domain names. On or about the time that WADND joined CFIT,  
11 Targeted Traffic Domains, Inc., a domain name holding company also joined. Targeted Traffic  
12 Domains, Inc. owns thousands of .COM domain names.

13           18.     In or about January, 2006, Name Administration, Inc. and iRegistry Corp joined CFIT  
14 as Supporters. Name Administration, Inc. is the registrant of hundreds of thousands of .COM domain  
15 names. iRegistry is a domain name registrar.

16           19.     In or about October, 2010, Linkz Internet Services Corp. joined CFIT as a Supporter.  
17 Linkz Internet Services Corp. is the registrant of tens of thousands of .COM domain names.

18           20.     The current supporters of CFIT are the World Association of Domain Name  
19 Developers, Inc., Targeted Traffic Domains, Inc., Name Administration, Inc., iRegistry Corp., and  
20 Linkz Internet Services Corp.

21           21.     The current supporters of CFIT have approximately 375,000 .COM domain names  
22 under registration.

23           22.     CFIT receives ongoing financial supports from its supporters, including for the  
24 support for the present litigation.

25           23.     CFIT maintains a website at [CFIT.ORG](http://CFIT.ORG) where it actively solicits new members. As  
26 CFIT's list of members continues to evolve and grow, the list of members will be produced to  
27 Verisign during discovery.  
28

**IV. JURISDICTION AND VENUE**

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

25. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c), in that defendant Verisign resides, transacts business, and is found in this district and defendant ICANN resides, transacts business, and is found in the State of California and in this district.

26. **Intradistrict Assignment:** A substantial part of the events giving rise to CFIT's claims occurred in Santa Clara County, California, where defendant Verisign has its principal place of business. Assignment to the San Jose division is therefore proper.

**V. RELEVANT MARKETS**

27. The relevant markets for antitrust analysis in this action include the following:

- a. The unique and separate market for .COM domain name registrations (the ".COM Registration Market").
- b. The unique and separate market for .NET domain name registrations (the ".NET Registration Market").
- c. As used in this Complaint, the ".COM Registration Market" and the ".NET Registration Market" may be referenced, from time to time, as the Domain Name Registration Markets.

28. The market for .COM domain name registrations is a distinct market for purposes of domain name registrations.

29. Although over 250 TLDs<sup>3</sup> exist, they are not equally accessible to businesses based in the United States. All country-code TLDs are operated and managed outside of the United States, and are therefore not subject to United States antitrust laws and statutes. Registration with ccTLDs requires a Registrant to leave the borders and protection of the United States. Therefore these ccTLDs cannot be counted as part of the relevant market for determining antitrust violations.

<sup>3</sup> TLDs or "top-level domains" are described more fully in section VII.B, paragraphs 16 through 19. ".COM" and ".NET" are examples of TLDs.



## VII. BACKGROUND

### A. THE INTERNET DOMAIN NAME SYSTEM

39. The Internet is a network of interconnected computers and computer networks. Every computer connected directly to the Internet has a unique numerical address. These addresses, which are known as Internet Protocol ("IP") addresses, are necessary for computers to communicate with each other over the Internet. An example of an IP address is 64.233.161.147.

40. Because numerical IP addresses can be cumbersome and difficult for Internet users to remember or to use, the numerical IP address system has been overlaid with a more user-friendly system of domain names, the Domain Name System or DNS.

### B. DOMAIN NAME SYSTEM HIERARCHY

41. The DNS defines a hierarchical name space divided into zones, each of which has authority over the zones below it.

42. For purposes of the DNS, domain names are read from right to left. The top zone is divided into top-level domains, or "TLDs" such as ".COM" and ".NET." Each TLD is divided into second-level domains or "SLDs" such as "example.com" or "example.net." Second-level domains can be further divided into third-level domains, such as "another.example.com," and so on.

43. A set of "root servers" provides a list of the registries responsible for maintaining each TLD. For example, at present, the root servers tell users looking for .COM or .NET domain names to find the location for that domain name on name servers operated by Verisign. For example, a user looking for google.COM would be directed to Verisign's .COM name server to find the entry for "google." The Verisign server, in turn, would tell the user that google could be found at the host identified by the address 64.233.161.147.

44. There are currently two different types of TLDs: generic TLDs ("gTLDs"), such as ".AERO," ".BIZ," ".COM," ".COOP," ".INFO," ".JOBS," ".MOBI," ".MUSEUM," ".NAME," ".NET," ".ORG," ".PRO," ".TRAVEL," ".GOV," ".EDU," ".MIL," and ".INT", and approximately 240 two-letter country code TLDs ("ccTLDs"), such as ".US," ".UK," ".JP," and ".KR."

45. Because domain names are essentially "addresses" that allow computers connected to the Internet to communicate with each other, each domain name must be unique, even if it differs

1 from another domain name by only one character (*e.g.*, "uscourts.com" is different from  
2 "uscourt.com" or "us-courts.com").

3 46. A given domain name is typically registered to only one entity and can point to only  
4 one set of host computers.

### 5 **C. REGISTRIES, REGISTRARS, AND REGISTRANTS**

6 47. Verisign acts as the "Registry" for domain names registered in the .COM and .NET  
7 gTLDs in accordance with a written agreement with ICANN.

8 48. As the Registry for the .COM and .NET gTLDs, Verisign maintains the definitive  
9 database that associates registered domain names in these gTLDs with the corresponding IP numbers  
10 of their respective domain name servers. The domain name servers, in turn, direct Internet queries to  
11 resources such as websites and e-mail systems. This database is known as a "zone file." Oftentimes,  
12 the Registry is referred to as a "Registry operator" and the zone file is referred to as the "Registry."

13 49. A domain name is created by an individual or organization that registers the domain  
14 name and thereby includes it in the zone file. The individual or organization that registers a specific  
15 domain name is a "Registrant."

16 50. Internet users typically interact with the DNS through their Internet Service Providers  
17 ("ISP"). Specifically, when a user requests a Web site associated with a domain name, the user's  
18 computer searches its local cache for the IP address associated with that domain name. If the IP  
19 address is not found locally, the computer will query the ISP's name server. If the ISP's name server  
20 does not have the address for the domain name requested, it will query the appropriate Registry's  
21 name server (*i.e.*, its zone file), from which it will obtain the name and IP address of the name server  
22 associated with the domain name requested. It will then query the name server associated with the  
23 domain name, and pass the IP address back to the user's computer.

### 24 **D. THE REGISTRY-REGISTRAR SPLIT**

25 51. Registrants do not have direct access to the Verisign Registry and do not interact  
26 directly with the Registry in connection with domain name registrations. Instead, prospective  
27 registrants must register domain names through any one of hundreds of private companies located in  
28

1 the United States and throughout the world that act as domain name "Registrars" for the second-level  
2 domain names in the .COM and .NET gTLDs.

3 52. The split between the .COM and .NET Registries and the Registrars was created by  
4 contract between ICANN and Verisign on or about November 10, 1999 in order to bring competition  
5 to the registration of domain names.

6 53. Prior to the creation of the registry-registrar split on November 10, 1999, Verisign, by  
7 and through its predecessor in interest, Network Solutions, Inc., was the sole provider of .COM and  
8 .NET registration services to consumers, either by itself or through a network of authorized resellers.

9 54. Verisign, by and through its predecessor in interest, Network Solutions, Inc., was  
10 required to agree to the registry-registrar split by the United States government, under threat of  
11 antitrust prosecution and possible loss of its contract for services with the United States.

12 55. Since 1999, the registry-registrar split has been the key to maintaining competition in  
13 the registration for domain names and the provisioning of related domain name services.

14 56. In effect, the registry-registrar split described in the paragraph above allows the  
15 "Registry" to act as a neutral services platform, while the "Registrars" compete for customers on  
16 price and differentiation of services.

#### 17 **E. COMPETITION FOR THE TLD REGISTRY AGREEMENTS**

18 57. One of the principal reasons ICANN was created was to enable competition in the  
19 registration of domain names.

20 58. As set forth more completely below, on July 1, 1997, as part of the Clinton  
21 Administration's Framework for Global Electronic Commerce, the President directed the Secretary  
22 of Commerce to privatize the domain name system (DNS) in a manner that increases competition  
23 and facilitates international participation in its management.

24 59. This Presidential directive resulted in a policy process that created ICANN. One of  
25 the principal statements of United States policy behind the creation of ICANN was a document  
26 released by the U.S. Department of Commerce on June 5, 1998, and titled "Management of Internet  
27 Names and Addresses," Docket Number: 980212036-8146-02. This document is often referenced  
28 by ICANN and the entities that are involved in ICANN as the "White Paper."

