

1 PATRICK A. CATHCART (CA SBN 65413)
BRET A. FAUSETT (CA SBN 198410)
2 IMANI GANDY (CA SBN 223084)
CATHCART COLLINS & KNEAFSEY LLP
3 444 South Flower Street, 42nd Floor
Los Angeles, California 90071
4 Telephone: (213) 225-6600
Facsimile: (213) 225-6601

5 Attorneys for Plaintiff
6 Coalition for ICANN Transparency, Inc.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 COALITION FOR ICANN TRANSPARENCY,
INC., a Delaware Corporation,

13 Plaintiff,

14 v.

15 VERISIGN, INC., a Delaware Corporation;
16 INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, a California
17 Corporation,

18 Defendants.

Case No. 05-4826 (RMW) PVT

**REQUEST FOR JUDICIAL NOTICE
OF PLAINTIFF CFIT IN SUPPORT OF
ITS CONSOLIDATED
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANTS' MOTIONS TO
DISMISS CFIT'S FIRST AMENDED
COMPLAINT**

DATE: JUNE 9, 2006

Time: 9:00 a.m.

Ctrm: 6

Honorable Ronald M. Whyte

CATHCART COLLINS & KNEAFSEY LLP
444 South Flower Street, 42nd Flr.
Los Angeles, California 90071

1 Pursuant to Federal Rule of Evidence 201, Plaintiff Coalition for ICANN Transparency,
2 Inc. ("CFIT") requests judicial notice of the documents identified below in support of its
3 Memorandum of Points and Authorities in Opposition to Internet Corporation for Assigned Names
4 and Numbers' ("ICANN") and VeriSign, Inc.'s ("VeriSign") Motions for Judgment on the
5 Pleadings.
6

7 Courts may "consider facts that are contained in materials of which the court may take
8 judicial notice" when deciding Rule 12(c) motions. *Heliotrope Gen., Inc. v. Ford Motor Co.*, 189
9 F.3d 971, 981 n.18 (9th Cir. 1999) (internal citations omitted). Judicial notice is proper where a
10 fact is "not subject to reasonable dispute in that its either (1) generally known within the territorial
11 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to
12 sources whose accuracy cannot reasonably be questioned." Fed.R.Evid. 201(b). A district court
13 may "consider a document the authenticity of which is not contested, and upon which the
14 plaintiff's complaint necessarily relies." *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998).
15 In addition, a court may take judicial notice of "matters of public record." *George W. v. U.S.*
16 *Dep't of Educ.*, 149 F. Supp. 2d 1195, 1201-02 (E.D. Cal. 2000). Taking judicial notice of matters
17 of public record and/or matters not reasonably subjected to dispute does not convert a Rule 12(c)
18 motion into a motion for summary judgment. *GE Engine Serv. UNC Holding I, Inc. v. Century*
19 *Indemn. Co.*, 250 F. Supp. 2d 1237, 1240 (C.D. Cal. 2001). Attached hereto as Exhibit C is the
20 declaration of Imani Gandy authenticating the documents attached as Exhibits A through B.
21

22 Accordingly CFIT request judicial notice of the following documents:
23

24 (A) Excerpts from VeriSign First Amended Complaint (VeriSign FAC) in *VeriSign,*
25 *Inc. v. Internet Corp. for Assigned Names and Numbers*, Case No. CV 04-1292 (AHM) (C.D. Cal.
26 June 14, 2004), true and correct copies of which are attached hereto as Exhibit A. This document
27 is judicially noticeable because it is a public record and its authenticity cannot reasonably be
28

1 disputed. The document is relevant to show that VeriSign has sought to enforce antitrust claims
2 based on virtually the same market definitions that CFIT alleged in the First Amended Complaint,
3 and that VeriSign now contends are inadequate as a matter of law.

