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15   **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16   **COUNTY OF LOS ANGELES**

17

18 VERANDAGLOBAL.COM, INC., a Flordia corporation, and BRYAN TALLMAN, a California citizen,	CASE NO. 23STCV19554
19	
20 Plaintiffs	**VERIFIED COMPLAINT FOR**
21 v.	**1. DECLARATORY JUDGMENT [CODE CIV. PROC. § 1060];**
22 INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, INC., a Californial Corporation, and DOES 1-10,	**2. UNFAIR COMPETITION LAW [BUS. & PROF. CODE §§ 17200, ET SEQ.];**
23	**3. BREACH OF CONTRACT;**
24	**4. BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING;**
25 Defendants.	**5. BREACH OF QUASI-CONTRACT;**
26	**6. NEGLIGENCE; and**
27	**7. FRAUDULENT INDUCEMENT.** [Filed with Verifications, Exhibits A1 and A2]
28	**DEMAND FOR JURY TRIAL**

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COMES NOW Plaintiffs VerandaGlobal.com, Inc. d/b/a First Place Internet, Inc. ("FPI") and Bryan Tallman ("Tallman") and for their Complaint ("Complaint") against Defendant Internet Corporation for Assigned Names and Numbers, Inc. ("ICANN") allege as follows on information and belief:

I.   INTRODUCTION

1.   This action seeks the principal relief of the Court declaring Plaintiffs' sole rights to register certain Single-Character domain names (such as "A.com") in accordance with ICANN's publicized policies, which Plaintiffs followed and relied upon. Plaintiff FPI expressly requested in writing that ICANN comply with its own policies, but ICANN ignored Plaintiff's request.

2.   ICANN expressly permits the registration and commercial use of Single-Character domain names, as it did with X.com and Elon Musk. Musk's involvement with X.com dates back to March 2000 when X.com merged with Confinity to create PayPal. In July 2017, Musk reaquired the domain X.com for an undisclosed amount from PayPal. Musk's Twitter Account posted the following concerning X.com: "Thanks PayPal for allowing me to buy back http://X.com! No plans right now, but it has great sentimental value to me." On October 27, 2022, Musk acquired the social medial platform Twitter for $44 billion. In 2023, Twitter merged with X Holdings, which became part of X Corp., and Twitter rebranded to "X." Currently, the domain name http://X.com connects directly to Twitter.

3.   The point is that ICANN expressly authorizes commercial entities to register and commercialize Single-Character Label domain names (hereinafter shortened to "Single-Character domain names"). Moreover, each of these domain names must be re-registered (renewed) every 12 months, which ICANN has permitted without fail. In other words, every 12 months ICANN has expressly elected to permit some holders of Single-Character domain names to re-register (renew) and control those domain names while arbitrarily denying others such as Plaintiffs the same right to register and control certain Single-Character domain names. As discussed below, ICANN's failing to recognize Plaintiffs' ability to register certain Single-Character domain names expressly violates ICANN's Bylaws and is contrary to its published policies.

4.   ICANN assigns certain functions to a non-entity, which exists solely as a "function" of ICANN, called the Internet Assigned Numbers Authority ("IANA"). On the IANA website,[1] ICANN (calling itself IANA) states: "We act as both the registrant and registrar for a select number of domains which have been reserved under policy grounds. [...] Domains which are described as registered to IANA or ICANN on policy grounds are not available for registration or transfer..."

5.   To demonstrate, Whois, which publicizes the availability of domain names, shows "GoDaddy.com, LLC" as the Registrar for X.com but for A.com the Registrar is: "RESERVED-Internet Assigned Numbers Authority". The A.com registration "Expires On: 2023-12-08" and was "Updated On: 2022-12-08".

6.   Plaintiffs are consumers-registrants of unique ".com" and ".net" domain names and Internationalized Domain Names ("IDN") (e.g. ".com" and ".net") in Katakana[2] (.コム, which means ".com"), Hangul[3] (.닷컴, which means ".com" and .닷넷, which means ".net"), and Hebrew[4] (.קום, which means ".com"). See, Exhibit A1 listing the Single-Character domain names Plaintiff FPI has registered and controls and Exhibit A2 listing the Single-Character domain names Plaintiff Tallman has registered and controls.

7.   Under ICANN's policy, an existing registrant of an IDN ".com" or ".net" domain name may participate in a process whereby that registrant has the sole right to register the same ".com" or ".net" domain name. For example, Plaintiff FPI registered and uses the following IDN ".com" and ".net" domain names:

      a. 1.コム (Katakana ".com") (1.xn--tckwe – created 12/9/2015)

      b. A.コム (Katakana ".com") (A.xn--tckwe – created 2/3/2016)

      c. A.닷컴 (Hangul ".com") (A.xn--mk1bu44c – created 6/17/2016)

      d. 1.닷넷 (Hangul ".net") (1.xn--t60b56a – created 3/7/2017)

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[1] https://www.iana.org/domains/reserved

[2] A written language commonly used in Japan.

[3] A written language commonly used in Korea.

[4] A written language commonly used in Israel.

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e. A.קום (Hebrew ".com") (A.xn--9dbq2a – created 7/31/2018)

8.   ICANN refuses to release the Latin (ASCII) (the colloquial "English" is hereafter substituted for Latin (ASCII)) version of the Single-Character ".com" and ".net" domain names that Plaintiffs hold the sole right to register and monetize.

9.   Plaintiff FPI requested in writing that ICANN release to Plaintiff the English version of the Single-Character ".com" domain names in accordance with its policies so that Plaintiff could register certain Single Character domains in English, i.e., ".com" and ".net". ICANN rejected Plaintiff FPI's request by ignoring it thereby necessitating this action.

10.   Plaintiffs seek to enforce ICANN's Bylaws and policies to require ICANN to permit Plaintiffs to register, control, and hold certain English Single-Character domain names for the same names that they originally acquired in the Hebrew, Katakana, and Hangul languages. Because ICANN already permits others the right to register, control, and operate X.com, Z.com, and Q.net there can be no rational reason to deny Plaintiffs the same right to register English Single-Character domain names.

II.   PARTIES

11.   Plaintiff VerandaGlobal.com, Inc. (d/b/a First Place Internet, Inc.) is a Florida corporation with its principal place of business in Florida.

12.   Plaintiff Bryan Tallman is a citizens and resident of Morgan Hill, Santa Clara County, California.

13.   Defendant ICANN is a California nonprofit public benefit corporation, with a principal place of business at 12025 Waterfront Drive, Suite 300, Los Angeles, California 90094, and it is a citizen of California.

14.   Defendants DOES 1 through 10, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When the true names and capacities are ascertained, Plaintiffs will amend this cross-complaint by inserting their true names and capacities herein. Plaintiffs are further informed and believe and thereon allege that each of the fictitiously named Defendants designated herein as a fictitiously named Defendant is in some manner responsible for the

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events and happenings herein referred to, either contractually or tortiously, and caused the damage to the Plaintiffs as herein alleged. Doe Defendants are included in the term "Defendants."

15.   At all times herein mentioned, each and every Defendant was the agent, partner, principal, employee, alter ego, co-conspirator, and/or co-venturer, of each and every one of the remaining Defendants and was at all times mentioned acting within the course and scope of such agency and employment.

III.   JURISDICTION AND VENUE

16.   This Court has jurisdiction over this action because ICANN is a citizen of California, and this is a Court of general jurisdiction.

17.   Venue in this Court is proper pursuant to Cal. Code Civ. Proc. § 395 because Defendant has its principal place of business in this judicial district and a substantial number of the actions alleged herein occurred within this district. Venue is also proper in this judicial district because Defendant is a California corporation.
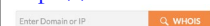
18.   Plaintiffs do not consent to the removal of this action to federal court.

IV.   FACTUAL BACKGROUND

19.   When the U.S. Government operated the DNS it exercised its authority to create the Internet Assigned Numbers Authority ("IANA"), whose function was transitioned to ICANN on September 30, 2016.