1           60.     The "White Paper" specifically provided that the corporation which would become  
2 ICANN should seek to use "Where possible, market mechanisms that support competition and  
3 consumer choice." The United States believed that competition would "lower costs, promote  
4 innovation, encourage diversity, and enhance user choice and satisfaction."

5           61.     This mandate to create competition is one of the core values currently written into  
6 ICANN's by-laws ("In performing its mission, the following core values should guide the decisions  
7 and actions of ICANN:....(6) Introducing and promoting competition in the registration of domain  
8 names where practicable and beneficial in the public interest.").

9           62.     Historically, one of the ways ICANN has sought to obtain the benefits of competition  
10 has been by putting TLD registry agreements out for bid, and by selecting a registry operator on the  
11 basis of the benefits to consumers in price and quality of service presented by each prospective  
12 registry operator.

13           63.     Periodic bidding for the TLD registry agreements has yielded substantial benefits for  
14 consumers.

15           64.     Verisign and others recently bid competitively for the right to operate the .NET  
16 registry beginning in July 2005. Verisign's bid was selected as the winning bid, in part because  
17 Verisign promised immediately to *lower* .NET registration fees by more than thirty percent.

18           65.     Because there can be only one registry operator at a time for each TLD registry, no  
19 competition among prospective registry operators exists during the term of each registry agreement.  
20 The only time competition among prospective registry operators exists is at the end of a registry  
21 agreement, when the next registry operator must be selected.

22           66.     A central competitive constraint on a TLD registry operator is the meaningful  
23 prospect that the operator will lose the registry in the next round of bidding on the basis of  
24 overcharging or poor performance during the current contract term.

25           67.     The threat of future competitive bidding not only constrains the TLD operator at the  
26 moment when it bids, but also during its operation of the registry. A failure to act reasonably and  
27 provide service on competitive terms and conditions throughout the contract term poses a potential  
28 for the current operator to lose in future bidding competition for the TLD registry agreement.

1           68.     Although current technology favors having a single registry for a given TLD, the  
2 assignment of a contract to operate a TLD does not create a natural monopoly.

3           69.     A registry operator that operates a TLD registry for a fixed period of time, knowing  
4 that the registry contract will be placed into a competitive bidding situation at the end of the fixed  
5 term, faces competition from its potential successors.

6           70.     This competitive bidding, between incumbent operator and prospective successor  
7 operators, benefits consumers by keeping prices in check, by ensuring that the registry operator  
8 invests in sufficient infrastructure and staff to maintain a stable and secure registry, by maintaining  
9 solid and reliable performance of the registry, and by preventing the registry from undertaking  
10 abusive practices that would financially benefit the registry at the expense of the end-user's  
11 experience.

12           71.     This competitive bidding, between incumbent operator and prospective successor  
13 operators, also benefits registrars, including registrars who act as back-end service providers (as  
14 defined *infra*), by ensuring that the registry operator invests in sufficient infrastructure and staff to  
15 maintain a stable and secure registry on which registrars can rely for their businesses, by maintaining  
16 solid and reliable performance of the registry on which registrars can rely for their businesses, and  
17 by preventing the registry from undertaking abusive practices that would allow the registry to  
18 cannibalize competitive registrar markets.

19           72.     Until June 2005, Verisign had operated both the .NET and the .COM registries under  
20 the competitive threat of future competitive bidding.

21           73.     When ICANN awarded the contract for the .NET registry to Verisign in July 2005,  
22 however, ICANN and Verisign eliminated all realistic prospects that Verisign would face  
23 competitive bidding for that registry in the future.

24           74.     Upon the award of the new .NET contract to Verisign in July, 2005, Verisign moved  
25 into a monopoly position with regard to .NET, insulated from any realistic competition from a  
26 successor registry for .NET.

27           75.     The new 2005 .NET Agreement included a renewal provision that allowed ICANN to  
28 solicit competitive bids for the .NET registry only if a court or arbitrator issued a non-appealable

1 final order finding Verisign to be in breach of the agreement. Even then, Verisign would not lose the  
2 registry contract if it cured the breach.

3 76. The proposed 2006 .COM Agreement challenged in this action includes an identical  
4 provision, thereby eliminating all realistic prospect that Verisign will face competitive bidding for  
5 the .COM registry in the future.

6 77. Upon the award of the new .COM contract to Verisign in 2006, Verisign moved into  
7 a monopoly position with regard to .COM, insulated from any realistic competition from a successor  
8 registry for .COM.

9 **F. OTHER TLDs ARE NOT SUBSTITUTES FOR .COM AND .NET**

10 78. The .COM registry does not compete with other TLDs.

11 79. The .NET registry also does not compete with other TLDs.

12 80. The .COM and .NET registries cannot compete with each other for an additional,  
13 separate reason: Verisign controls both the .COM and the .NET registries.

14 81. Consumers do not regard .COM domain names as having reasonable substitutes in  
15 any other top-level domain name registries.

16 82. Demand cross-elasticities between .COM domain names, on the one hand, and  
17 domain names in other TLDs such as .NET, .INFO, .BIZ and in country code TLDs, are low.

18 83. Decreases in the price of domain name registrations in other TLDs (such as occurred  
19 on July 1, 2005 when .NET domain name registration prices were cut by more than thirty percent)  
20 do not result in price decreases for .COM domain name registrations.

21 84. As a promotional device, .INFO domain names were given away for free for a  
22 significant period when that registry first started to operate. During that time, there was no  
23 discernible number of registrants switching from .COM domain names to .INFO domain names.

24 85. The prices that consumers are willing to pay for .COM domain name registrations in  
25 auctions substantially exceed the prices they are willing to pay for domain name registrations in  
26 other TLDs when they are offered at auctions. For example, during the past year, nine .COM  
27 domain names sold for \$600,000.00 or more, while the highest selling .BIZ domain name was  
28 \$15,000.00.

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1           86. Many .COM domain name registrants regard domain names in other TLDs as  
2 complements to, rather than substitutes for, .COM domain name registrations and seek similar  
3 domain name registrations in a number of TLDs.

4           87. In fact, Verisign itself has registered not only "Verisign.com" but also "Verisign.net,"  
5 "Verisign.info," and "Verisign.biz," among others.

6           88. Moreover, most .COM domain name registrants would experience overwhelming  
7 costs to switch from a .COM domain name registration to the complementary domain name in  
8 another TLD (for example, a switch from cook.COM to cook.NET or to cook.info), including  
9 potential lost traffic, e-mails, and goodwill, as well as slippage in search engine results and costs  
10 associated with revising letterhead, business cards, Internet listings, and websites.

11           89. As a result, registrants of .COM domain names would not regard domain names in  
12 other TLDs as reasonable substitutes for their existing domain names in the .COM TLD.

13           90. For all practical purposes, registrants of .COM domain names are locked in to the  
14 registration and use of their .COM domain name.

15           91. For many .COM domain name registrants, their .COM domain name has become  
16 their trademark or trade name, such as "Amazon.com." These registrants do not regard domain  
17 names in other TLDs, such as "Amazon.net," to be reasonable substitutes for their .COM domain  
18 name registrations.

19           92. For a company that has branded its online identity with a .COM domain name, the  
20 costs of changing that branding to a new TLD are enormous. For this reason, .COM registrants are  
21 locked into their use of the .COM registry.

22           93. .COM domain names are the primary commercial domain names and dominate the  
23 market for domain names registered for commercial purposes.

24           94. There are in excess of 60,000,000 .COM domain name registrations, which is  
25 approximately 75% of all domain names registered in generic TLDs (.COM, .NET, .ORG, .INFO,  
26 and .BIZ) and approximately 45% of all domain names registered in any TLD (including those  
27 registered in restricted TLDs such as .GOV or .MUSEUM, and the country code TLDs).  
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1           95. Consumers likewise do not regard .NET registrations as having reasonable substitutes  
2 in any other top level domain name registries.

3           96. Demand cross-elasticity between domain names in the .NET TLD, on the one hand,  
4 and domain names in other TLDs such as .COM, .INFO, .BIZ and country code TLDs, are low.

5           97. The significant decrease in the registration fee for .NET domain names in July 2005  
6 (more than thirty percent) did not result in significant numbers of consumers switching to .NET  
7 domain names from domain names in other TLDs.

8           98. When .INFO domain names were being given away for free when that registry first  
9 started to operate, there was no discernible number of registrants switching from .NET domain  
10 names to .INFO domain names.

11           99. The prices that consumers are willing to pay at auctions for .NET domain name  
12 registrations substantially exceed the prices they are willing to pay for domain names in all other  
13 TLDs when they are offered at auction, with the sole exception of .COM domain names.

14           100. For example, during one recent year the highest selling .NET domain name was  
15 \$150,000.00, which was more than double what anyone was willing to pay for a domain name in the  
16 other TLDs (other than the .COM TLD).