4
5 (B) Excerpts from VeriSign's Opening Brief in *VeriSign, Inc. v. Internet Corp. for*
6 *Assigned Names and Numbers*, Ninth Circuit Case No. 04-56761, dated December 17, 2004, true
7 and correct copies of which are attached hereto as Exhibit B. This document is judicially
8 noticeable because it is a public record and its authenticity cannot reasonably be disputed. The
9 document is relevant to show that VeriSign has sought to enforce antitrust claims based on
10 virtually the same market definitions that CFIT alleged in the First Amended Complaint, and that
11 VeriSign now contends are inadequate as a matter of law.

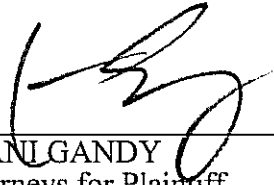
12
13 For the foregoing reasons, CFIT respectfully requests that the Court take judicial notice of
14 Exhibits A through B, attached hereto.

15 DATED: May 17, 2006

16 Respectfully submitted,

17 CATHCART COLLINS & KNEAFSEY LLP

18
19
20 By: _____


21 IMAN GANDY
22 Attorneys for Plaintiff
23 COALITION FOR ICANN
24 TRANSPARENCY INC.
25
26
27
28

CATHCART COLLINS & KNEAFSEY LLP
444 South Flower Street, #2nd Flr.
Los Angeles, California 90071

EXHIBIT A

1 RONALD L. JOHNSTON (State Bar No. 057418)
LAURENCE J. HUTT (State Bar No. 066269)
2 SUZANNE V. WILSON (State Bar No. 152399)
JAMES BLACKBURN (State Bar No. 169134)
3 ARNOLD & PORTER LLP
1900 Avenue of the Stars, 17th Floor
4 Los Angeles, California 90067-4408
Telephone: (310) 552-2500
5 Facsimile: (310) 552-1191

6 Of Counsel:
RICHARD L. ROSEN (*pro hac vice*)
7 ARNOLD & PORTER LLP
555 Twelfth Street NW
8 Washington, D.C. 20004-1206
Telephone: (202) 942-5000
9 Facsimile: (202) 942-5999

10 Brian A. Davis (*pro hac vice*)
VeriSign, Inc.
11 21355 Ridgetop Circle
Dulles, Virginia 20166
12 Telephone: (703) 948-2300
Facsimile: (703) 450-7326

13 Attorneys for Plaintiff
14 VeriSign, Inc.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

18 VERISIGN, INC., a Delaware
corporation,
19 Plaintiff,
20 v.
21 INTERNET CORPORATION FOR
22 ASSIGNED NAMES AND
NUMBERS, a California corporation
23 Defendants.
24
25

) Case No. CV 04-1292 AHM (CTx)
) **FIRST AMENDED COMPLAINT**
) **FOR VIOLATION OF THE**
) **ANTITRUST LAWS, SPECIFIC**
) **PERFORMANCE OF**
) **CONTRACT, DAMAGES FOR**
) **BREACH OF CONTRACT,**
) **INTERFERENCE WITH**
) **CONTRACTUAL RELATIONS,**
) **DECLARATORY AND**
) **INJUNCTIVE RELIEF**

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

1 would further delay VeriSign's offering of WLS, decrease its utility and
2 attractiveness for consumers, and otherwise adversely affect the WLS service in
3 restraint of trade.

4 Injury to Competition

5 106. There is a relevant product market for the provision of services for the
6 secondary domain name market, including the provision of domain name "backorder"
7 and similar services. The relevant geographic market is worldwide. The secondary
8 domain name market includes the market for registered (or existing) domain names,
9 including various forms of direct sales and auctions. "Backorder" and similar
10 services consist of various services designed to register a domain name in the name of
11 a new registrant in the event the domain name is deleted from the registry, including
12 related auctions.

13 107. There are several means by which a prospective party can obtain an
14 existing (or currently registered) domain name of his or her choice. The prospective
15 registrant can seek to obtain the registration for that domain name from the current
16 registrant, either through a direct transaction or through a domain name auction.
17 Alternatively, the prospective registrant can take advantage of one or more
18 "backorder" services that seek to register the name for the prospective registrant in
19 the event that domain name is deleted or otherwise becomes available for new
20 registration.