20.   By December 1, 1993, the IANA created the Single-Character domain names A.com, B.com, C.com, D.com, F.com, G.com, H.com, I.com, J.com, K.com, L.com, M.com, N.com, O.com, P.com, R.com, S.com, T.com, U.com, V.com, W.com, Y.com, 0.com, 1.com, 2.com, 3.com, 4.com, 5.com, 6.com, 7.com, 8.com, 9.com, and 1.net. Those domain names remain registered by and through an ICANN-controlled registrar, which means ICANN has renewed and controls those Single-Character domain names.[5]

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[5] A true and correct copy of WHOIS, which identifies the registrant/owner of particular domain names, can be found at https://www.whois.com by simply entering the corresponding domain name in the search bar, which looks like this:

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21.   In May 1994, Dr. Jon Postel confirmed that IANA created the Single-Character domain names shown in Exhibits A1 and A2 by stating:

The IANA took the step of reserving all the (as then un-registered) single letter names in COM, ORG, and NET to preserve this option for the future.[6]

22.   "Currently, [IANA] is a *function* of ICANN" and not a separate entity.[7]

23.   ICANN provided the historical pedigree of the DNS and confirmed the U.S. Government operated the DNS system before 1998.

24.   In a lawsuit ICANN stated the following[8]:

The Internet Corporation for Assigned Names and Numbers ("ICANN"), a non-profit public benefit corporation, does not sell Internet domain names, it does not register Internet domain names, and it certainly is not an Internet pornographer. ICANN does not make or sell anything, **it does not participate in <u>any</u> market**, and **its Bylaws expressly forbid it from participating in any of the markets**...

[…]

A.   Background on the Internet's Domain Name System

The Internet is succinctly described as "an international network of interconnected computers." *Reno v. ACLU*, 521 U.S. 844, 849 (1997). Each computer connected to the Internet has a unique identity, established by its unique Internet Protocol address ("IP address"). Compl. ¶ 17. An IP address consists of a series of numbers. Id. Because those numbers are hard to remember, the founders of the Internet created the Domain Name System ("DNS") to allow those numbers to be converted into names such as "weather.com" or "uscourts.gov." *Id.* at ¶ 18. In these examples, ".COM" and ".GOV" are known as the "Top Level Domain" or "TLD." *Id.* at ¶ 20. The letters immediately to the left of the last "period" or "dot" are known as the Second Level Domain (weather or uscourts); the letters to the left of the Second

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[6] Email to George William Herbert dated 20 May 1994.
https://web.archive.org/web/20030614022228/http://ops.ietf.org/lists/namedroppers/namedroppers.199x/msg01156.html

[7] https://en.wikipedia.org/wiki/Internet_Assigned_Numbers_Authority (emphasis added); *see also*
https://web.archive.org/web/20020816084852/http://www.wia.org:80/pub/iana.html ("USC General Counsel, acting on behalf of Jon Postel as a USC staff member in the suit *Image Online Design v. IANA, et al*, states for the record that IANA is not "a separate entity," but rather "a task performed by Dr. Postel under contract between USC and an agency of the federal government.").

[8] ICANN's representations of fact that it provided in support of its FRCP 12(b)(6) Motion to Dismiss in *Manwin Licensing Int'l, et al. v. ICM Registry, LLC, and ICANN, Inc., et al.*, U.S. Dist. Court Central District of California Case No. 2:11-cv-09514-PSG-JCG. *See* ECF No. 18 pp. 7-13 (Page ID # 116-120). A true and correct copy of this document can be found at: http://domainincite.com/docs/icann-manwin-motion-to-dismiss.pdf (bold emphasis added).

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Level Domain are known as the Third Level Domain (for example, the "cacd" in the website to the Central District's main Internet page located at cacd.uscourts.gov). *Id.*

TLDs can either be "unsponsored" or "sponsored." *Id.* at ¶ 21. The most common "unsponsored" TLDs are ".COM" and ".NET"; **there are no restrictions as to who can acquire a domain name subscription in "unsponsored" TLDs**. See generally *id.* By contrast, a "sponsored" TLD is operated by an organization that has a sponsor that is typically an entity representing a narrower group or industry, such as ".MUSEUM" which is operated for the benefit of museums throughout the world and is not available to persons who are not in the museum industry. *Id.* .XXX is a "sponsored" TLD.

Background on ICANN.

Prior to ICANN's formation in 1998, the United States government, via contractual arrangements with third parties, operated the DNS. *Id.* at ¶ 24. ICANN was formed in 1998 as part of the U.S. Government's commitment to "privatize" the Internet so that the administration of the DNS would be in the hands of those entities that actually used the Internet as opposed to governments. *Id.* at ¶ 25. ICANN signed its first agreement with the Department of Commerce (DoC) in 1998. Since that time, ICANN has signed numerous subsequent contracts with the DoC which have conferred upon **ICANN the authority and responsibility to** coordinate the DNS in the public interest by, among other things, **promoting competition and consumer choice in the DNS marketplace**. In addition, ICANN has entered into agreements with the registry operators for TLDs. *Id.*

Consumers do not contact registries directly in order to purchase a domain name registration. Instead, consumers (or "registrants") may obtain the contractual right to use second-level domain names through companies known as "registrars." *Id.* at ¶ 23. ICANN operates the accreditation system that has produced an extremely competitive registrar marketplace, with hundreds of accredited registrars. Registrants buy domain name registrations through these registrars (or their agents), which in turn register those names with the appropriate TLD registry. *Id.*

ICANN's Articles of Incorporation ("Articles") provide that it shall be a nonprofit public benefit corporation organized under California law to be operated "exclusively for charitable, educational, and scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986 . . . ." See ICANN's Request for Judicial Notice ("RJN"), filed concurrently herewith, Ex. A, Art. 3. Article 3 of the Articles further provides:

> In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article 5 hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain

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universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).

Id. (emphasis added); see also Compl. ¶ 26.

Article 4 of the Articles provides:

4. The **Corporation shall operate for the benefit of the Internet community** as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, **through open and transparent processes that enable competition and open entry in Internet-related markets**. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.

RJN, Ex. A at Art. 4.

Section 1 of ICANN's Bylaws sets forth ICANN's overall mission. Specifically, ICANN:

Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are (a) Domain names (forming a system referred to as "DNS"); (b) Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and (c) Protocol port and parameter numbers. 2. Coordinates the operation and evolution of the DNS root name server system. 3. Coordinates policy development reasonably and appropriately related to these technical functions.

RJN, Ex. B at Art. I, § 1.

Article II, Section 2 of the Bylaws sets forth an important restriction on ICANN's activities:

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry **in competition with entities affected by the policies of ICANN**. Nothing in this Section is intended to prevent ICANN from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

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Id. at Art. II, § 2 (emphasis added).

To summarize:

      1.   ICANN is a nonprofit public benefit corporation organized under California law.

      2.   ICANN's primary purpose is to coordinate the operation of the DNS.

      3.   **ICANN's Bylaws prohibit it from operating as an Internet registry or registrar. ICANN does not sell anything or make anything; its functions are noncommercial and in support of the public interest**.

ICANN's Expansion of the DNS.

As noted above, **one of ICANN's core values in support of its mission is to create competition within the DNS**. See RJN, Ex. A at Art. 4 ("The Corporation shall operate . . . through open and transparent processes that enable competition and open entry in Internet-related markets."); RJN, Ex. B at Art. I, § 2.6 ("Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest."). In furtherance of this mission, in 2000, ICANN accepted applications for new TLDs—any entity was free to apply—"

(Bold emphasis added.)

25.   ICANN holds an active InterNIC® License Agreement with the DoC[9] ("DoC License Agreement") "in association with its activities in furtherance of the Memorandum of Understanding ("MOU")".

26.   That DoC License Agreement includes the following[10]:

     D.   Prohibitions.

     1.   **ICANN shall not act as a domain name Registry or Registrar or IP Address Registry in competition with entities affected by the plan developed under this Agreement**. Nothing, however, in this Agreement is intended to prevent ICANN or the USG from taking reasonable steps that are necessary to protect the operational stability of the Internet in the event of the financial failure of a Registry or Registrar or other emergency.

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[9] A true and correct copy of the License Agreement can be found at https://ntia.gov/other-publication/internic-license-agreement-01-08-01

[10] A true and correct copy of the ICANN/DoC MOU can be found at: www.ntia.doc.gov/other-publication/1998/memorandum-understanding-between-us-department-commerce-and-internet-corporat (bold emphasis added).