17           101. As with registrants of .COM domain names, many .NET domain name registrants use  
18 their .NET domain name as their trademark or trade name, such as "earthlink.net." They would be  
19 unwilling to incur the substantial switching costs involved in switching from their .NET domain  
20 name to a complementary domain name in another TLD (such as a switch from "att.net" to  
21 "att.info").

22           102. Moreover, because .NET domain names are the primary domain names used for  
23 networking purposes and dominate the market for such names, they are commonly used by Internet  
24 and e-mail service providers who could not easily substitute a domain name in an alternative TLD  
25 without potentially disrupting traffic for thousands if not millions of customers.

26           103. There are a limited number of generic TLDs.

27 ///

28 ///

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1           104. A number of these generic TLDs, such as .MIL, .MUSEUM, and .TRAVEL, impose  
2 restrictions on who can register a domain name in the TLD and the purpose for which such a domain  
3 name can be used.

4           105. Other generic TLDs, such as .ORG and .EDU, are recognized by consumers as being  
5 used in connection with particular purposes, such as non-profit organizations and educational  
6 institutions.

7           106. None of the other generic TLDs compete with the .COM or .NET TLDs.

8           107. The country codes TLDs do not compete with either the .COM TLD or the .NET  
9 TLD.

10           108. Many ccTLDs impose nexus requirements between the prospective registrant and the  
11 host country for the ccTLD, preserving the idea that domain names in ccTLDs should be used by  
12 individuals and entities that have a nexus with the host country.

13           109. Some of these nexus requirements can be quite onerous, for example, limiting domain  
14 name registrations to entities formed or incorporated in the host country.

15           110. Even in those cases where there is no nexus requirement, a ccTLD is not viewed as a  
16 reasonable substitute for a .COM or .NET domain name for individuals and entities who have no  
17 nexus with the host country because it could lead to consumer confusion. For example, a company  
18 located in the United States would not view a domain name registered in the Mexican TLD as a  
19 substitute for a domain name registered in the .COM or .NET TLDs. Additionally, all country code  
20 TLDs are operated and managed outside of the United States, and are therefore not subject to United  
21 States antitrust laws and statutes.

22           111. Registration with ccTLDs requires a Registrant to leave the borders and protection of  
23 the United States.

24           112. ccTLDs cannot be counted as part of the relevant market for determining antitrust  
25 violations.

26 **G. HISTORY OF gTLD DOMAIN NAME ADMINISTRATION**

27           113. Today's Internet has its origin in a network called the ARPAnet which was launched  
28 by the Department of Defense ("DOD") in 1969. ARPAnet was later linked to other networks

1 established by various government agencies, universities, and research facilities. In 1990, NSFnet,  
2 the network developed by the National Science Foundation superseded ARPAnet.

3 114. In 1992, Congress passed the Scientific and Advanced-Technology Act of 1992, 42  
4 U.S.C. § 1862(g), which allowed commercial activity on NSFnet and permitted NSFnet to  
5 interconnect with commercial networks.

6 115. In 1993, NSF signed a cooperative agreement with Network Solutions ("NSI"),  
7 Verisign's predecessor in interest, under which NSI became the exclusive registrar for second-level  
8 domains in .COM, .NET, .ORG, and .EDU, as well as the exclusive Registry operator for each of  
9 those top-level domains.

10 116. The NSF initially underwrote NSI's domain registration services, thereby allowing  
11 Internet users to register domain names free of charge.

12 117. On or about September 13, 1995, however, NSF and NSI entered into Amendment 4  
13 of the cooperative agreement, which permitted NSI to charge Internet users \$100 for a two-year  
14 registration of a second-level domain in the .COM, .NET, and .ORG domains. Thirty percent of the  
15 registration fees were to be paid into an NSF Infrastructure fund.

16 118. In April 1998, the portion of the fee allocated to the Infrastructure fund was held to  
17 constitute an unconstitutional tax, and the effective rate for domain registrations dropped to \$35 per  
18 year.

19 119. On July 1, 1997, the Clinton administration issued a report on electronic commerce,  
20 "*A Framework for Global Electronic Commerce.*" The report supported private efforts to address  
21 Internet governance and made the Department of Commerce ("DOC") the lead agency on this  
22 initiative. Accompanying the report was a presidential directive that called on the DOC to "support  
23 efforts to make the governance of the domain name system private and competitive and to create a  
24 contractually based self-regulatory regime that deals with potential conflicts between domain name  
25 usage and trademark laws on a global basis."

26 120. To carry out this mission, the DOC first issued a Request for Comment on DNS  
27 administration, and then on February 20, 1998, it published "*Proposal to Improve Technical  
28 Management of Internet Names and Addresses*" (commonly referred to as the "Green Paper").

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1           121. After receiving more than 650 comments, the DOC ended the proposed rulemaking  
2 and instead published on June 10, 1998, a policy statement also known as the "White Paper."

3           122. The White Paper, reflecting the views of the overwhelming majority of comments,  
4 called upon the private sector to create a new, not-for-profit corporation to assume responsibility,  
5 over time, for the management of certain aspects of the DNS.

6           123. The White Paper identified four specific functions to be performed by this new  
7 corporation: (i) To set policy for and direct the allocation of Internet Protocol number blocks; (ii) To  
8 develop overall policy guidance and control of top-level domains and the Internet root server system;  
9 (iii) To develop policies for the addition, allocation, and management of gTLDs, and the  
10 establishment of domain name registries and domain name registrars and the terms, including  
11 licensing terms, applicable to new and existing gTLDs and registries under which registries,  
12 registrars, and gTLDs are permitted to operate; and (iv) To coordinate maintenance and  
13 dissemination of the protocol parameters for Internet addressing.

14           124. The White Paper also articulated the fundamental policies that would guide United  
15 States participation in the transfer of DNS management responsibility to the private sector: stability;  
16 competition; private, bottom-up coordination; and representation.

17           125. The White Paper listed a number of tasks to be undertaken on a priority basis,  
18 including, in particular, the creation and organization of a new, not-for-profit corporation ("NewCo")  
19 to manage the DNS and the rapid introduction of competition in the provision of domain name  
20 registration services. The Department of Commerce committed to enter into an agreement with NSI  
21 by which NSI would agree to take specific actions, including commitments as to pricing and equal  
22 access, designed to permit the development of competition in domain name registration.

23           126. In fulfillment of the commitment expressed in the White Paper, on October 7, 1998,  
24 the DOC and NSI entered Amendment 11 to the Cooperative Agreement. In Amendment 11, NSI  
25 agreed to recognize NewCo "when recognized by the [DOC] in accordance with the provisions of  
26 the Statement of Policy."

27 ///

28 ///

1 127. NSI further committed to enter into a contract with NewCo, and acknowledged "that  
2 NewCo will have the authority, consistent with the provisions of the Statement of Policy and the  
3 agreement between the [DOC] and NewCo, to carry out NewCo's Responsibilities."

4 128. Under Amendment 11, "NewCo's Responsibilities" specifically include the  
5 establishment and implementation of DNS policy and the terms, including licensing terms,  
6 applicable to new and existing gTLDs and registries under which registries, registrars and gTLDs are  
7 permitted to operate."

8 129. Amendment 11 also provided for the development, deployment, and licensing by NSI  
9 (under a license agreement to be approved by the Department of Commerce) of a mechanism to  
10 allow multiple registrars to submit registrations for the gTLDs for which NSI acted as the Registry  
11 (the "Shared Registration System," or "SRS").

12 **H. ICANN'S ROLE IN THE INTERNET DOMAIN NAME SYSTEM**

13 130. In September 1998, Defendant Internet Corporation for Assigned Names and  
14 Numbers was formed. ICANN is a non-profit public benefit corporation.

15 131. In October 1998, ICANN transmitted to the Department of Commerce a copy of its  
16 Articles of Incorporation, and proposed Bylaws.

17 132. In November 1998, the DOC entered into a Memorandum of Understanding  
18 ("MOU") with ICANN that recognized ICANN as the new not-for-profit corporation for DNS  
19 management and specifically contemplated ultimate transition of management responsibility to  
20 ICANN.

21 133. The MOU expressly identified the promotion of competition in the DNS as one of its  
22 central principles.

23 134. In the MOU, ICANN expressly agreed to abide by principles of stability, competition,  
24 private, bottom-up coordination, and representation.

25 135. The MOU also obligated ICANN to "act in a non-arbitrary and reasonable manner  
26 with respect to design, development, and testing of the DNS Project and any other activity related to  
27 the DNS Project," and to refrain from acting "unjustifiably or arbitrarily to injure particular persons  
28 or entities or particular categories of persons or entities."