21 108. At all relevant times, the WLS co-conspirators have been existing or
22 potential competitors of VeriSign for the WLS service. From at least early 2002, the
23 WLS co-conspirators have offered the following services for prospective registrants
24 wishing to secure an existing domain name: eNom's Club Drop service, Dotster's
25 NameWinner service, Alice Registry's backorder service, and TuCows' backordering
26 service (offered to consumers through its resellers). Since at least early 2003,
27 POOL.com's Domain Marketplace and Backorder services, and GoDaddy's
28

1 DomainAlert Monitoring, Backordering, and PowerGrab services have been
2 operating. WLS competes with such “backorder” and similar services.

3 109. Registrars and providers of such “backorder” services cannot guarantee
4 that their customers will receive the chosen domain name because a competing
5 registrar may be able to register the domain name first on behalf of another party (or
6 itself, such as to auction the domain name to others). For example, multiple potential
7 registrants may pay (indeed, to the same registrar) to “backorder” the same domain
8 name, despite the fact that none of them will secure the registration even if the
9 domain name is deleted from the registry. As a result, existing services are wasteful
10 of consumer resources, and uncertain, unreliable, inefficient and overly costly to
11 consumers. Furthermore, such services impose demands on the registry system by
12 transmitting continuous automated “add” requests, using registry system resources,
13 potentially blocking other registrars’ access to the registry, and imposing
14 unreimbursed costs on VeriSign.

15 110. The WLS subscriptions would be distributed by ICANN-accredited
16 domain name registrars, rather than directly by VeriSign to registrants. All ICANN-
17 accredited registrars would have an equal opportunity, at an equal wholesale price, to
18 participate in the WLS and to sell WLS subscriptions to prospective registrants.
19 Those registrars that offer “backorder” and similar services are seeking to distribute
20 these services through many of the same domain name registrars who are VeriSign’s
21 potential customers.

22 111. The WLS would compete directly with “backorder” and similar services
23 offered by others, including the WLS co-conspirators, who cannot offer a guarantee
24 of registration if the sought-after domain name becomes available for registration, but
25 who can compete for the business of prospective registrants in other ways. The WLS
26 would also compete with the “backorder services” of WLS co-conspirators in
27 offering domain name registrars, as distributors, a value-added service that can be
28 provided along with their other domain name registration services.

1 112. ICANN and the WLS co-conspirators have blocked and delayed the
2 implementation of WLS for almost three years and have imposed anti-competitive
3 conditions on its implementation. The WLS co-conspirators have used this delay to
4 introduce competitive but inferior, and often higher priced, products to WLS, beating
5 VeriSign to the market by reason of their conspiratorial conduct. By reason of these
6 delays, among other things, consumers have been denied a superior service and have
7 paid artificially inflated prices for inferior services.

8 113. The WLS would have expanded the range of alternatives available to
9 prospective registrants seeking to register currently-registered second-level domain
10 names and to registrars seeking to offer such "backorder" services to customers.
11 None of the currently available backorder services is able to guarantee that its
12 customer will obtain the desired domain name registration if it becomes available.
13 Indeed, many providers of competitive services exploit this inefficiency in the system
14 to auction a domain name to multiple "backorder" customers who have paid for the
15 same domain name, thereby using the uncertainty in existing services to cause a
16 further waste of consumer resources.

17 114. In contrast to current competitive services, a WLS subscriber would be
18 guaranteed that it would get the domain name if that domain name became available.
19 The WLS would thereby have been a superior service that would have stimulated
20 quality and price competition in the relevant markets.

21 115. As of the filing of this Complaint, ICANN still has not agreed to terms
22 for the introduction WLS, and WLS has not been made available to registrars or
23 registrants.

24 116. Representatives of ICANN repeatedly have acknowledged the unique
25 benefits for consumers and competition that the WLS would provide. In July 2003,
26 for example, ICANN's President testified before a Senate Committee that "[t]he
27 VeriSign [WLS] proposal offered a significant improvement from a consumer
28 perspective to the various services already offered by registrars," and that "[I]t would

1 be anomalous to 'protect' competition between providers of non-guaranteed products
2 by preventing the new competition of a guaranteed product that at least some
3 consumers would likely prefer."