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2.   **Neither Party**, either in the DNS Project or in any act related to the DNS Project, **shall act unjustifiably or arbitrarily** to injure particular persons or entities or particular categories of persons or entities.

3.   Both Parties shall act in a non-arbitrary and reasonable manner with respect to design, development, and testing of the DNS Project and any other activity related to the DNS Project.

(Emphasis added.)

27.   ICANN Bylaws Articles 2, and 3, Sections 2.2-2.3, 3.1 include the following prohibitions and requirements:[11]

Section 2.2. RESTRICTIONS

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN.

Section 2.3. NON-DISCRIMINATORY TREATMENT

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

Section 3.1. OPEN AND TRANSPARENT

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent bodies (including the detailed explanations discussed above).

28.   ICANN's conduct regarding Plaintiffs' right to register Single-Character domain names such as 1.com and A.com violates ICANN's Bylaws, including, but not limited to Bylaws Articles 2 and 3.

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[11] A true and correct copy of ICANN's Bylaws may be found at:
https://www.icann.org/resources/pages/governance/bylaws-en/#article2

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29.   VeriSign, Inc. ("VeriSign") is a registry operator contracted with the U.S. Department of Commerce's ("DoC") National Telecommunications and Information Administration ("NTIA") to operate the ".com" TLD through an ongoing Cooperative Agreement, the entirety of which has only been made public through a FOIA request. The original Cooperative Agreement No. NCR-9218742 was between the National Science Foundation and Network Solutions.[12]

30.   That Cooperative Agreement No. NCR-9218742 <u>Article 3. Statement of Work</u>, Paragraph G. expressly states:

> [I]n no case shall any user-based fee structure be imposed or changed without the express direction/approval of the [U.S. Government].

31.   VeriSign and NTIA adopted the original Cooperative Agreement, including its original nine amendments.[13]

32.   ICANN and VeriSign have Registry Agreements[14] for the ".com" TLD and the ".net" TLD where each Agreement states in part:

> ICANN is a nonprofit public benefit corporation duly organized, validly existing, and in good standing under the laws of California

> […]

> Section 3.1 Covenants of Registry Operator. Registry Operator covenants and agrees with ICANN as follows:

> […]

> (A) principles for allocation of registered names in the TLD (e.g., first-come, first-served, timely renewal, holding period after expiration);

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[12] Plaintiff reasonably believes that a true and correct copy of the original Cooperative Agreement No. NCR-9218742 between the National Science Foundation and Network Solutions, including its first 9 Amendments may be found at: https://freespeech.com/2020/05/24/original-cooperative-agreement-that-laid-the-foundation-of-verisigns-monopoly/

[13] A true and correct copy of the VeriSign/NTIA Cooperative Agreement under Cooperative Agreement No. NCR 92-18742, continuing with Amendments 10 through 35, which may be found at https://www.ntia.doc.gov/page/verisign-cooperative-agreement

[14] A true and correct sample of such a Registry Agreement can be found at https://www.icann.org/en/registry-agreements/com/com-registry-agreement-1-12-2012-en

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(B) prohibitions on warehousing of or speculation in domain names by registries or registrars;

33.   Yet ICANN has clearly engaged in such unauthorized market activities concerning Single-Character domain names because ICANN approved an amendment to its .com Registry Agreement to auction and sell the existing O.com domain name, which would involve a registrar warehousing or speculating in domain names.

34.   In 2004, VeriSign sued ICANN and submitted a declaration opposing ICANN's motion to dismiss the lawsuit.[15] VeriSign's declaration stated:

> **A domain name does not exist until created and registered in VeriSign's registry master database. The individual or organization that creates and registers a specific domain name is a "registrant." Registrants do not have direct access to the VeriSign registry. Instead, prospective registrants must register domain names they have created through any one of over 100 private and public companies located throughout the United States and the world that act as domain name "registrars" for the .com TLD. Registrars provide direct services to registrants and prospective registrants, such as processing domain name registrations. The VeriSign registry has no contractual or other relationship with a registrant and has no information on or knowledge of who the registrant of a domain name is. Registrars have a contractual relationship with registrants and keep all information regarding the registrants.**
>
> **[…]**
>
> **The registry's role is entirely passive and automated – namely to process a registrars' domain name registration requests on behalf of registrants, comparing those requests against the registry tables of registered domain names**

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[15] *See VeriSign Inc. v. ICANN*, U.S. Dist. Court Central Dist. California, Case No. 04-cv-1292-AHM(CTx). A true and correct copy of the VeriSign declaration may be found at: turner-decl-29apr04-en.pdf (icann.org) (*see* Turner Decl. ¶¶ 10 & 11).

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to prevent duplicate registrations of the same domain name, and registering the domain name in the registry database if it is not already registered.

35. The ".com" and ".net" Registry Agreements' Appendix 6, Schedule of Reserved Names[16], each state:

Except to the extent that ICANN otherwise expressly authorizes in writing, the Registry Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD…(emphasis added)

B. Additional Second-Level Reservations. In addition, the following names shall be reserved at the second level:

- All single-character labels.

36. On May 23, 2007, ICANN's Reserved Names Working Group ("RN-WG") issued a Final Report regarding the recommended release of "Single Letters and Digits" domain names at the Second Level in new TLDs and those currently reserved in existing TLDs.[17] ICANN's RN-WG Final Report states:

Single Letters and Digits

2nd Level

We recommend that single letters and digits be released at the second level in future gTLDs, and that those currently reserved in existing gTLDs should be released. This release should be contingent upon the use of appropriate allocation frameworks. More work may be needed. Examples include a.com, i.info.
[…]
Rationale

[…]

Given that single letter and number second level domains are widely used in country codes and as IDNs, and six letters are used in the

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[16] A true and correct copy of the Registry Agreements' Appendix 6 Schedule of Reserved Names can be found at https://www.icann.org/en/registry-agreements/com/com-registry-agreement-appendix-6-1-12-2012-en and https://www.icann.org/en/registry-agreements/net/net-registry-agreement-appendix-6--schedule-of-reserved-names-1-7-2011-en.

[17] A true and correct copy of the RN-WG's May 23, 2007 Final Report may be found at: https://gnso.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm

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existing legacy generic top level domains at the second level, it seems feasible to examine how to release and allocate single letter and number second level names.

Consultation with experts

Single letters and numbers are widely delegated at the second level, in 63 TLDs and as IDN (U-label) versions. Therefore, we presume there is no technical reason why remaining letters, at least, should remain reserved.

37.   On August 8, 2007, ICANN GNSO completed more work and issued its Final Report

Introduction of New Generic Top-Level Domains with the recommendations below[18]:

	Reserved Name Category	Domain Name Level(s)	Recommendation
5	Single and Two Character IDNs	IDNA-valid strings at all levels	Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script (see Recommendation 10 below). Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.
7	Single Letters and Digits	2nd Level	In future gTLDS we recommend that single letters and single digits be available at the second (and third level if applicable).

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[18] A true and correct copy of the August 8, 2007 Final Report Introduction of New Generic Top-Level Domains may be found at: https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm

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	RECOMMENDATIONS[26]	MISSION & CORE VALUES
1	ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.	M1-3 & CV1-11
2	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1

38.   On July 21, 2009, ICANN's Chief Executive Officer affirmed ICANN's support of implementing IDNs and New gTLDs and described ICANN's role in the process as tied to its essential responsibility where ICANN expressly cites its key responsibility to its original 1998 Memorandum of Understanding with the U.S. Government by stating[19]:

Message from the CEO

21 July 2009

First, let me say that I am thrilled to be on board as ICANN's CEO and President. The moment I joined this exciting organization I found it working on an incredible range of activities involving an array of constituencies.

[…]

IDNs

The first step is to support the implementation of Internationalized Domain Names (IDNs) so that businessmen in Russia or India, as just two

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[19] A true and correct copy of the ICANN CEO's July 21, 2009 statement may be found at: https://archive.icann.org/en/ceo/ceo-message-21jul09-en.htm

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examples, can use their native languages and language scripts to write their domain names, and can access written information and other content in the same way. Perhaps it is appropriate that this very significant change in the Internet marks its roughly 40th anniversary. That same forty years ago, man's first footsteps on the moon enlightened mankind's view of his place in the universe. In the same way, IDNs will guarantee that all mankind can have a place on the Internet in their native script.