1           136. Under the MOU, ICANN exclusively awards the generic TLD registry agreements,  
2 including the registry agreements for the .COM and .NET TLDs.

3           137. The original MOU was scheduled to terminate on September 30, 2000, and has been  
4 amended seven times.

5           138. The most recent amendment, in the form of a Joint Project Agreement ("JPA") was  
6 entered into on or around September 29, 2006.

7           139. In the September 29, 2006 JPA, the DOC reaffirmed its "continued support" for  
8 privatizing the technical management of the DNS in a manner that promotes stability and security,  
9 competition, coordination, and representation.

10           140. The new JPA reaffirmed ICANN's operational principles, including that ICANN  
11 foster and enable "competition."

12           141. ICANN's by-laws also explicitly recognize "core values," which "should guide the  
13 decisions and actions of ICANN," including: "Where feasible and appropriate, depending on market  
14 mechanisms to promote and sustain a competitive environment" and "Introducing and promoting  
15 competition in the registration of domain names where practicable and beneficial in the public  
16 interest."

17           142. The DOC has recognized that ICANN is subject to federal anti-trust laws.

18 **I. ICANN'S COURSE OF DEALING AND AGREEMENTS WITH VERISIGN**

19 **1. The 2001 .COM and .NET Agreements ("the 2001 Registry Agreements")**

20           143. On or about November 10, 1999, NSI and ICANN entered into a written Registry  
21 Agreement (the "1999 Registry Agreement") with respect to NSI's operation of the Registry for the  
22 .COM and .NET gTLDs.

23           144. Through the negotiations that led to the 1999 Registry Agreement and by agreements  
24 with the United States negotiated at the same time, NSI agreed to recognize ICANN.

25           145. Through the negotiations that led to the 1999 Registry Agreement and by agreements  
26 with the United States negotiated at the same time, NSI agreed to split its business into a registrar  
27 business and a registry business, which it would maintain separately. NSI agreed to face  
28 competition at the registrar level, while maintaining its single position as the sole registry.

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1           146. On or about May 25, 2001, Verisign and ICANN entered into the 2001 .COM  
2 Agreement with respect to Verisign's operation of the .COM registry and the 2001 .NET Agreement  
3 with respect to Verisign's operation of the .NET registry.

4           147. The 2001 Registry Agreements superseded the 1999 Registry Agreement with NSI.

5           148. In accordance with the 2001 Registry Agreements, Verisign undertook to operate the  
6 .COM and .NET gTLD registry and to pay certain registry-level fees to ICANN.

7           149. Verisign is the sole registry for the .COM and .NET gTLDs and therefore maintains a  
8 monopoly over the .COM and .NET gTLDs.

9           150. The 2001 .COM Agreement had been set to expire on November 10, 2007, but  
10 provided that Verisign could submit a written proposal to extend the agreement.

11           151. Under this same agreement, ICANN was required to consider any extension proposal  
12 for a period not to exceed six (6) months "before deciding whether to call for competing proposals  
13 from potential successor registry operators." It further provided that Verisign "shall be awarded a  
14 four-year renewal term" unless ICANN determines that Verisign is in material breach of the 2001  
15 .COM Agreement, or the proposal to extend the agreement contains a maximum price that exceeds  
16 the price allowed under Section 22 of the 2001 .COM Agreement or certain other conditions apply.  
17 This four-year renewal term, if granted, would have expired on November 10, 2011.

18           152. Verisign repeatedly breached the terms of the 2001 .COM Agreement, and ICANN  
19 sought to redress certain of Verisign's breaches in litigation against Verisign.

20           153. These breaches give ICANN the right to seek competitive bids to replace Verisign at  
21 the expiration of the current term, or even earlier.

22           154. Verisign and ICANN agreed to bypass this process by entering into a new .COM  
23 Registry Agreement.

24           155. In the new 2006 .COM Agreement, negotiated and agreed to by Verisign, Verisign is  
25 proposing to set a new maximum price for domain name registrations that exceeds the price allowed  
26 under Section 22 of the 2001 .COM Agreement.

27 ///

28 ///

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1 156. If Verisign had proposed this pricing change to ICANN as part of a written proposal  
2 to extend the 2001 .COM Agreement (as contemplated by that agreement), ICANN would have had  
3 the right, and (because of the MOU) the obligation, to seek competitive bids for the .COM registry.

4 157. The 2001 .NET Agreement also allowed for competitive bidding, which took place in  
5 advance of its expiration on June 30, 2005.

6 158. That agreement established a procedure by which ICANN was to select as a successor  
7 operator of the .NET registry "the eligible party that it reasonably determines is best qualified to  
8 perform the registry function . . . taking into account all factors relevant to the stability of the  
9 Internet, promotion of competition, and maximization of consumer choice . . . ."

10 159. Under both the 2001 .COM Agreement and the 2001 .NET Agreement, Verisign is  
11 required to provide "Registry Services" to ICANN-accredited registrars in a manner meeting the  
12 performance and functional specifications attached to the agreement. "Registry Services" are  
13 defined in the 2001 .COM Agreement as follows:

"Registry Services" means services provided as an integral part of the  
Registry TLD, including all subdomains. These services include:  
receipt of data concerning registrations of domain names and  
nameservers from registrars; provision to registrars of status  
information relating to the Registry TLD zone servers, dissemination  
of TLD zone files, operation of the Registry zone servers,  
dissemination of contact and other information concerning domain  
name and nameserver registrations in the Registry TLD, and such  
other services required by ICANN through the establishment of  
Consensus Policies as set forth in Definition 1 of this Agreement.

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19  
20 The 2001 .NET Agreement contains a substantially similar definition of "Registry Services."

21 160. Under both the 2001 .COM Agreement and the 2001 .NET Agreement, Verisign is  
22 also obligated to comply with "Consensus Policies," which consist of specifications and policies  
23 established on the basis of a consensus among Internet stakeholders represented in the ICANN  
24 process, as demonstrated by compliance with detailed procedures prescribed in the agreement.

25 161. The 2001 .COM Registry Agreement defines "Consensus Policies" as consisting of  
26 those specifications and policies established on the basis of a consensus among Internet stakeholders  
27 represented in the ICANN process, as demonstrated by compliance with specific, detailed  
28 procedures prescribed in the agreement.

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1           162. The 2001 Registry Agreements set forth "General Obligations of Registry Operator  
2 [Verisign]."

3           163. Verisign generally is obligated to comply with Consensus Policies if, among other  
4 requirements, they are properly adopted by ICANN and consistent with ICANN's other contractual  
5 obligations, and (A) they "do not unreasonably restrain competition"; and (B) relate to "(1) issues for  
6 which uniform or coordinated resolution is reasonably necessary to facilitate interoperability,  
7 technical reliability, and/or stable operation of the Internet or DNS, (2) Registry policies reasonably  
8 necessary to implement Consensus Policies relating to registrars, or (3) resolution of disputes  
9 regarding the registration of domain names (as opposed to the use of such domain name)."

10           164. In an effort avoid federal antitrust violations by Verisign, the 2001 .COM Registry  
11 Agreement further sets forth the following "General Obligations of ICANN." "With respect to all  
12 matters that impact the rights, obligations, or role of Registry Operator," the agreement explicitly  
13 provides that ICANN shall, among other obligations: (i) "exercise its responsibilities in an open and  
14 transparent manner," (ii) "not unreasonably restrain competition and, to the extent feasible, promote  
15 and encourage robust competition...." As discussed below, these goals were abandoned in the 2005  
16 .NET and 2006 .COM Registry Agreements.

17           165. Appendix G to both the 2001 .COM Agreement and the 2001 .NET Agreement sets  
18 forth the maximum prices Verisign can charge for specified services.

19           166. Among other things, Appendix G to both the 2001 .COM Agreement and the 2001  
20 .NET Agreement set a maximum price of six dollars (\$6.00) per year for registration of a domain  
21 name and six dollars (\$6.00) per year for renewal or extension of the registration of a domain name.  
22 In addition, for each one-year domain name registration a "registry-level transaction fee" of \$0.25 is  
23 charged and paid to ICANN. Under the 2001 .COM Agreement, a registrar currently pays \$6.00 per  
24 year to register each domain name registered with Verisign. The registrar also pays \$0.25 to ICANN  
25 for the registry-level transaction fee. Any amount above \$6.25 that is charged to the registrant is  
26 kept by the registrar. On information and belief, Verisign has always charged the maximum price  
27 allowed under the 2001 .COM Agreement and 2001 .NET Agreement to register a .COM or .NET  
28

1 domain name. Thus, the maximum price has been more than a price cap; it has been the *de facto*  
2 price.