4 117. Notwithstanding that ICANN recognized the clear benefits that WLS
5 would have provided to competition and consumers, ICANN insisted on conditions,
6 proposed at the behest of the registrars who stood to benefit competitively from any
7 obstacles thrown in WLS's path, that made the WLS service uneconomical and that,
8 at a minimum, would delay its introduction.

9 118. By preventing and delaying the offering of WLS and imposing
10 conditions that would materially interfere with the WLS and adversely impact its
11 availability and attractiveness to consumers, the WLS co-conspirators have deprived
12 consumers of a new, superior competitive service that would have offered them
13 substantial and unique benefits over existing competitive services. In addition, the
14 WLS would have forced the co-conspirators to improve the service, pricing or terms
15 on which they offered competing services.

16 119. The WLS co-conspirators had an economic and competitive interest in
17 preventing plaintiff from offering the WLS. These co-conspirators captured,
18 controlled and manipulated the processes of ICANN, as set forth above, and
19 combined and conspired with ICANN to delay VeriSign's offering of WLS and to
20 force VeriSign to accept conditions on the offering of WLS that would make it less
21 competitive with domain name "backorder" and similar services offered by those co-
22 conspirators and others.

23 120. The operation of TLD registries also is a relevant product market. The
24 relevant geographic market is worldwide.

25 121. In addition to its pro-competitive impact on the markets for services to
26 the secondary domain name market and for domain name "backorder" and similar
27 services, WLS also would have increased the utility of second-level domain names
28 registered in the .com gTLD, which would have stimulated competition between the

1 .com registry and other TLD registries. VeriSign competes with other TLD
2 registries.

3 122. VeriSign's revenue from .com registrations is a function of the
4 desirability of second level domain names in the .com gTLD as compared with other
5 TLDs. Thus, VeriSign, like operators of other TLD registries, is continually seeking
6 ways to assure that potential domain name registrants will choose to register second
7 level domain names in the .com gTLD rather than to register in or switch to
8 competing TLDs. Other TLD registries do the same.

9 123. The registrar customers for the WLS offer registration services for .com
10 as well as other TLDs. The WLS would have increased the utility and popularity of
11 second-level domain names registered in the .com gTLD, by making it easier and less
12 costly for potential domain name registrants to reserve the ability to register a desired
13 domain name in the .com gTLD even if that name were currently registered. This in
14 turn would have stimulated competition between the .com registry and other TLD
15 registries.

16 124. By preventing the offering of the WLS and imposing conditions on the
17 service as alleged above, the WLS co-conspirators injured competition among TLD
18 registries by denying VeriSign, as the operator of the .com registry, the ability to
19 offer a service that would have induced registrants to seek out domain names within
20 the .com gTLD rather than domain names offered in other TLDs, thereby stimulating
21 competition among TLD registries.

22 125. The WLS co-conspirators had an economic and competitive interest in
23 preventing plaintiff from offering the WLS. These conspirators captured, controlled
24 and manipulated the processes of ICANN, as set forth above, and combined and
25 conspired with ICANN to delay its offering of the WLS and to force VeriSign to
26 accept conditions on the offering of the WLS that would make it less competitive
27 with domain name backorder services offered by those conspirators and others.
28

1 Site Finder co-conspirators joined and agreed with ICANN that ICANN would assert
2 control over Site Finder as a purported Registry Service and would shut down the
3 service.

4 130. The Site Finder co-conspirators specifically identified above are all
5 members of ICANN's Security and Stability Advisory Committee ("SECSAC")
6 either themselves (in the case of the individual Site Finder co-conspirators) or
7 through employees of theirs (in the case of the company Site Finder co-conspirators).
8 At all times relevant hereto, the Site Finder co-conspirators captured and controlled
9 the processes of SECSAC with respect to Site Finder.