From here on, once IDNs are released and supported, every language group in the world that signs up and implements their language will be able to see their Internet in ways unimaginable until now. Thus, the rollout of IDNs over the next year is a small but enormously important step for the ICANN community and for the broader global Internet community.

[…]

New gTLDs

[…]

The ICANN responsibility to support methods for securely introducing new TLDs was specified in the original White Paper that led to our formation. And our original 1998 memorandum of understanding with the U.S. Government stated one of our key responsibilities this way: **"Oversight of the policy for determining the circumstances under which new top level domains would be added to the root system."** It went on to say, **"The Parties will jointly design, develop, and test the mechanisms, methods, and procedures that will achieve the transition without disrupting the functional operation of the Internet."** According to Chairman of the Board Peter Dengate Thrush, **"We are . . . declaring success on these points. It's been 11 years. We have developed and tested those mechanisms, and we find that they work.**

39.   On February 26, 2010, VeriSign's Vice President of Policy and Compliance for VeriSign Information Services, Chuck Gomes, was quoted in an article stating that Registrants of existing .com domain names are well positioned for the coming release of IDN TLDs[20]:

"We want the .com name to be a unique experience for .com regardless of what script you do it in," said Gomes… "I can say that the business unit is considering applying for 'several' IDN versions of .com in some of the scripts that are available."

"If you want to create a web site around that [Chinese IDN TLD] you can, or you can point the Chinese version to your existing web site," explained Gomes."

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[20] A true and correct copy of the February 26, 2010 article quoting Mr. Gomes may be found at: https://domainnamewire.com/2010/02/26/verisigns-plans-for-com-idns-become-clearer/

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40. On June 26, 2008 and June 20, 2011, ICANN resolved and adopted IDN recommendations to allow new IDN TLD Registries to offer Single-Character domain name registrations, including but not limited to that if an applicant or Registry offers an IDN service, then ICANN's IDN Guidelines must be followed.[21][22]

41. On July 7, 2011, VeriSign's Senior Vice President and General Manager of VeriSign Naming Services, Pat Kane, was quoted in an article stating the following:[23]

> **"It [New gTLDs] will attract people to the domain space for the first time because it's more relevant to them because it's in their language or in their script."… "We're trying to extend the value proposition of .com," Mr. Kane explained. "It's not new domain space, it's a resolution service."**

42. In June 2012 ICANN expanded the DNS with formal acceptance of VeriSign's new IDN gTLD applications for ".com" and ".net" domain names in foreign languages including Katakana/Japanese (.コム, .xn--tckwe), Hangul/Korean/(.닷컴, .xn--mk1bu44c and .닷넷, .xn--t60b56a), and Hebrew (.קום, .xn--9dbq2a).[24]

43. Each of VeriSign's new gTLD IDN applications provide clear commitments made to its registrants:[25]

27. Registration Life Cycle

1.4 Aspects of the Registration Lifecycle Not Covered by Standard EPP RFCs.

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[21] A true and correct copy of ICANN's June 26, 2008 Board Resolution may be found at https://www.icann.org/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#_Toc76113171 ; a true and correct copy of ICANN's June 20, 2011 Board Resolution may be found at: https://www.icann.org/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-singapore-20-06-2011-en

[22] *See also supra* n.18 (August 8, 2007 Final Report Introduction of New Generic Top-Level Domains).

[23] A true and correct copy of the July 7, 2011 article quoting Mr. Kane may be found at: https://domainnamewire.com/2011/07/07/verisigns-pat-kane-discusses-new-tlds-and-idns/

[24] *See infra* nn.26-29.

[25] *See infra* nn.26-29.

Our registration lifecycle processes and code implementations adhere to the standard EPP RFCs related to the registration lifecycle. By adhering to the RFCs, our registration lifecycle is complete and addresses each registration-related task comprising the lifecycle. No aspect of our registration lifecycle is not covered by one of the standard EPP RFCs and thus no additional definitions are provided in this response.

[…]

2 CONSISTENCY WITH ANY SPECIFIC COMMITMENTS MADE TO REGISTRANTS AS ADAPTED TO THE OVERALL BUSINESS APPROACH FOR THE PROPOSED gTLD

The registration lifecycle described above applies to the HEBREW_TRANSLITERATION_OF_.COM gTLD as well as other TLDs managed by VeriSign; thus we remain consistent with commitments made to our registrants. No unique or specific registration lifecycle modifications or adaptations are required to support the overall business approach for the HEBREW_TRANSLITERATION_OF_.COMgTLD.

44. A unique new gTLD IDN application was created for all offered languages related to the Single-Character domain names that Plaintiffs registered and controlled.

45. Therefore, paragraph two of the above example substituted the Hangul and Katakana languages where there are references to the Hebrew language.[26][27][28][29]

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[26] A true and correct copy of the new gTLD IDN application for Hebrew ".com" (.קום) domain names may be found at: https://gtldresult.icann.org/applicationstatus/applicationdetails/1138 and https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadapplication/1138?t:ac=1138

[27] A true and correct copy of the new gTLD IDN application for Hangul ".com" (.닷컴) domain names may be found at: https://gtldresult.icann.org/applicationstatus/applicationdetails/1140 and https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadapplication/1140?t:ac=1140

[28] A true and correct copy of the new gTLD IDN application for Hangul ".net" (.닷넷) domain names may be found at: https://gtldresult.icann.org/applicationstatus/applicationdetails/1133 and https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadapplication/1133?t:ac=1133

46. In other words, all of VeriSign's new gTLD IDN applications contained the same terms and conditions except inserted the relevant applicable language.

47. These IDN applications clearly state VeriSign's intent to remain consistent with commitments made to registrants, such as Plaintiffs, by ensuring a uniformly implemented registration lifecycle across all TLDs it manages in every language applicable to the Plaintiffs' domain names.

48. ICANN's IDN Guidelines expressly provide for adoption of "information fundamental to the understanding of a registry's IDN policies" ("ICANN-Adopted Policy"). ICANN's IDN Guidelines for IDN Implementation Version 3.0, Section 6, states[30][31]:

> **Any information fundamental to the understanding of a registry's IDN policies**
>
> **that are not published by the IANA will be made directly available online by the**
>
> ***registry [VeriSign].***
>
> **(emphasis added).**

49. On August 8, 2007, ICANN's Generic Names Supporting Organisation ("GNSO") recommended the following:

> **Single and two character labels at the second level and the third level if**
>
> **applicable should be available for registration, provided they are consistent with**
>
> **the IDN Guidelines.**
>
> **[and the Board expressly resolved that]**
>
> **…if an applicant [Registry] offers an IDN service, then ICANN's IDN**
>
> **guidelines *must* be followed.**
>
> **(Emphasis added).[32]**

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[29] A true and correct copy of the new gTLD IDN application for Katakana ".com" (.コ厶) domain names may be found at: https://gtldresult.icann.org/applicationstatus/applicationdetails/1139 and https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadapplication/1139?t:ac=1139

[30] A true and correct copy of ICANN's IDN Guidelines for IDN Implementation Version 3.0 may be found at: https://www.icann.org/resources/pages/idn-guidelines-2011-09-02-en

[31] *See also* https://www.icann.org/resources/pages/implementation-guidelines-2012-02-25-en

[32] *See supra* n.21.

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50.   ICANN's IDN Guidelines require that information fundamental to understanding the registry's IDN policies to be made directly available online by the registry (VeriSign).

