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14 Attorneys for Plaintiff  
15 VERISIGN, INC.

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 VERISIGN, INC., a Delaware  
19 corporation,

20 Plaintiff,

21 v.

22 INTERNET CORPORATION FOR  
23 ASSIGNED NAMES AND  
24 NUMBERS, a California corporation;  
25 DOES 1-50,

26 Defendants.

Case No. CV 04-1292 AHM (CTx)

**DECLARATION OF CHARLES A.  
GOMES IN OPPOSITION TO  
SPECIAL MOTION TO STRIKE OF  
DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS**

Date: May 17, 2004  
Time: 10:00 a.m.  
Courtroom: 14 – Spring Street Bldg.  
Hon. A. Howard Matz

[Memorandum of Points and Authorities;  
Evidentiary Objections; Appendix of  
Exhibits; Declarations; and [Proposed] Order  
concurrently filed and lodged herewith]

1 I, CHARLES A. GOMES, declare:  
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3 1. I know all of the following facts of my own personal knowledge and, if  
4 called and sworn as a witness, would competently testify thereto.

5 2. I am a Vice President of plaintiff VeriSign, Inc. ("VeriSign") and have  
6 been continuously employed by VeriSign, and its predecessor operator of the registry,  
7 Network Solutions, Inc. since approximately October 16, 1984. I work in VeriSign's  
8 Naming and Directory Services unit. In that role, part of my duties focuses on  
9 Internet relations and VeriSign's interactions with the Internet Corporation for  
10 Assigned Names and Numbers ("ICANN").

11 3. In addition to its role as operator of the registry for the .com and .net  
12 generic top level domains ("gTLDs"), VeriSign is also the operator of the registry for  
13 two country code top level domains ("ccTLDs"), specifically .cc and .tv. As one part  
14 of my responsibilities for VeriSign, I monitor and stay generally apprised of  
15 developments affecting ccTLD registry operators and the relationships between the  
16 ccTLD registry operators and ICANN.

17 4. In that connection, I have attended meetings of the ccTLD "constituency"  
18 within ICANN and of regional groups of ccTLD registry operators; I follow postings  
19 on ICANN's website relating to ccTLDs; and, in the ordinary course of business, I  
20 receive reports from VeriSign's representative in the ccTLD operator community. In  
21 the discharge of those (and my other) responsibilities for VeriSign, I regularly attend  
22 ICANN meetings and communicate with ICANN representatives on VeriSign's  
23 behalf regarding subjects and issues of mutual interest and concern.

24 5. I am generally familiar with the terms of the 1999 Registry Agreement and  
25 the 2001 .com Registry Agreement between VeriSign and ICANN. One of the  
26 provisions of those Agreements is that ICANN will use reasonable efforts to, and  
27 make substantial progress, toward entering into registry agreements with operators of  
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1 over 240 ccTLDs The purpose of that requirement is to promote competitive  
2 equality between the gTLDs and the ccTLDs by ensuring that all registries are subject  
3 to substantially the same contractual obligations and restrictions that ICANN  
4 imposes, and seeks to impose on VeriSign. ICANN's performance of that obligation  
5 is particularly important to VeriSign as the operator of the .com gTLD. If ccTLDs  
6 are not subject to the same set of conditions as ICANN seeks to impose on the  
7 gTLDs, including .com, and if ccTLDs are free to introduce innovations and new  
8 services for their customers and users that ICANN prohibits the .com gTLD to offer,  
9 the .com gTLD will not be able to compete effectively with the ccTLDs.

10 6. This is no mere theoretical concern. Already, many ccTLDs are offering  
11 or have offered services similar to VeriSign's Site Finder (including .bz (Belize), .cc  
12 (Cocos Islands), .cn (China), .cx (Christmas Island), .mp (Northern Mariana Islands),  
13 .nu (Niue), .ph (Philippines), .pw (Palau), .td (Chad), .tk (Tokelau), .tv (Tuvalu), .tw  
14 (Taiwan), and .ws (Western Samoa)) and many ccTLDs are offering or are intending  
15 to offer IDN services (including .bz (Belize), .cc (Cocos Islands), .cn (China), .jp  
16 (Japan), .kr (Korea), .nu (Niue), .tv (Tuvalu), and .tw (Taiwan)).