3 167. Appendix I to both the 2001 .COM Agreement and the 2001 .NET Agreement  
4 includes a Code of Conduct. Under the Code of Conduct, Verisign is obligated to "at all times strive  
5 to operate as a trusted and neutral third-party provider of Registry Services."

6 168. Among other obligations, the Code of Conduct to both the 2001 .COM Agreement  
7 and the 2001 .NET Agreement requires Verisign to treat all ICANN-accredited registrars equally and  
8 to give them equivalent access to the registry and prohibits Verisign from warehousing or registering  
9 domain names in its own right other than through an ICANN-accredited registrar.

## 10 **2. The Unlawful and Anticompetitive 2005, 2006 Registry Agreements**

11 169. Unrestrained by any competition, ICANN and Verisign have now abandoned their  
12 commitments to avoid unreasonable restraints of trade and promote fair competition in the  
13 "Covenants" or "General Obligations" to this effect.

14 170. Verisign is now using its monopoly power to raise prices above their natural level and  
15 permit Verisign to leverage its power into other markets. The antitrust and unfair competition laws  
16 were enacted to prohibit this very conduct.

17 171. Verisign and ICANN have agreed to eliminate the competitive constraints imposed  
18 by the competitive bidding process, the Consensus Policies and the Code of Conduct, and thereby to  
19 secure for Verisign an unlawful monopoly in each of the relevant markets.

20 172. Pursuant to the conspiracy, ICANN allowed Verisign to alter substantial terms of its  
21 bid for the 2005 .NET Agreement, after the bid was accepted by ICANN and after bidding was  
22 closed to other participants. The conspiracy led to the implementation of the monopolistic  
23 provisions in the 2005 .NET Agreement, and also includes an understanding between the  
24 conspirators as to the terms for the .COM Registry Agreement.

25 173. The objectives of the unlawful conspiracy are to replace the 2001 .COM and .NET  
26 Agreements with successor agreements that eliminate permanently all vestiges of competition in the  
27 operation of these two registries and in the Relevant Markets; to secure for Verisign free reign to  
28 impose supracompetitive prices for registrations of domain names in the .COM and .NET TLDs; to

1 free Verisign from current limitations that prevent it from leveraging monopolies in downstream and  
2 adjacent markets; and to divide between Verisign and ICANN the monopoly profits achieved by  
3 operation of the conspiracy.

4 174. ICANN and Verisign have agreed (a) to extend the term of Verisign's control of the  
5 .COM registry for an additional five years beyond the termination date under the current 2001 .COM  
6 Agreement, in violation of its terms and without ever submitting the renewal to any sort of  
7 competitive bidding; (b) to eliminate any meaningful prospect that Verisign will ever have to  
8 compete to operate the .NET registry or the .COM registry or that there will be any competitive  
9 bidding to operate either of them; (c) to increase the overall prices to consumers of domain names in  
10 the .COM and .NET TLDs; (d) to assure that any contractual price caps will be identical to the actual  
11 prices by having eliminated any competitive constraint on Verisign in the relevant markets; (e) to  
12 free Verisign to launch preemptive services that, by virtue of its control of the .COM and .NET  
13 registries, will eliminate rivalry and permit Verisign to exploit a complete monopoly over traffic data  
14 and other resources it has never paid or competed for the right to exploit; and (f) to provide  
15 mechanisms by which ICANN shares in the resulting monopoly profits.

16 175. **Elimination of Competitive Bidding.** Under the terms of the conspiracy, ICANN  
17 has agreed to divest itself of any meaningful ability to require Verisign to bid for a renewal term  
18 against competing registry operators for the .COM TLD.

19 176. Under the 2001 .COM Agreement, ICANN had the right to require Verisign to bid for  
20 a renewal term to begin in November 2007.

21 177. Under the MOU between ICANN and the Department of Commerce, ICANN is  
22 required to avail itself of every available opportunity to harness competition for the benefit of  
23 consumers and the Internet.

24 178. The 2006 .COM Registry Agreement provides for the automatic renewal of the  
25 agreement, *inter alia*, as follows:

26 Renewal. This Agreement shall be renewed upon the expiration of the  
27 term set forth in Section 4.1 above and each later term, unless the  
28 following has occurred : (i) following notice of breach to Registry  
Operator in accordance with Section 6.1 and failure to cure such  
breach within the time period prescribed in Section 6.1, an arbitrator or

1 court has determined that Registry Operator has been in fundamental  
 2 and material breach of Registry Operator's obligations set forth in  
 3 Sections 3.1(a), (b), (d) or (e); Section 5.2 or Section 7.3 and (ii)  
 4 following the final decision of such arbitrator or court, Registry  
 5 Operator has failed to comply within ten days with the decision of the  
 6 arbitrator or court, or within such other time period as may be  
 7 prescribed by the arbitrator or court.

8 Upon renewal, in the event that the terms of this Agreement are not  
 9 similar to the terms generally in effect in the Registry Agreements of  
 10 the 5 largest gTLDs (determined by the number of domain name  
 11 registrations under management at the time of renewal), renewal shall  
 12 be upon terms reasonably necessary to render the terms of this  
 13 Agreement similar to such terms in the Registry Agreements for those  
 14 other gTLDs. The preceding sentence, however, shall not apply to the  
 15 terms of this Agreement regarding the price of Registry  
 16 Services... Upon renewal, Registry-Level Transaction Fees may be  
 17 reasonably modified so long as any increase in such fees shall not  
 18 exceed the average of the percentage increase in Registry-Level  
 19 Transaction Fees for the 5 largest gTLDs (determined as for the 5  
 20 largest gTLDs (determined as above), during the prior three-year  
 21 period.

22 179. ICANN's conspiratorial agreement to waive its right to impose competitive bidding  
 23 with respect to operation of the .COM registry, and to violate its contract with the federal  
 24 government, is a keystone of the overall conspiracy with Verisign.

25 180. ICANN has similarly conspired with Verisign to eliminate future competitive bidding  
 26 for operation of the .NET registry. In 2005, competitive bidding for the .NET registry yielded a  
 27 reduction in the price for .NET domain name registrations that was in excess of thirty percent.  
 28 ICANN's and Verisign's conspiracy eliminates this possibility in the future.

181. Verisign was able to extract from ICANN agreement to enter into this conspiracy as a  
 result of the financial and litigation pressure applied to ICANN by Verisign's vastly superior  
 financial resources.

182. Although the 2006 .COM Registry Agreement gives ICANN the titular ability to  
 rebid the registry agreement if Verisign is in breach, the provision is illusory.

183. The rebid provision only applies if Verisign has been adjudged in material breach of  
 the agreement by a final, non-appealable judgment and Verisign has not cured the defect. This is an  
 event that never will be triggered.

///

1 184. At the time they negotiated the rebid provision of the 2006 .COM Registry  
2 Agreement, and at the time they executed the Agreement, both ICANN and Verisign understood that  
3 it never would be triggered.

4 185. At the time they negotiated the rebid provision of the 2006 .COM Registry  
5 Agreement, and at the time they executed the Agreement, both ICANN and Verisign understood that  
6 the rebid provision was illusory.

7 186. By contrast, the rebid provisions of the previous agreement, which allowed a rebid for  
8 breach or because of a proposal to price .COM domain names higher than \$6.00 per year, already  
9 would have been triggered had that provision remained in effect.

10 187. **Increasing Prices.** The conspiracy increases significantly the prices that Verisign  
11 will charge for .COM and .NET domain name registrations.

12 188. The conspiracy also, in effect, raises the amounts that registrants ultimately bear for  
13 the registry level transaction fees paid to ICANN. By eliminating periodic rivalry to run the registry,  
14 Verisign will be unconstrained in setting prices and will charge the maximum cap allowed by the  
15 terms of the conspiracy.

16 189. The 2006 .COM Registry Agreement affects prices by not only redrafting the  
17 previous provisions for maximum price, but also redefining which terms are included in the  
18 maximum price.

19 190. In the 2006 .COM Registry Agreement Verisign and ICANN effectively fix the price  
20 for .COM domain name registration at \$6 through December 31, 2006, and further conspire to  
21 permit Verisign to permanently raise the price of .COM registration 7% for four out of the next six  
22 years. This price exceeds the historical rate of inflation and is greater than what a fair market would  
23 otherwise bear.<sup>4</sup>

24  
25  
26 <sup>4</sup> In the 2005 .NET Registry Agreement, entered into on June 29, 2005, ICANN and Verisign  
27 agree to set the price for new and renewed domain name registrations at \$4.25. The Agreement then  
28 goes on to say that, effective January 1, 2007, the "controls on [Verisign's] pricing set forth in this  
Agreement shall be eliminated...." 2005 .NET Registry Agreement, section 7.3. Virtually the only  
restriction the Agreement places on pricing is that all registrars be equally subject to the price  
Verisign sets and treated equally under any incentive programs Verisign offers. The unfettered  
ability to raise prices indefinitely demonstrates the collusive manipulation and control which ICANN

1 191. If .COM had been put out for a competitive bid, the costs of domain name  
2 registrations would have fallen to at least as low as \$3.00 per domain name, with at least the same  
3 level and quality of services provided by Verisign.