51.   ICANN resolved and adopted a policy stating:

Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.[33]

52.   ICANN also resolved and adopted a policy that "if an applicant [Registry] offers an IDN service, then ICANN's IDN guidelines **must** be followed". (Emphasis added).[34]

53.   ICANN's IDN Guidelines required that "[a]ny information fundamental to the understanding of a registry's IDN policies that is not published by the IANA will be made directly available online by the registry."[35]

54.   On July 11, 2013, VeriSign wrote to inform ICANN of its IDN implementation strategy illustrated in Use Case No. 1 and Use Case No. 2, which does not exclude Single-Character domain names.[36]

55.   VeriSign's July 11, 2013 Letter states:

In considering our strategy to implement our new IDN gTLDs, we sought to achieve several objectives but chief among them was, where feasible, to avoid costs to consumers and businesses from purely defensive registrations in these new TLDs as well as to avoid end user confusion. With these important objectives in mind, we note that under Appendix 6 of our .com and .net Registry Agreements, all "Tagged Domain Names" (defined as labels with hyphens in the third and fourth character positions) in these two TLDs are in a reserved status until such time that valid internationalized names are registered. This

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[33] *Id.*

[34] *See supra* n.18.

[35] https://www.icann.org/resources/pages/idn-guidelines-2011-09-02-en

[36] A true and correct copy of VeriSign's July 11, 2013, Letter to ICANN may be found at: https://www.icann.org/en/system/files/correspondence/kane-to-willett-11jul13-en.pdf

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principle is embodied in our updated TLD implementation plans where only valid IDNs in their ASCII encoding (e.g., "xn--ndk051n") may be registered as within the .com TLD and .net TLD. In this way, a registrant in one of our new IDN TLDs, or a registrant of an IDN.com or IDN.net, will have the sole right, subject to applicable rights protection mechanisms, but *not be required* to register the second level name across all or any of our IDN TLDs, including the .com or .net TLDs as applicable. We think this will be an important benefit to the community and we expect strong support from brands and others with our plan. In order to illustrate our approach, we have identified two use cases below:

Use Case No. 1: Bob Smith already has a registration for an IDN.net second-level domain name. That second-level domain name will be unavailable in all of the new .net TLDs except to Bob Smith. Bob Smith may choose not to register that second-level domain name in any of the new transliterations of the .net TLDs.

Use Case No. 2: John Doe does not have a registration for an IDN.com second-level domain name. John Doe registers a second-level domain name in our Thai transliteration of .com but in no other TLD. That second-level domain name will be unavailable in all other transliterations of .com IDN TLDs and in the .com registry unless and until John Doe (and only John Doe) registers it in another .com IDN TLD or in the .com registry.

56.   ICANN published VeriSign's July 11, 2013 Letter without objection thereby accepting VeriSign's planned IDN implementation strategy.[37]

57.   VeriSign's IDN implementation strategy unambiguously provides that a domain name registrant in an IDN .com/.net TLD "…will have the **sole right…to register the same second-level**

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[37] https://www.icann.org/en/system/files/correspondence/kane-to-willett-11jul13-en.pdf

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domain name across all or any of our *IDN TLDS,* **including .com or .net TLD**…" (Emphasis added).[38]

58.   ICANN's publication of VeriSign's July 11, 2013 Letter explicitly instructs, or reasonably intends that, the general public can rely upon VeriSign's [registry] IDN implementation strategy ("ICANN-Adopted Policy") in its entirety.

59.   Plaintiffs know of no public objection, retraction, or clarification that ICANN has ever made regarding its publication of VeriSign's July 11, 2013 Letter to ICANN.

60.   Any visitor, including Plaintiffs, to the ICANN web page, would reasonably conclude VeriSign's IDN implementation strategy of ICANN-Adopted Policy and illustrations therein had full ICANN approval and sanction. Plaintiffs did review this ICANN web page and did affirmatively rely upon the representations and policies contained in the Letter.

61.   Plaintiffs came to this conclusion independently.

62.   To be clear, Registry's IDN implementation strategy of ICANN-Adopted Policy plainly states that "a registrant in [Hebrew (.קום), Hangul (.닷컴, .닷넷), or Katakana (.コ ム) … *will have the sole right … to register* the second level name across all or any of our IDN TLDs, including the .com or .net TLDs…" (emphasis added).

63.   ICANN did not reject VeriSign's IDN implementation strategy as communicated in the Letter, including Use Case No. 2, nor did ICANN inform the general public, including Plaintiffs, that ICANN would **not** comply with the policies as defined in the Letter.

64.   Rather, ICANN expressly sanctioned Priority Access Program periods which provided existing second-level domain name registrants of .com and .net the exclusive right to register the same second-level domain names for each of the four IDN ".com" and ".net" domain names.[39]

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[38] *Id.*

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65. Therefore, registry mechanisms were demonstrably proven to exist that could have made Priority Access rights reciprocal in accordance with Use Case No. 2.

66. The Kane Willett Letter concluded by stating:

VeriSign intends to shortly initiate a broad communications plan to educate and inform our community about our IDN implementation planning.[40]

67. Whereas ICANN's June 26, 2008 and June 20, 2011 Board resolutions impose ICANN IDN Guidelines for Registries that offer IDNs, and ICANN's IDN Guidelines state that "any information fundamental to the understanding of a registry's IDN policies that are not published by the IANA will be made directly available online by the registry," and that "information fundamental to the understanding of a registry's IDN policies" was made "directly available online" by the Registry through Registry's IDN implementation strategy Letter dated July 11, 2013, ICANN's publication of Registry's Letter without objection acknowledges Registry's IDN implementation strategy is ICANN-Adopted Policy, which is open, clear, and transparently illustrated in Use Case No. 1 and Use Case No. 2.

68. On July 12, 2013, one day after ICANN published VeriSign's IDN Letter, VeriSign published an article describing how it is implementing the ICANN-Adopted Policy by beginning a "broad communications plan" to make "directly available online" its "IDN policies."[41]

69. From July 12, 2013, to the present, VeriSign implemented the ICANN-Adopted Policy regarding "information fundamental to the understanding of a registry's IDN policies" for feasible allocation of domain names at the second level in New TLDs (including IDN ".com" and ".net" TLDs) and for domain names in existing TLDs (including ".com" and ".net" TLDs) and that is open,

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[39] https://portal.icann.org/servlet/servlet.FileDownload?file=00P6100000FPBo9EAH (ICANN Priority Access Program Table for Katakana); https://portal.icann.org/servlet/servlet.FileDownload?file=00P6100000FPBG6EAP ICANN Priority Access Program Table for Hangul); https://portal.icann.org/servlet/servlet.FileDownload?file=00P6100000V7eh9EAB (ICANN Priority Access Program Table for Hebrew).
[40] *See supra* n.36.
[41] A true and correct copy of the July 12, 2013 policy can be found at: https://circleid.com/posts/20130712_update_on_verisigns_idn_implementation_plans/

22

clear, and transparently illustrated in Use Case No. 1 and Use Case No. 2, while Single-Character

domain names are not excluded in either illustration.[42]

70.   In 2015, ICANN approved VeriSign's New TLD Registry Agreements for IDN ".com"

and ".net" domain names for Hebrew (.קום), Hangul (.닷컴, .닷넷), and Katakana (.コム) that contain

certain mandatory public interest commitments ("PICs"), expressly enforceable by ICANN.[43][44][45][46]

71.   In Specification 11 of each of the 2015 new TLD Registry Agreements paragraph 3 and

3(c) provides:

> Specification 11 (3): Registry Operator agrees to perform the following specific public
> interest commitments, **which commitments shall be enforceable by ICANN**…

> Specification 11 (3) (c): Registry Operator will operate the TLD in a transparent manner
> consistent with general principles of openness and non-discrimination **by establishing,
> publishing, and adhering to clear registration policies**…
> (Emphasis added).

72.   ICANN is not enforcing these PICs by failing to require the Registry Operator to

operate the TLD in a transparent manner consistent with general principles of openness and non-

discrimination by establishing, publishing, and adhering to clear registration policies.