17 7. These services are attractive to registrants and potential registrants of  
18 second level domain names, because they make registered domain names within these  
19 ccTLDs easier to find and use and more accessible to consumers, particularly due to  
20 the increased accessibility IDNs provide to non-English speaking consumers of  
21 whom there are rapidly increasing numbers using the Internet. However, VeriSign's  
22 .com gTLD registry has been hindered and prohibited by ICANN from offering  
23 similar Site Finder and IDN services.

24 8. In addition, the .de ccTLD operator has the flexibility to allow payment of  
25 registry fees for domain name registration services in installments over the course of  
26 a year, a flexibility that enabled the .de registry to align charges for its services with  
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1 monthly web-hosting charges and that is attractive to consumers. The .com Registry  
2 Agreement with ICANN does not permit this flexibility; therefore VeriSign's .com  
3 TLD registry cannot compete in this area.

4 9. Presently, there are 244 ccTLDs. According to information presently  
5 posted on ICANN's website, ICANN has entered into contracts with only 10 of the  
6 over 240 ccTLD registry operators – namely, .jp (Japan), .ke (Kenya), .au (Australia),  
7 .sd (Sudan), tw (Taiwan), .uz (Uzbekistan), .af (Afghanistan), .bi (Burundi), .la (Lao  
8 People's Democratic Republic), and .mw (Malawi). The first six of those ccTLDs  
9 have "agreements" with ICANN; the latter four have "memoranda of understanding"  
10 with ICANN.

11 10. A total of about 19 million second level domain names are registered in all  
12 of the over 240 ccTLDs. Only around 700,000 of those domain names are registered  
13 in ccTLDs under some form of agreement with ICANN. Stated another way, the 10  
14 ccTLD operators represent less than 4% of ccTLD domain name registrants. By far  
15 the largest ccTLDs, including .uk (England) and .de (Germany), continue to operate  
16 without the conditions of an ICANN contract or the conditions ICANN seeks to  
17 impose on gTLDs. Indeed, the United States Department of Commerce which has  
18 ultimate control over .us, the ccTLD for the United States, did not even authorize the  
19 operator of the .us ccTLD to enter into an agreement with ICANN.

20 11. ICANN posts registry agreements and memoranda of understanding to  
21 which it is a party on its website, and I have generally reviewed those agreements and  
22 compared them to the registry agreements ICANN has with gTLDs, including the  
23 2001 .com Registry Agreement with VeriSign, which are also posted on ICANN's  
24 website. The registry agreements and memoranda of understanding ICANN has  
25 signed with the 10 ccTLDs do not contain the same or equivalent terms as the 2001  
26 .com Registry Agreement or ICANN's registry agreements with other gTLDs. To the  
27 contrary, the ccTLD agreements are narrower in scope than the gTLD registry  
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1 agreements, and ICANN does not purport to require ccTLDs to comply with the same  
2 conditions and restrictions as ICANN has attempted to impose on VeriSign, for  
3 example, in connection with VeriSign's Site Finder response service and IDN. In  
4 fact, while ICANN has hindered and delayed the launch and operation of new  
5 services by VeriSign, ICANN has reassured operators of ccTLDs that it will not  
6 attempt to interfere with their business and operations.

7 12. ICANN's efforts to enter into contracts with ccTLD operators have been  
8 singularly unsuccessful, as the above data demonstrates. After initially relying  
9 primarily on governments to push the operators of their respective ccTLD registries  
10 to enter into contracts with ICANN, ICANN shifted course in or about 2001, and  
11 tried to force registry agreements on ccTLD registries by conditioning effectuating a  
12 ccTLD registry's change in technical identification information, associated with the  
13 ccTLD operator's operation of the registry, upon the ccTLD registry's entering into a  
14 registry agreement with ICANN. This strategy was no more successful, as the small  
15 number of ccTLDs under contract with ICANN to this day shows, and ICANN's  
16 attempted refusal to recognize changes in technical information, including registry  
17 administrators and name servers, even in situations in which a ccTLD registry  
18 operator went bankrupt or could no longer continue in business, itself imperiled the  
19 functioning of ccTLDs.