10 131. Pursuant to ICANN's Bylaws, SECSAC is an advisory committee that
11 reports to the ICANN Board. The SECSAC is composed of part time volunteers.
12 The Committee's website notes that "[b]ecause the Committee is composed of people
13 actively working in the field, conflicts of interest arise from time to time." Indeed,
14 the website explicitly acknowledges that "several members work for companies . . .
15 competing with VeriSign."

16 132. In connection with the conduct of SECSAC alleged herein, no members
17 of SECSAC working for companies competing with VeriSign recused themselves
18 from the SECSAC proceedings and decision regarding Site Finder. In addition,
19 contrary to the Bylaws of ICANN, during the course of the SECSAC proceedings
20 concerning Site Finder, the Site Finder co-conspirators, who dominated and
21 controlled the proceedings, added to SECSAC outspoken opponents of the Site
22 Finder service, including persons affiliated with Site Finder co-conspirators,
23 specifically in order to secure and retain control of SECSAC, bias the proceedings
24 against VeriSign and Site Finder, dictate the conclusions and contents of SECSAC
25 reports concerning Site Finder, and compel ICANN to take action to terminate Site
26 Finder.

27 133. On September 19, 2003, just four days after VeriSign launched the Site
28 Finder service, the Chairman of SECSAC, Steve Crocker, circulated to certain

1 committee members a draft “report” entitled Recommendations Regarding VeriSign’s
2 Introduction of Wild Card Response to Unregistered Domains within .com and .net.
3 This draft “report” already included what purported to be SECSAC’s opinions and
4 recommendations that the Site Finder service should be terminated, but no facts,
5 evidence, or analysis was included in the report – nor existed. To the contrary, the
6 draft report reads: “This is where we need to include the factual information to
7 support the opinions and recommendations that follow. Paul Vixie and Suzanne,
8 among others, please dump stuff into this section.” Paul Vixie is a Site Finder co-
9 conspirator, and Suzanne Woolf was an outspoken critic of Site Finder, improperly
10 added to SECSAC by the Site Finder co-conspirators, and a Vixie collaborator. At
11 the time of circulating the draft report, members of SECSAC, which was controlled,
12 with respect to Site Finder, by the Site Finder co-conspirators, had reached a
13 “conclusion” to stop Site Finder, despite having no evidence that the service affected
14 the security or stability of the domain name system or of the infrastructure of the
15 Internet.

16 134. SECSAC issued its report based on the above-referenced draft on
17 September 22, 2003. The SECSAC report was, in fact, a subterfuge and pretext to
18 attempt to justify the actions of ICANN, the Site Finder co-conspirators and SECSAC
19 in forcing the termination of VeriSign’s Site Finder service. The report does not
20 include any facts concerning the effects of Site Finder or any analysis supporting the
21 report’s opinions and recommendations that the service be immediately terminated.

22 135. The SECSAC Report itself admits that rather than setting forth facts
23 supporting its conclusions, SECSAC would meet the following month purportedly to
24 gather facts to support its predetermined conclusion. However, despite subsequent,
25 repeated promises by SECSAC that a report with supporting facts would be issued in
26 November 2003, after almost *nine months* from the issuance of the SECSAC Report,
27 SECSAC has yet to issue any report to support its conclusions. No such support in
28 fact exists.

1 136. Pursuant to the conspiracy among ICANN and the Site Finder co-
2 conspirators, and despite the fact that Site Finder is neither a Registry Service nor
3 otherwise properly subject to control by ICANN or SECSAC, in September 2003,
4 ICANN purported to assert "authority" over Site Finder and took action based on the
5 SECSAC Report, and without proper independent review or consideration, to force
6 VeriSign to shut down the service, with the specific purpose and intent to interfere
7 with the service and to restrain trade in the market and submarkets alleged below.

8 137. As contemplated and intended by ICANN and the Site Finder co-
9 conspirators, ICANN used the SECSAC report, which itself was a product of
10 SECSAC proceedings captured and controlled by Site Finder co-conspirators, as a
11 pretext to justify its action in furtherance of the conspiracy, including ICANN's
12 demand that Site Finder be suspended.