4 192. Furthermore, the 2006 .COM Registry Agreement specifically excludes the "registry-  
5 level transaction fee" from the definition of the maximum price. Therefore, the actual price is not  
6 simply \$6.00 plus the ICANN sanctioned 7% increase in four of the next six years, but these two  
7 terms plus the registry-level transaction fee.

8 193. Under the terms of the 2006 .COM Registry Agreement, the increase in the registry-  
9 level transaction fee is an automatic process. The Agreement makes no provision for registrars and  
10 Internet stakeholders to provide any input into the process. *Id.*

11 194. Verisign and ICANN each believe that Verisign could raise prices to the maximum  
12 permitted by the caps under .COM and to any price whatsoever under .NET without running afoul of  
13 the antitrust laws.

14 195. In addition, pursuant to the conspiracy, the 2005 .NET Agreement provides for higher  
15 prices in the future for new or renewal domain name registrations in the .NET TLD. Until  
16 December 31, 2006, the maximum price is set at \$4.25, which includes a \$0.75 Registry-Level  
17 Transaction Fee that is paid to ICANN by the registrars. Beginning in 2007, the price controls set  
18 forth in the 2005 .NET Registry Agreement will be eliminated. Without the constraint of  
19 competitive bidding, Verisign will be free to impose, and will impose, monopoly pricing on .NET  
20 domain name registrations.

21 196. Verisign has stated its intention to raise prices under the 2006 .COM and 2005 .NET  
22 Agreements.

23 197. Verisign will raise its prices under the .COM and .NET Agreements.

24 198. Verisign's stock has risen on the widespread expectation by financial analysts that  
25 Verisign will raise its prices under the .COM and .NET Agreements.

26  
27  
28 and Verisign are perpetrating. Only with certain monopolistic control over the market could  
Verisign and ICANN create such an agreement.

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1            199. The price increases, as described in the previous paragraphs, will be above the prices  
2 that Verisign could charge if the .COM and .NET registry contracts were subject to a competitive  
3 bidding process.

4            200. The unlawful price increases, as described in the previous paragraphs, will be passed  
5 to consumers.

6            201. Under a competitive model for registry bidding, prices would have fallen, to at least  
7 as low as \$3.00 per name for similar levels and quality of service.

8            202. The sale of new .COM registrations is highly competitive, with a number of high  
9 volume, low margin businesses pricing their domains just above or even at the price charged by the  
10 registry.

11           203. Lower .COM prices at the registry level would have been passed on to consumers by  
12 these high volume, low margin registrars.

13           204. **ICANN's Economic Motives to Conspire.** ICANN was motivated to enter into the  
14 conspiracy by economic factors.

15           205. First, the conspiracy provides for ICANN to share in the monopoly profits, including  
16 among other things, through the payment by Verisign to ICANN of a "registry level fee," beginning  
17 at \$6 million dollars per year and increasing over the next two years to potentially in excess of \$12  
18 million dollars per year.

19           206. These monopoly profits are far above the fees paid to ICANN under prior  
20 agreements.

21           207. Second, Verisign has put ICANN in financial jeopardy through a stream of costly and  
22 aggressive litigation: Verisign brought claims in federal court that were dismissed without  
23 prejudice; filed similar claims again in federal court that were dismissed with prejudice; proceeded  
24 to file for a third time in state court; and has also proceeded in arbitration against ICANN.

25           208. ICANN has acquiesced to Verisign's pressure to conspire, and ICANN has further  
26 been lured by the share of monopoly profits that it will receive from Verisign's operations of the  
27 .NET and .COM registries.

28

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1           209. Verisign used its oppressive and costly litigation, its threats to withhold funding to  
2 ICANN, and the promise of a financial bailout and windfall of \$12,000,000 in order to coerce  
3 ICANN into the conspiracy.

4           210. Since ICANN was founded in November, 1998, Verisign (both by itself and by and  
5 through its predecessor NSI) has been relentless in its assault on ICANN's legitimacy and credibility.

6           211. Among other things, Verisign (both by itself and by and through its predecessor NSI)  
7 has, among other things: (a) lobbied against ICANN's authority in Washington, D.C. and in the  
8 European Union: (b) attempted to control policy debates within ICANN by hiring people to advocate  
9 its positions under the guise that they were independent of Verisign/NSI; (c) paid bloggers to attack  
10 ICANN under the guise that they were independent of Verisign/NSI; (d) planted news stories critical  
11 of ICANN with mainstream and online media; (e) contributed to various "think tanks" and non-profit  
12 organizations to enable those organizations to criticize and undermine ICANN; and (f) threatened  
13 ICANN, its Staff members, and its Board members with litigation, arbitration, government  
14 investigation and even personal financial liability.

15           212. Verisign (both by itself and by and through its predecessor NSI) has threatened to  
16 withhold funding from ICANN, jeopardizing its stability and existence.

17           213. The relentless assault on ICANN by Verisign (both by itself and by and through its  
18 predecessor NSI) has designed to, and had had the effect of, coercing and/or convincing ICANN to  
19 agree to the conspiracy alleged in this Complaint.

20           214. In the 2006 .COM Registry Agreement, Verisign expressly pledged to cease the  
21 attacks on ICANN's credibility and legitimacy in exchange for ICANN's agreement to the conspiracy  
22 detailed herein.

23           215. In addition, the 2005 .NET Agreement provides for a maximum price per year for  
24 each new or renewal domain name registration. Until December 31, 2006, the maximum price is set  
25 at \$4.25, which includes a \$0.75 Registry-Level Transaction Fee that is paid to ICANN by the  
26 registrar. The increase in the "Registry-Level Transaction Fee" from \$0.25 under the 2001 .NET  
27 Agreement to \$0.75 under the 2005 .NET Agreement allows ICANN to share in the monopoly profit  
28 generated by Verisign's and ICANN's conspiracy.

1           216. The conspiracy hands Verisign an additional windfall by relieving it of its obligation  
2 under the 2001 .COM Agreement to expend a minimum of two hundred million dollars  
3 (\$200,000,000) "for research, development, and infrastructure improvements to the .COM, .NET,  
4 and .org Registries" between May 25, 2001, and December 31, 2010.

5           217. The conspiracy also frees Verisign from the Code of Conduct in Appendix I to the  
6 2001 .COM Agreement.

7           **VIII. ICANN'S AND VERISIGN'S ANTICOMPETITIVE, EXCLUSIONARY AND**  
8           **PREDATORY CONDUCT IN THE RELEVANT MARKETS**

9           218. The history of ICANN's oversight of the Internet domain name system has seen an  
10 ever-expanding empire-building by Verisign, most recently with ICANN's capitulation to Verisign's  
11 litigation and financial threats.

12           219. Verisign has repeatedly taken steps to expand its limited-duration contractual  
13 monopoly over the registry itself into a permanent monopoly over that registry and over markets for  
14 various domain name services.

15           220. Verisign's misconduct has included outright breaches of its contracts with ICANN.  
16 Indeed, these breaches have led to litigation between Verisign and ICANN in which ICANN brought  
17 a counterclaim alleging that Verisign was in violation of material provisions of its contracts with  
18 ICANN.

19           **A. ANTICOMPETITIVE CONDUCT IN THE DOMAIN NAME REGISTRATION**  
20           **MARKET**

21           221. Verisign's persistence in challenging ICANN's oversight authority has been rewarded  
22 with a steady erosion of competition under ICANN.

23           222. For example, in negotiating to take over operation of the .COM registry in 2001,  
24 Verisign deployed its substantial economic muscle to extract from ICANN a renewal term that  
25 would make it difficult for ICANN to reopen the registry contract to competitive bidding. Now, the  
26 conspiracy all but eliminates that potential for competition in all of the relevant markets, and  
27 virtually ensures Verisign's monopoly control over these markets.  
28

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1           223. Without the threat of future open bidding on its registry operation contracts, Verisign  
2 is free to increase the prices consumers are charged for registering domain names.

3           224. In just one manifestation of Verisign's monopoly control, the proposed .COM  
4 Registry Agreement calls for an increase in registration fees coupled with guaranteed annual  
5 additional increases (in four of the next six years) – and with the renewal provision for four of every  
6 six years, in perpetuity.