20 13. I have had experience dealing with ICANN in connection with the  
21 operation of a ccTLD registry. VeriSign acquired ownership of the corporation that  
22 operated the .tv ccTLD registry in 2000, with the consent of the Government of  
23 Tuvalu. Thereafter, VeriSign sought to change the designated administrative contact  
24 for the .tv registry in the master list of registry administrative contacts maintained by  
25 ICANN. Even though the registry operator for .tv had not changed, and VeriSign  
26 only wanted to designate a new administrative contact for .tv with the approval of  
27 both the prior administrative contact and the Government of Tuvalu, ICANN treated  
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1 the situation as if it were a redelegation of the registry operator for .tv and notified us  
2 that it would not make the change unless VeriSign entered into a registry agreement  
3 with ICANN for the .tv ccTLD. After substantial efforts by VeriSign, the then  
4 president of ICANN promised in 2002 to effectuate the requested change.

5 14. However, the change in administrative contact for the .tv registry was not  
6 made by ICANN then, and it has not been made by ICANN to this day. Rather, after  
7 four years, ICANN has advised VeriSign that the "process" of seeking this change in  
8 designation must start again. ICANN representatives have said that, among other  
9 steps, VeriSign will have to resubmit written consent to the change from the prior  
10 administrative contact for the .tv ccTLD registry, even though VeriSign has already  
11 submitted at least two such written consents to ICANN. In fact, the prior contact has  
12 demanded substantial sums from VeriSign to refurnish the consent. In addition,  
13 because of ICANN's refusal to effectuate the change, .tv is not recognized as the  
14 valid operator of the ccTLD and therefore cannot join the "supporting organization"  
15 within ICANN for ccTLDs. As a result, ICANN does not officially recognize  
16 VeriSign as the operator of the .tv registry.

17 15. I have also had experience dealing with ICANN in the context of a  
18 promotional program VeriSign offered to .com registrars in 2001, to encourage new  
19 domain name registrations in the .com TLD. The program was scheduled to be in  
20 effect for two months. After the start of the program, I received a letter dated  
21 November 6, 2001, from Louis Touton, then Vice President and General Counsel of  
22 ICANN, in which he complains that the promotional program was improper and  
23 unauthorized, that it constituted a "registry service," and that it was implemented  
24 without notice to ICANN, among other points.

25 16. On the same day, ICANN's then President and Chief Executive Officer,  
26 M. Stuart Lynn, in an email to VeriSign's President, Stratton Sclavos, charged that  
27 the promotional program called in question VeriSign's commitment to the .com  
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1 Registry Agreement, and threatened to hold VeriSign in breach, and possibly either to  
2 terminate or decline to renew the .com Registry Agreement, unless VeriSign made a  
3 “rapid and significant change in [its] operations.” I received and read a copy of Mr.  
4 Lynn’s email the day after he sent it. A true and correct copy of that email is  
5 submitted concurrently as Exhibit 1.

6 17. On November 19, 2001, I caused a written response to be transmitted to  
7 Mr. Touton. A true and correct copy of that letter is submitted concurrently as  
8 Exhibit 2. The letter accurately reflects and states the facts regarding the promotional  
9 program and the position of VeriSign on the points Mr. Touton had raised. In the  
10 letter, I take strong exception to his assertion that the program was or could be a  
11 “registry service” under the 2001 .com Registry Agreement and explain that the  
12 promised incentive to participating registrars was payment for their aggressively  
13 advertising and promoting .com TLD registrations.

14 18. I subsequently received another letter from Mr. Touton regarding the  
15 program, this one dated December 3, 2001. A true and correct copy of that letter is  
16 submitted concurrently as Exhibit 3. In the letter, Mr. Touton expressly states that  
17 ICANN intended “to issue a formal notice of breach” with respect to the program. In  
18 response to that threat, VeriSign had to modify the program substantially in mid-  
19 course and at substantial cost to VeriSign, as I understand is being described in more  
20 detail in another declaration.

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2 19. The promotional program had been favorably received by the registrar  
3 community and something like it could be offered freely at any time by most of  
4 VeriSign's ccTLD competitors without advance notice or ICANN involvement.  
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6 I declare under penalty of perjury under the laws of the United States that the  
7 foregoing is true and correct. Executed this 28th day of April 2004, at Sacramento,  
8 California.  
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13 CHARLES A. GOMES  
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