13 138. At the time ICANN took these actions, Steve Crocker, one of the Site
14 Finder co-conspirators and the author of the SECSAC report, sat on the ICANN
15 board as a non-voting liaison. The Board of Directors of ICANN never adopted a
16 lawful resolution regulating Site Finder.

17 139. The actions of SECSAC and ICANN were not open or transparent, but
18 rather were staged, arbitrary and in furtherance of the conspiracy among them.
19 ICANN did not adopt independent review procedures, as required by the 2001 .com
20 Registry Agreement, among other sources, and ICANN did not act with
21 accountability. In this manner, ICANN further encouraged, facilitated, and
22 contributed to the domination and control of its processes by the Site Finder co-
23 conspirators.

24 *Injury to Competition*

25 140. There is a relevant product market for the provision of Web address
26 directory assistance services. Such services include various services designed to help
27 Internet users locate a pre-determined website. The relevant geographic market is
28 worldwide.

1 141. The Site Finder co-conspirators consist of existing and potential
2 providers of TLD registry operations and web address directory assistance services in
3 competition with VeriSign, and those who share similar economic interests with
4 them. Afilias Limited is an existing provider of competitive gTLD and ccTLD
5 registry operations, a competitor of VeriSign for new registry operations, and a
6 potential provider of web address directory assistance services in competition with
7 VeriSign. Paul Vixie is an existing provider of competitive services for registry
8 operations, including providing TLD domain name hosting services for ccTLDs and
9 gTLDs, and a competitor of VeriSign for new registry operations. Alice's Registry,
10 Inc. is an existing and potential competitor of VeriSign for various services, including
11 a competitor for new registry operations and services relating to secondary domain
12 name registrations, and it shares economic interests with other VeriSign competitors.
13 Steve Crocker is a consultant regarding Internet services. The Site Finder co-
14 conspirators have combined with other VeriSign competitors to prevent the offering
15 of Site Finder on the grounds that Site Finder would make VeriSign a more effective
16 competitor and stimulate and enhance competition in the relevant markets alleged
17 herein.

18 142. Prior to the introduction of Site Finder, a user who typed an erroneous
19 web address or a web address that included a non-existent domain and received a 404
20 error message, received no assistance in locating the chosen website. Such a user
21 would have to resort to other inferior services or means to attempt to find the web
22 address he or she was seeking. To utilize a search engine for web address directory
23 assistance, for example, the user would be required to access and separately launch a
24 search engine, and then to formulate an appropriate query to reach a desired website.

25 143. In contrast to such general purpose search services, with Site Finder,
26 when a non-existent web address is typed, the user does not receive a 404 error
27 message page and, instead, is automatically presented with a web page suggesting
28 possible alternative addresses for the webpage the user is seeking, a search engine

1 box, and other useful information. Thus, for many consumers, Site Finder would
2 have offered substantially more efficient and convenient functionality than existing
3 search engine services. Site Finder would have been a material improvement for
4 Internet users who otherwise receive error messages when attempting to locate a
5 predetermined website and who have to engage in multiple steps to attempt to find
6 the address of the site.

7 144. Certain web browsers and Internet service providers (“ISP”) also provide
8 web address directory assistance services as an integral feature of their service.
9 However, an Internet user would have access to such directory services only if the
10 user employed a specific web browser or ISP that provided the service as a feature of
11 the web browser or ISP service. Many millions of Internet users do not have access
12 to such a browser or ISP.

13 145. During the several days that Site Finder was operational, more than
14 40,000,000 Internet users made use of the service and benefitted from it. Before Site
15 Finder was launched, and after Site Finder was closed down, many of these users had
16 no such service available to them.

17 146. Certain entities that have shared economic relationships with registrars
18 market services to Internet users that they claim will assist users in finding a correct
19 web address.

20 147. Site Finder would also have provided a unique alternative for sponsors
21 of web links and advertisers choosing to reach Internet users. Those link sponsors
22 and advertisers contract with search providers to provide links to their content and
23 advertisers aimed at Internet users who are seeking particular types of content.
24 Because Site Finder would reach a large number of users seeking more specialized
25 content, and because it would offer greater ease of use for them than competing
26 services, Site Finder would offer significant and unique benefits to many sponsors of
27 web links and advertisers, and thus stimulate competition with other web address
28 directory assistance services.