7           225. By contrast, because Verisign failed to secure similar favorable renewal terms in its  
8 initial 2001 contract to operate the .NET registry, Verisign faced competitive bidding when it sought  
9 to renew the .NET registry agreement in 2005. As a result, Verisign was forced to agree to lower  
10 registration fees by thirty percent in connection with that registry in order to win renewal of the  
11 contract.

12           226. The conspiracy frees Verisign from any reasonable prospect of competitive bidding  
13 for either registry in the future.

14           227. Verisign also used its litigation with ICANN and the confidential settlement  
15 negotiations attendant to that litigation to obtain an unfair competitive advantage in its 2005 bid to  
16 operate the .NET registry.

17           228. In its settlement negotiations for .COM, which preceded the submission of  
18 competitive bids for .NET, Verisign learned of material changes in ICANN's registry contractual  
19 terms, including the release of price caps and changes in the approval process for new registry  
20 services, that allowed Verisign to submit a more competitive bid for .NET than it could have had it  
21 been subject to the rules applicable to other bidders.

22           229. Verisign used its leverage over ICANN to obtain an unfair commercial advantage in  
23 the bidding for the .NET registry contract. Verisign coerced ICANN into creating a bidding process  
24 for .NET that Verisign was certain to win. ICANN and Verisign thus conspired to provide Verisign  
25 undue and unfair advantage in the .NET rebid process. ICANN specifically added judging criteria  
26 requested by VeriSign by which Verisign alone would measure favorably. ICANN altered and  
27 downplayed evaluation criteria requested by the public by which Verisign would have measured  
28

1 unfavorably. ICANN specifically rejected evaluation criteria detrimental to VeriSign despite  
2 requests by the public to do so on legitimate public policy grounds.

3 230. To further ensure that Verisign was awarded the .NET contract, ICANN selected as a  
4 supposedly "independent" evaluator, Telcordia Technologies, Inc. ("Telcordia"). At the time of  
5 Telcordia's selection, Telcordia was a wholly owned subsidiary of Science Applications  
6 International Corporation ("SAIC"), a predecessor in interest to Verisign and which, just a few years  
7 earlier, had been a major shareholder in Verisign. At the time of the "independent" evaluation, a  
8 Corporate Executive Vice President for Telcordia's parent company, SAIC, was a sitting director of  
9 VeriSign.

10 231. The stacked evaluation criteria coupled with an evaluator with extensive ties to  
11 Verisign ensured that Verisign would win the .NET rebid. Verisign was not the qualified bidder with  
12 the lowest price bid (based on proposed per domain name registration costs), and a more fair  
13 evaluation process untarnished by Verisign's unlawful influence would have resulted in an award of  
14 .NET to a different bidder, with lower overall .NET registration costs to consumers.

15 232. Verisign, insulated from the threat of future competition, has engaged in monopolistic  
16 conduct that has disrupted the competitive balance of the Internet, and at times has included flagrant  
17 breaches of its obligations under the existing .COM and .NET registry agreements.

18 233. Verisign engaged in a predatory and exclusionary campaign that included depleting  
19 ICANN's resources while at the same time luring it with a share of monopoly profits, in order to  
20 exclude rivals from the relevant markets.

21 234. Through its own conduct, including its unlawful conspiracy with ICANN, Verisign  
22 has monopolized and will continue to monopolize the relevant markets for .COM domain name  
23 registrations, has imposed and will impose supracompetitive prices on consumers in those markets,  
24 and has eliminated and will continue to eliminate any economic pressure on itself to innovate or  
25 offer improvements in service including security and stability.

26 235. Through its own conduct, including its unlawful conspiracy with ICANN, Verisign  
27 has monopolized and will continue to monopolize the relevant markets for .NET domain name  
28 registrations, has imposed and will impose supracompetitive prices on consumers in those markets,

1 and has eliminated and will continue to eliminate any economic pressure on itself to innovate or  
2 offer improvements in service including security and stability.

3 **IX. HARM SUFFERED BY THE PLAINTIFF AND ITS MEMBERS**

4 236. As noted, *infra*, CFIT was formed for the purpose of challenging the anticompetitive  
5 agreements and activities of Verisign alleged herein, including the 2006 .COM Agreement.

6 237. **CFIT's members include domain name registrants and registrars** that,  
7 collectively, have registered hundreds of thousands of domain names in the .COM and .NET  
8 registries.

9 238. Domain name registrants, including those members of the Plaintiff, will be harmed by  
10 the actions and conspiracy detailed in this Complaint by (a) the unlawful increase in prices which  
11 Verisign will exact from registrants in the .COM TLD, which will damage Plaintiff's members by  
12 hundreds of thousands of dollars each year and extract hundreds of millions of dollars from all  
13 .COM registrants over the course of the 2006 .COM Registry Agreement's existence; (b) the loss of  
14 competitive services for expiring domain names, which will displace some registrants, including  
15 members and supporters of CFIT, from the market for such services entirely and exact new and  
16 unnecessary costs from those who can afford to remain in the market; (c) the degradation in registry  
17 services that will come from allowing Verisign to abandon its \$200,000,000 infrastructure  
18 commitment and operate unrestricted by the prior "Code of Conduct"; (d) the loss of policy influence  
19 of Internet users, including CFIT's members, by the restrictions on the definition of "Consensus  
20 Policies" in the .COM and .NET Registry Agreements; and (e) such other injuries and harms as  
21 detailed throughout this Complaint.

22 239. None of the harms detailed in the paragraph above are conditional on any future acts  
23 or decisions of the parties. All of the harms are real and will occur if not enjoined by this Court.

24 **X. NO ANTITRUST IMMUNITY FOR VERISIGN**

25 240. On or about November 30, 2006, the United States Department of Commerce  
26 approved the 2006 .COM Registry Agreement at issue in this Complaint, as modified by a new  
27 Amendment 30 to the Cooperative Agreement between Verisign and the United States.

28 241. This approval allows the 2006 .COM Registry Agreement to take effect immediately.



1 extend and enhance its control over the .COM and .NET registries to allow it to dominate new  
2 markets and to price its services far above that which a competitive market otherwise would allow.

3 253. Verisign's unlawful conduct has caused and, unless enjoined by this Court, will  
4 continue to cause adverse and anticompetitive injury to consumers and to the business and property  
5 of Internet stakeholders and to CFIT's Members and Supporters, as described more fully in this  
6 Complaint.

7 **SECOND CAUSE OF ACTION**  
8 **Attempted Monopolization Under Section 2 of the Sherman Act**  
9 **(.COM and .NET Registration Markets)**

10 254. Plaintiff repeats and incorporates by reference the allegations set forth above as if  
11 fully set forth herein.

12 255. For purposes of this claim, the relevant product markets are the .COM and .NET  
13 Registration Markets.

14 256. The relevant geographic markets are global.

15 257. For purposes of this claim, CFIT alleges that .COM and .NET are separate markets  
16 and that Verisign has engaged in exclusionary and predatory conduct with respect to each of them  
17 separately and individually.

18 258. Verisign has a complete monopoly in the .COM and .NET Registration Markets, and  
19 each of them individually, and exercises market power in those markets.

20 259. Verisign has engaged in exclusionary and predatory conduct with the specific intent  
21 to extend and perpetuate its monopoly over these relevant markets in violation of Section 2 of the  
22 Sherman Act, 15 U.S.C. § 2.

23 260. The acts done and threatened by Verisign are exclusionary insofar as they have  
24 prevented and threaten to further prevent in perpetuity any other entity from ever competing to  
25 operate the .COM and .NET registries such as by offering lower prices, superior service or  
26 innovation.

27 261. By virtue of Verisign's exclusionary scheme and unlawful conduct, there is a  
28 dangerous probability that Verisign will succeed in extending its monopoly control over the .COM

1 and .NET Registration Markets in perpetuity in violation of Section 2 of the Sherman Act, 15 U.S.C.  
2 § 2.

3 262. If not enjoined, there is a dangerous likelihood that Verisign's monopolization will  
4 continue, with the result that all other existing and potential competitors will be forever excluded  
5 from competition in the relevant .COM and .NET Registration Markets, and Verisign will continue  
6 to impose supra-competitive price increases.

7 263. If not enjoined by this Court, Verisign will continue to cause adverse and  
8 anticompetitive injury to consumers and to the business and property of Internet stakeholders and to  
9 CFIT's Supporters.

10  
11 **THIRD CAUSE OF ACTION**  
12 **Conspiracy to Monopolize Under Section 2 of the Sherman Act**  
13 **(All Relevant Markets)**

14 264. Plaintiff repeats and incorporates by reference the allegations set forth above as if  
15 fully set forth herein.

16 265. For purposes of this claim, the relevant product markets are the .COM and .NET  
17 Registration Markets and the Expiring Names Registration Services Market.

18 266. The relevant geographic markets are global.