73.   Under ICANN-Adopted Policy, VeriSign promoted its new TLD IDNs as "the .com

you know now in Japanese" and "the .com you know now in Korean" and the ".net you know now in

Korean."[47][48]

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[42] A true and correct copy of VeriSign's July 12, 2013 blog entry discussing these matters can be found at: https://blog.verisign.com/domain-names/update-on-verisigns-idn-implementation-plans/

[43] A true and correct copy of the Hebrew version of the new 2015 TLD Registration agreement may be found at: https://itp.cdn.icann.org/en/files/registry-agreements/xn--9dbq2a/xn--9dbq2a-agmt-pdf-15jan15-en.pdf

[44] A true and correct copy of the Hangul version of the new 2015 TLD Registration agreement for .com domains may be found at: https://itp.cdn.icann.org/en/files/registry-agreements/xn--mk1bu44c/xn--mk1bu44c-agmt-pdf-15jan15-en.pdf

[45] A true and correct copy of the Hangul version of the new 2015 TLD Registration agreement for .net domains may be found at: https://itp.cdn.icann.org/en/files/registry-agreements/xn--t60b56a/xn--t60b56a-agmt-pdf-15jan15-en.pdf

[46] A true and correct copy of the Katakana version of the new 2015 TLD Registration agreement for .com domains may be found at: https://itp.cdn.icann.org/en/files/registry-agreements/xn--tckwe/xn--tckwe-agmt-pdf-15jan15-en.pdf

[47] A true and correct copy of VeriSign's promotional materials for Japanese TDLs may be found at: https://www.verisign.com/assets/factsheet-japan-idn-faq-web.pdf

74. Under ICANN-Adopted Policy, ICANN sanctioned VeriSign's "Priority Access Program" for the same IDNs in Katakana, Hangul, and Hebrew.[49][50][51]

75. VeriSign began offering new TLD IDN ".com" and ".net" registrations in Japanese/Katakana, Korean/Hangul, and Hebrew, which Plaintiffs reasonably relied upon in purchasing and registering IDNs in ".com" and ".net" from December 2015 to September 2020.

76. For example, Plaintiff FPI registered the following IDNs:

    a.   1.コム (Katakana ".com") (1.xn--tckwe)[52] (created 12/9/2015)

    b.   1.닷넷 (Hangul ".net") (1.xn--t60b56a) (created 3/7/2017)

    c.   A.コム (Katakana ".com") (A.xn--tckwe) (created 2/3/2016)

    d.   A.닷컴 (Hangul ".com") (A.xn--mk1bu44c) (created 6/17/2016)

    e.   A.קום (Hebrew ".com") (A.xn--9dbq2a) (created 7/31/2018)

77. ICANN's conduct regarding 1.com, A.com, and the other Single-Character domain names shown in Exhibits A1 and A2 violates ICANN's Bylaws, including, but not limited to 2.2, 2.3, and 3.1 because ICANN is: (a) acting as a registry or registrar contrary to Bylaw § 2.2; (b) engaging in discriminatory treatment contrary to Bylaw § 2.3; and (c) failing to act in an open and transparent manner consistent with procedures designed to ensure fairness contrary to Bylaw § 3.1.[53]

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[48] A true and correct copy of VeriSign's promotional materials for Korean TDLs may be found at: https://www.verisign.com/assets/factsheet-korean-idn-com-faq-web.pdf ; *see also* https://web.archive.org/web/20170116163643/https://blog.verisign.com/tag/idns/

[49] A true and correct copy of ICANN Priority Access Program Table for Katakana may be found at:: https://portal.icann.org/servlet/servlet.FileDownload?file=00P6100000FPBo9EAH

[50] A true and correct copy of ICANN Priority Access Program Table for Hangul may be found at:: https://portal.icann.org/servlet/servlet.FileDownload?file=00P6100000FPBG6EAP

[51] A true and correct copy of ICANN Priority Access Program Table for Hebrew may be found at:: https://portal.icann.org/servlet/servlet.FileDownload?file=00P6100000V7eh9EAB

[52] The parenthetical 1.xn--tckwe is referred to as "PUNY Code", which is the vehicle by which the code converts into the IDN native language.

[53] *See supra* n.11 (Bylaws).

78.   On March 7, 2017 Plaintiff FPI again relied upon ICANN-Adopted Policy illustrated in Use Case No. 2 in order to purchase and register the Single-Character IDN Hangul "1.net" domain name 1.닷넷.[54]

79.   Plaintiff FPI purchased its Hangul "1.net" IDN with the reasonable expectation that ICANN-Adopted Policy illustrated in Use Case No. 2 would be honored and enforced because Plaintiff FPI paid for and earned the sole right to register the Single Character "1.net" domain name shown in Exhibit A1.

80.   On April 19, 2021 Plaintiff FPI wrote to ICANN demanding it release all Single-Character domain names that Plaintiff FPI has the sole right to register, but which ICANN is currently holding or controlling in violation of its Bylaws.[55]

81.   ICANN failed to respond to Plaintiff FPI's demand.

82.   ICANN, on its own or through its subsidiaries, is continuing to impermissibly act as a registrar by annually renewing for itself the registrations of the domain names listed and shown in Exhibits A1 and A2.

83.   In other words, each year ICANN reassesses and renews its impermissible conduct by holding and controlling Single-Character domain names that Plaintiffs hold the sole right to register.

84.   Concurrently, every 12 months ICANN expressly reauthorizes and re-permits the registrants of certain Single Character domain names, such as X.com, Z.com, and Q.net to register, control, hold, and operate Single Character domain names while depriving Plaintiff of the same.

85.   Thus, each year ICANN improperly acts as a registrar for the Single-Character domain names, contrary to prohibitions that "ICANN shall not act as a Domain Name System Registry or

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[54] https://www.firstplace.com/CSCemailchainforpurchaseofpremiumdomainname1.net.pdf
[55] A true and correct copy of FPI's letter is available at https://www.firstplace.com/ICANNformalrequestwithreceipts.pdf

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Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN."[56]

86. By ignoring Plaintiff FPI's request to release Single-Character domain names and preventing Plaintiffs from registering and using the Single-Character domain names at the .com and .net TLD, ICANN is arbitrarily discriminating against Plaintiffs and in so doing is violating its policies and Bylaws and its PICs and its DoC Agreement.

87. Due to ICANN's failure to comply with its own policies and Bylaws, Plaintiffs are unable to register the Single-Character ".com" and ".net" domain names, which unfairly impairs Plaintiffs' right to use the Single-Character domain names. Indeed, ICANN's conduct is directly contrary to its representations to a California federal court when it represented that "ICANN does not sell anything or make anything; its functions are **noncommercial** and in support of the public interest." *See supra* Cmplt. ¶ 24 (emphasis added).

88. Despite Plaintiff FPI having the sole right to register Single-Character domain names shown in Exhibit A1 under the ICANN-Adopted Policy (feasible allocation frameworks) illustrated by Use Case No. 1 and Use Case No. 2, ICANN sought to impermissibly authorize a speculative auction for the O.com domain name. [57]

89. On March 27, 2019, ICANN approved the Second Amendment to .Com Registry Agreement authorizing the auction of O.com.

90. ICANN released the names of the intended recipients of the auction proceeds, and subsequently redacted that information from proposed Second Amendment, claiming it was confidential.[58]

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[56] *See supra* text accompanying n.11 (ICANN Bylaws § 2.2).
[57] A true and correct copy of the proposed ICANN Second Amendment to .com Registry Agreement can be found at https://itp.cdn.icann.org/en/files/registry-agreements/com/com-amend-2-pdf-27mar19-en.pdf
[58] Exhibit A of the Second Amendment to .com Registry Agreement states: "[REDACTED FOR CONFIDENTIALITY]" https://www.firstplace.com/ICANNsecondamendmentunredactedandredacted.pdf.

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91.   ICANN tried to conceal the identity of its chosen non-profits that would reap the auction proceeds from selling O.com, which conduct violated its supposed policy of conducting its business in an "open and transparent" manner.

92.   Moreover, by authorizing and assisting in the speculative auction of O.com ICANN also violated its policy prohibiting it from engaging in or benefiting from a commercial transaction related to a domain name in the secondary market sale of a domain name.

93.   ICANN is prohibited from participating in such transactions.[59]

94.   Contrary to its actions towards Plaintiffs, ICANN's functions are required to be non-commercial and in support of the public interest.

95.   Therefore, ICANN's refusal to permit Plaintiffs to register their Single Character domain names violates ICANN's policies and Bylaws.

96.   ICANN's actions toward Plaintiffs are arbitrary and capricious, especially considering ICANN permits others to annually re-register, control, and operate certain Single-Character domain names while refusing Plaintiffs the same.

V.   CAUSES OF ACTION

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT
(All Plaintiffs Against All Defendants)

97.   Plaintiffs refer to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

98.   There is a bona fide, actual, present and practical need for a declaration by this Court, which concerns a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts.

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[59] *See supra* n.12, which identifies the original Cooperative Agreement No. NCR-9218742 that expressly prohibits ICANN from engaging the sale of domain names.

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99.   Cal. Civ. Proc. Code § 1060 provides that:

Any person interested under a written instrument, excluding a will or a trust, or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, or with respect to the location of the natural channel of a watercourse, may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

100.   ICANN controls the worldwide issuance or release of the relevant internet domain names. ICANN promulgated and entered numerous policies and contracts with government agencies and others regarding the manner in which it will issue or release internet domain names.

101.   Plaintiffs seek a declaration that ICANN's policies and procedures require ICANN to release its hold and permit the transfer of all Single-Character domain names listed in Exhibit A1 to FPI and Exhibit A2 to Tallman.

102.   Alternatively, Plaintiffs seek a declaration that ICANN is in breach of its policies and procedures pertaining to the release of any (or all) of the Single-Character domain names listed in Exhibit A1 to FPI and Exhibit A2 to Tallman.

103.   Alternatively, Plaintiffs seek a declaration that ICANN's policies and procedures prevent ICANN from holding, retaining, or attempting to monetize those Single-Character domain names listed in Exhibit A1 and Exhibit A2.

104.   Cal. Civ. Proc. Code § 1062.3 provides that:

(a) Except as provided in subdivision (b), actions brought under the provisions of this chapter shall be set for trial at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence may be given by law.

(b) Any action brought under the provisions of this chapter in which the plaintiff seeks any relief, in addition to a declaration of rights and duties, shall take such

1 precedence only upon noticed motion and a showing that the action requires a
2 speedy trial.

3 105.   Plaintiffs seek relief "in addition to a declaration of rights and duties," and therefore

4 shall make a "noticed motion and a showing that the action requires a speedy trial" to receive such

5 precedence.

6 106.   Wherefore, Plaintiffs, having shown they are in doubt as to their rights and duties, prays

7 this Court will enter a judgment pursuant to the California Declaratory Relief Act, Cal. Code Civ. P. §

8 1060 *et seq.*

9

10 **SECOND CAUSE OF ACTION:**
UNFAIR & DECEPTIVE TRADE PRACTICES (UCL)
11 **Bus. & Prof. Code § 17200, et seq.**
(All Plaintiffs Against All Defendants)
12

13 107.   Plaintiffs refer to each and every preceding paragraph and incorporates those

14 paragraphs as though set forth in full in this cause of action.

15 108.   ICANN controls the worldwide issuance or release of the relevant internet domain

16 names. ICANN promulgated and entered numerous policies and contracts with government agencies

17 and others regarding the manner in which it will issue or release internet domain names.

18 109.   Defendant ICANN provides internet-related services to consumers throughout

19 California and therefore is required to comply with California Business and Professions Code Section

20 17200.

21

22 110.   California Business and Professions Code Section 17200 provides:

23 As used in this chapter, unfair competition shall mean and include any unlawful, unfair,
or fraudulent business act or practice and unfair, deceptive, untrue, or misleading
24 advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of
Part 3 of Division 7 of the Business and Professions Code
25

26 111.   Defendant ICANN engaged in unfair or illegal business acts and practices within the

27 meaning of Business and Professions Code Section 17200.

28

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COMPLAINT

112.   Defendant ICANN's conduct was unfair. CALIFORNIA EVIDENCE CODE § 669 states in pertinent part: "(a) The failure of a person to exercise due care is presumed if: (1) He violated a statute, ordinance, or regulation of a public entity."

113.   As a result of Defendants' violation of the UCL Defendant is presumed to have failed to exercise due care. This presumption standing alone is tantamount to an unfair business practice in violation of UCL § 17200.

114.   Defendant ICANN has violated the fraudulent prong of the UCL by knowingly and willfully making false and misleading claims regarding its promise to comply with its own policies and procedures regarding the issuance of Single-Character domain names listed in Exhibits A1 and A2.

115.   Defendant's false representations were acts likely to and in fact did mislead Plaintiffs acting reasonably under the circumstances, and constitute a deceptive trade practice in violation of the UCL.

116.   Defendant has violated the fraudulent prong of the UCL by knowingly and willfully not intending to abide by its published policies and procedures thereby unlawfully deceiving or inducing Plaintiffs to purchase the Single-Character domain names.

117.   Defendant ICANN's conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, and the general public. Accordingly, Plaintiffs seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure Section 1021.5.

118.   Defendant ICANN's activities, as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of California Business & Professions Code Section 17200, *et seq.*

119.   A violation of California Business & Professions Code Section 17200, *et seq.*, may be predicated on any illegal, unfair, or fraudulent business act or practice.

COMPLAINT

120.   In this instant case, Defendant ICANN's failure to comply with its publicly stated policies and contractual obligations are, as described herein, both unfair and unlawful.

121.   ICANN's failure to release the Single-Character domain names listed in Exhibits A1 and A2 for registration is an unlawful, unfair or fraudulent business act or practice.

122.   ICANN's representations set forth herein constitute unfair, deceptive, untrue or misleading advertising as discussed herein.

123.   Defendant ICANN has defrauded or misled consumers, internet users, and/or its customers, including Plaintiffs, by failing to comply with its policies, organizational mandate, and its contractual obligations regarding the naming and releasing of internet domain names.

124.   As a result of the herein-described violations of California law, Defendant ICANN unlawfully gained an unfair advantage over other businesses, including Plaintiffs, and caused Plaintiffs to expend money in reliance on ICANN's policies, contractual promises, and governing mandates.

125.   Plaintiffs have each been personally and directly injured by Defendant ICANN's unlawful business acts and practices, including but not necessarily limited to the loss of money, the loss of use of their Single-Character domain names, the diminution of value of their Single-Character domain names, and the loss of use of their personal property interests.

126.   Plaintiffs have been harmed by ICANN's conduct in an amount to be proven at trial, but which exceeds the jurisdictional threshold of this unlimited jurisdiction court.

127.   Plaintiffs have been damaged as a result and seek among other things, injunctive relief requiring ICANN to release its hold and to permit the transfer of all Single-Character domain names listed in Exhibit A1 to FPI and Exhibit A2 to Tallman.

128.   Pursuant to UCL § 17203, Plaintiffs seek an order: (1) requiring Defendant to cease the unfair practices described herein; (2) compelling Defendant to release to Plaintiffs all Single-Character domain names listed Exhibits A1 and A2; (3) enjoining and ordering Defendant to comply with all

court-ordered declaratory relief sought herein; and, (4) upon Plaintiff's motion demonstrating a significant benefit to the public, such as enhancing the public's access to internet domain names, awarding reasonable costs and attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5.

THIRD CAUSE OF ACTION:
BREACH OF CONTRACT
(All Plaintiffs Against All Defendants)

129.   Plaintiffs refer to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

130.   ICANN controls the worldwide issuance or release of the relevant internet domain names. ICANN promulgated and entered numerous policies and contracts with government agencies and others regarding the way it will issue or release internet domain names.

131.   Plaintiffs entered a binding agreement with ICANN and/or through its agents that was governed by ICANN's policies and procedures.

132.   Plaintiffs registered the IDN .com / .net TLD Single-Character domain names listed in Exhibits A1 and A2.

133.   ICANN failed to follow its policies as to Plaintiffs' IDN .com / .net TLD Single-Character domain names listed in Exhibits A1 and A2.

134.   Plaintiffs paid for the Single-Character domain names listed in Exhibits A1 and A2 in reliance on ICANN complying with and following its policies and procedures.

135.   Plaintiffs performed all of their duties under the applicable policies, except those that were waived, prevented, or excused, and complied with all applicable provisions of the agreement.

136.   Nevertheless, ICANN refused to release the Single-Character domain names listed in Exhibits A1 and A2 as required pursuant to its policies and procedures, thereby breaching said policies and procedures.