19 267. Verisign has a complete monopoly in the .COM and .NET Registration Markets, and  
20 exercises market power in those markets.

21 268. It is unnecessary and unreasonable for a single company to continue indefinitely to  
22 maintain monopoly control over the .COM and .NET registries.

23 269. Verisign has acted in concert with ICANN unlawfully to acquire and maintain  
24 Verisign's monopoly over these relevant markets indefinitely into the future in violation of Section 2  
25 of the Sherman Act, 15 U.S.C. § 2, and both have acted with the specific intent to confer upon  
26 Verisign unlawful monopoly power in these relevant markets.

27 270. In furtherance of their conspiracy, Verisign and ICANN negotiated and entered into  
28 agreements and profit-sharing arrangements whereby Verisign and ICANN will in various ways share  
the monopoly overcharges that the conspiracy will impose on consumers in the relevant markets.

1 271. Verisign's conspiracy to monopolize the relevant markets has been in violation of § 2  
2 of the Sherman Act.

3 272. Verisign's unlawful conspiracy has caused and, unless enjoined by this Court, will  
4 continue to cause adverse and anticompetitive injury to consumers and to the business and property  
5 of Internet stakeholders and to CFIT's Supporters.

6 273. If not enjoined, Verisign's conspiracy and restraint on trade will continue.

7  
8 **FOURTH CAUSE OF ACTION**  
**Conspiracy in Restraint of Trade Under Section 1 of the Sherman Act**

9 **(All Relevant Markets)**

10 274. Plaintiff repeats and incorporates by reference the allegations set forth above as if  
11 fully set forth herein.

12 275. For purposes of this claim, the relevant product markets are the .COM and .NET  
13 Registration Markets and the Expiring Names Registration Services Market.

14 276. The relevant geographic markets are global.

15 277. For purposes of this claim, CFIT alleges that .COM and .NET are separate markets  
16 and that Verisign has engaged in exclusionary and predatory conduct with respect to each of them  
17 separately and individually.

18 278. Verisign has a complete monopoly over the relevant .COM and .NET Registration  
19 Markets, and each of them individually, and exercises market power in those markets. It is  
20 unnecessary and unreasonable for a single company to continue indefinitely to maintain monopoly  
21 control over the .COM and .NET registries.

22 279. Verisign has acted in concert with ICANN unlawfully to secure monopoly power and  
23 to restrain and eliminate competition in the relevant .COM and .NET Registration Markets  
24 indefinitely into the future in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

25 280. The Expiring Names Registration Services Market is currently highly competitive.

26 281. Verisign and ICANN have conspired to act together to restrain trade and competition  
27 in each of these relevant markets in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.  
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1 282. Verisign's conspiracy to restrain trade in the relevant markets has had, and unless  
2 enjoined will continue to have, the effect of harming the competitive process in interstate commerce.

3 283. If not enjoined, Verisign's restraint on trade will continue, with the result that all other  
4 existing and potential competitors will be excluded from competing in the relevant markets and  
5 consumers will be forced to pay, and continue to pay in perpetuity, supra-competitive prices for the  
6 registration of .COM and .NET domain names.

7 284. Verisign's conspiracy has caused, and unless enjoined will continue to cause, injury to  
8 consumers and to the business and property of Verisign's existing and potential competitors and  
9 Internet stakeholders and to CFIT's Supporters.

10  
11 **FIFTH CAUSE OF ACTION**  
**Conspiracy in Restraint of Trade Under the Cartwright Act**

12 **(All Relevant Markets)**

13 285. Plaintiff repeats and incorporates by reference the allegations set forth above as if  
14 fully set forth herein.

15 286. For purposes of this claim, the relevant product markets are the .COM and .NET  
16 Registration Markets and the Expiring Names Registration Services Market.

17 287. The relevant geographic markets are global, including California.

18 288. Verisign has a complete monopoly over the relevant .COM and .NET Registration  
19 Markets, and exercises market power in those markets.

20 289. It is unnecessary and unreasonable for a single company to continue indefinitely to  
21 maintain monopoly control over the .COM and .NET registries.

22 290. Verisign has acted in concert with ICANN unlawfully to restrain and eliminate  
23 competition in the relevant .COM and .NET Registration Markets indefinitely into the future in  
24 violation of the Cartwright Act, California Business & Professions Code sections 16720 *et seq.*

25 291. The Expiring Names Registration Services Market is currently highly competitive.

26 292. Verisign and ICANN have conspired to act together to restrain trade and competition  
27 in each of these relevant markets in violation of the Cartwright Act California Business &  
28 Professions Code sections 16720 *et seq.*



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1 of the Sherman Act and in violation of the Cartwright Act, California Business & Professions Code  
2 §§ 16720 *et seq.*;

3 6. That the Court adjudge and decree that Verisign has combined and conspired with  
4 ICANN to monopolize interstate trade and commerce in the relevant markets in violation of  
5 Section 2 of the Sherman Act, 15 U.S.C. § 2;

6 7. That the Court adjudge and decree that Verisign has combined and conspired with  
7 ICANN to restrain interstate trade and commerce in the relevant markets in violation of Section 1 of  
8 the Sherman Act, 15 U.S.C. § 1;

9 8. That the Court adjudge and decree that Verisign has combined and conspired with  
10 ICANN to restrain trade, and to have formed a trust, in violation of the Cartwright Act, California  
11 Business & Professions Code §§ 16720 *et seq.*;

12 9. That Verisign and all persons, firms, and corporations acting on its behalf and under  
13 its direction or control be permanently enjoined from engaging in, carrying out, renewing or  
14 attempting to engage, carry out, or renew, any contracts, agreements, practices, or understandings in  
15 violation of the Sherman Act, the Lanham Act, the Cartwright Act, or the Unfair Competition Act,  
16 and specifically including, without limitation, the renewal provisions of the 2006 .COM registry  
17 agreement and Section 2.4 "Renewal" of the 2005 .NET Agreement;

18 10. That Verisign be ordered to divest promptly and in any event within 90 days the  
19 registry business and all assets used or reasonably necessary to its operation to a separate company  
20 that will be prohibited from engaging in any business except for services that are defined as  
21 "Registry Services" in the 2001 .COM Agreement;

22 11. That Verisign be prohibited from seeking approval from ICANN for any service for  
23 the .COM or .NET registries where the effect may be to tend to create a monopoly, to substantially  
24 harm competition, or to restrain trade and competition in any line of commerce;

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1           12.     That CFIT and other third parties who shall have been or might be injured in their  
2 business or property as a result of any violation by Verisign of any of the provisions of the Court's  
3 order, including CFIT's Supporters, be specifically authorized to enforce the provisions of thereof in  
4 this Court, including without limitation pursuant to the antitrust laws of the United States as well as  
5 any applicable state antitrust or unfair competition laws;

6           13.     That the 2006 .COM Registry Agreement be judged and decreed an unlawful  
7 agreement in violation of Sections 1 and 2 of the Sherman Act and the Cartwright Act, California  
8 Business & Professions Code §§ 16720 *et seq.*;

9           14.     That Verisign be ordered to abide by the terms of the 2001 .COM Agreement;

10          15.     That the 2005 .NET Agreement be adjudged to have been procured through a  
11 fraudulent bidding process;

12          16.     That Verisign be ordered and required to comply with the price provisions of  
13 Appendix G of the 2001 .COM Agreement, and the Code of Conduct provisions of Appendix I of  
14 the 2001 .COM Agreement and 2001 .NET Agreement;

15          17.     That Verisign be ordered and required to comply with the research and development  
16 provisions of Appendix W of the 2001 .COM Agreement and make public the required annual  
17 reports thereunder;

18          18.     That Defendant be ordered to disgorge all of its unlawful profits, including but not  
19 limited to, all per domain name fees it has collected on .COM domain name sales in excess of \$6.00  
20 per name (the maximum price permitted under the terms of the 2001 .COM Agreement) and all per  
21 domain name fees it has collected on .NET domain names in excess of what the lowest bidder in the  
22 2005 .NET auction would have charged;

23     ///

24     ///

25     ///

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1           19.     That Plaintiff have such other relief as the Court may consider necessary or  
2 appropriate to restore competitive conditions in the markets affected by Verisign's unlawful conduct;

3           20.     That plaintiff recover the costs of this action and its attorneys' fees.  
4

5 DATED: February 22, 2011

ALVARADOSMITH  
A Professional Corporation

7 By: \_\_\_\_\_ /s/ Bret A. Fausett

8 PATRICK A. CATHCART  
9 BRET A. FAUSETT  
10 REGINALD ROBERTS, JR.  
11 IMANI GANDY

12 Attorneys for Plaintiff  
13 COALITION FOR ICANN TRANSPARENCY INC.  
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