137.   Plaintiffs suffered monetary damages as a result.

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COMPLAINT

138.   Plaintiffs are damaged in being unable to register the same Single-Character domain names as Plaintiffs' IDN .com / .net TLD Single-Character domain names listed in Exhibits A1 and A2.

139.   Plaintiffs have been harmed by ICANN's conduct in an amount to be proven at trial, but which exceeds the jurisdictional threshold of this unlimited jurisdiction court.

140.   ICANN has breached and otherwise repudiated its duty to provide the Single-Character domain names listed in Exhibits A1 and A2 in return for Plaintiffs purchasing said Single-Character domain names and their compliance with all other applicable provisions.

FOURTH CAUSE OF ACTION:
COVENANT OF GOOD FAITH AND FAIR DEALING
(All Plaintiffs Against All Defendants)

141.   Plaintiffs refer to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

142.   ICANN controls the worldwide issuance or release of the relevant internet domain names. ICANN promulgated and entered numerous policies and contracts with government agencies and others regarding the manner in which it will issue or release internet domain names.

143.   Plaintiffs entered an agreement with ICANN and/or through its agents that was governed by ICANN's policies and procedures.

144.   Plaintiffs performed all, or substantially all of the material requirements required of them pursuant to ICANN's policies and procedures.

145.   All of the conditions required for ICANN's performance have occurred.

146.   ICANN's refusal or failure to release the Single-Character domain names listed in Exhibits A1 and A2 to Plaintiffs violates Plaintiffs' sole right to the benefits of registering said Single-Character domain names.

147.   By doing so, ICANN did not act fairly and in good faith.

148. Plaintiffs have been harmed by ICANN's conduct in an amount to be proven at trial, but which exceeds the jurisdictional threshold of this unlimited jurisdiction court.

FIFTH CAUSE OF ACTION:
QUASI CONTRACT
(All Plaintiffs Against All Defendants)

149. Plaintiffs refer to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

150. ICANN controls the worldwide issuance or release of the relevant internet domain names. ICANN promulgated and entered numerous policies and contracts with government agencies and others regarding the manner in which it will issue or release internet domain names.

151. Plaintiffs relied on ICANN's rules, policies, procedures, and contractual requirements with Registrars and others, and in reliance thereon purchased the Single-Character domain names listed in Exhibits A1 and A2. An implied contract at law is therefore presumed to exist between ICANN and Plaintiffs.

152. Plaintiffs entered an implied or actual contract with ICANN and/or its agents that is specified or governed by ICANN's policies and procedures.

153. Plaintiffs performed all, or substantially all of the material requirements required of them pursuant to ICANN's policies and procedures.

154. All of the conditions required for ICANN's performance have occurred.

155. ICANN's refusal or failure to release the same Single-Character domain names listed in Exhibits A1 and A2 to Plaintiffs violates Plaintiffs' sole right to the benefits of registering said Single-Character domain names.

156. ICANN is withholding the Single-Character domain names listed in Exhibits A1 and A2 for its own benefit.

COMPLAINT

157.   ICANN has not compensated Plaintiffs for this benefit, and therefore has damaged Plaintiffs.

158.   Plaintiffs have been harmed by ICANN's conduct in an amount to be proven at trial, but which exceeds the jurisdictional threshold of this unlimited jurisdiction court.

SIXTH CAUSE OF ACTION:
NEGLIGENCE
(By All Plaintiffs Against All Defendants)

159.   Plaintiffs refer to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

160.   ICANN controls the worldwide issuance or release of the relevant internet domain names. ICANN promulgated and entered numerous policies and contracts with government agencies and others regarding the manner in which it will issue or release internet domain names.

161.   As the authority that controls and is responsible for the worldwide Internet DNS, ICANN has a duty of care to Plaintiffs, each a consumer-registrant of internet domain names, to fairly and impartially apply its governing policies and procedures regarding the registration and release of domain names including the Single-Character domain names listed in Exhibits A1 and A2.

162.   Plaintiffs reasonably relied on ICANN rules, policies, procedures, and contractual requirements with Registrars and others by purchasing the Single-Character domain names listed in Exhibits A1 and A2.

163.   ICANN breached its duty by failing to release the Single-Character domain names listed in Exhibits A1 and A2 for registration by Plaintiffs.

164.   ICANN's breach of its duty of care proximately caused injury to Plaintiffs, who cannot register and use the Single-Character domain names in accordance with ICANN policies.

165.   Plaintiffs have been harmed by ICANN's conduct in an amount to be proven at trial, but which exceeds the jurisdictional threshold of this unlimited jurisdiction court.

COMPLAINT

SEVENTH CAUSE OF ACTION:
FRAUDULENT INDUCEMENT
(All Plaintiffs Against All Defendants)

166.   Plaintiffs reallege and incorporate each and every previous paragraph of this Complaint as though fully set forth herein.

167.   Defendant ICANN intentionally concealed or ratified the concealment of an important fact from Plaintiffs, namely that ICANN did not intend to follow its published policies and procedures regarding the release of Single-Character domain names, which concealment created a false impression with Plaintiffs.

168.   Alternatively, Defendant ICANN intentionally concealed or ratified the concealment of an important fact from Plaintiffs, namely that ICANN intended to violate its published policies and procedures such that it would retain for itself or for the financial benefit of entities that it controls the release of Single-Character domain names, which concealment created a false impression with Plaintiffs.

169.   Alternatively, Defendant ICANN intentionally concealed or ratified the concealment of an important fact from Plaintiffs, namely that ICANN intended to violate its published policies and procedures such that it would release Single-Character domain names to certain limited persons or entities and not on a fair, impartial or arbitrary bases, which concealment created a false impression with Plaintiffs.

170.   The intentional concealment of an important fact, was made with the intent to deceive Plaintiffs or induce Plaintiffs to rely on the concealment of the fact.

171.   Plaintiffs did justifiably rely on ICANN's concealment of the important fact. Plaintiffs purchased the Single-Character domain names in reliance on the omitted material facts.

172.   Plaintiffs' reliance on the failure to disclose the concealed fact was a substantial factor in causing Plaintiffs' injury.

173.   Plaintiffs have been harmed by ICANN's conduct in an amount to be proven at trial, but which exceeds the jurisdictional threshold of this unlimited jurisdiction court.

174.   The aforementioned acts of Defendant ICANN were committed and done willfully, wantonly, or maliciously and said intended acts were fraudulent, oppressive, or committed in disregard

of Plaintiffs' rights, feelings, and well-being, and by reason thereof Plaintiffs seek punitive and exemplary damages against Defendant in a sum according to proof at the time of trial within the discretion of this court.
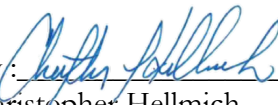
VI.   PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

a.   Declare Defendant ICANN's actions, as described herein, violate the UCL §§ 17200 *et seq.* and constitute fraud in the inducement, negligence, negligent misrepresentation, and breach of contract, good faith and fair dealing, and/or quasi contract;

b.   Award all economic, monetary, actual, consequential, statutory, and compensatory damages caused by Defendant's conduct, and if justified, award Plaintiffs exemplary damages;

c.   Award injunctive relief as necessary to cease Defendant's violations of California common law and UCL §§ 17200 *et seq.*;

d.   Award Plaintiffs their reasonable litigation expenses and attorneys' fees as provided by statute and California law;

e.   Award Plaintiff pre- and post-judgment interest, to the extent allowable; and

f.   Award such other and further relief as equity and just may require.

Dated: August 16, 2023   **HELLMICH LAW GROUP, P.C.**

By: _____
Christopher Hellmich

TFPC, A MAINE PROFESSIONAL CORPORATION
Talcott J. Franklin (*pro hac vice* to be filed)

SAHRBECK P.C.
Jonathan Sahrbeck (*pro hac vice* to be filed)

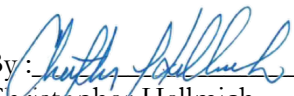Attorneys for Plaintiffs VerandaGlobal.com, Inc. and Bryan Tallman

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COMPLAINT

JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all claims so triable.

Dated: August 16, 2023   **HELLMICH LAW GROUP, P.C.**

By: _Christopher Hellmich_
Christopher Hellmich

COMPLAINT