1 148. The operation of TLD registries and submarkets thereof also are a
2 relevant product market. The relevant geographic market for such services is
3 worldwide.

4 149. In addition to competing with existing and potential providers of web
5 address directory assistance services, VeriSign also competes with other TLD
6 registries. VeriSign's revenue from .com registrations is a function of the desirability
7 of second level domain names in the .com TLD as compared with other TLDs. Thus,
8 VeriSign, like operators of other TLD registries, is continually seeking ways to assure
9 that potential domain name registrants will choose to register second level domain
10 names in the .com TLD rather than to register in or switch to competing TLDs. Other
11 TLD registries do the same.

12 150. Site Finder would have increased the utility of second-level domain
13 names registered in the .com TLD, by making it easier for Internet users to locate
14 websites that include a .com name as part of the web address in the .com TLD when
15 they were unsure of the web address. This in turn would have stimulated competition
16 between the .com registry and other TLD registries.

17 151. Some other gTLD and ccTLD registries that compete with the .com
18 gTLD registry, including the .museum gTLD registry, with which ICANN has a
19 registry agreement, and ccTLD registries, are currently offering services similar to
20 Site Finder, and the operators of other gTLD and ccTLD registries have either already
21 tested or stated that they intend to launch similar services. These registries recognize
22 the unfulfilled demand for services similar to Site Finder. However, none of their
23 services could be used to locate web addresses for domain names registered in the
24 .com registry.

25 152. There are approximately 32,000,000 second level domain names
26 registered in the .com registry. While more than 40,000,000 consumers used Site
27 Finder to locate pre-determined websites with domains registered in the .com registry
28 during the brief period Site Finder was operational. On an annualized basis Site

1 Finder would have created a huge benefit both for Internet users and websites using
2 domain names registered in the .com registry, and an equal loss to consumers was
3 caused by reason of ICANN shutting down Site Finder.

4 153. Plaintiff projected that Site Finder would generate profits of
5 approximately \$12.75 million in 2004. This also reflects the impact it would have on
6 competition in the market for web address directory assistance services and on the
7 market for the operation of TLD registries.

8 154. The conspiracy between ICANN and its co-conspirators has deprived
9 consumers of a beneficial new service and VeriSign of revenues and profits it would
10 have generated and would generate in the future from and in connection with Site
11 Finder.

12 155. The Site Finder co-conspirators had an economic and competitive
13 interest in preventing VeriSign from offering Site Finder in that, as described above,
14 each of them operates or has been seeking to operate a competitive registry or
15 provides services for registries competing with VeriSign's .com registry. These
16 conspirators captured, controlled and manipulated the processes of ICANN, as set
17 forth above, and combined and conspired with ICANN to force VeriSign to withdraw
18 its offering of Site Finder.

19 156. By forcing VeriSign to withdraw its offering of Site Finder, ICANN and
20 the Site Finder co-conspirators restrained and eliminated competition in the market
21 for web address directory assistance services and in the market for the operation of
22 TLD registries and submarkets thereof, and have deprived consumers of the benefits
23 of free and open competition in violation of Section 1 of the Sherman Act, 15 U.S.C.
24 § 1.

25 **Internationalized Domain Names**

26 *The Conspiracy to Restrain Trade*

27 157. ICANN and existing and potential competitors of VeriSign have
28 combined and conspired to delay and limit the offering of internationalized domain

1 names by VeriSign, thereby restraining trade in the relevant market and submarkets
2 for such services. Pursuant to this combination, competitors of VeriSign have
3 captured and controlled the ICANN process concerned with IDNs, improperly
4 delaying and conditioning VeriSign's offering of IDN services, and limiting the
5 quantity and choice of IDN services available to consumers. By virtue of this
6 conduct, VeriSign's competitors have secured important competitive advantages not
7 otherwise available to them, including enabling them to achieve a head start in
8 entering the market for IDN services and acquire increased market share
9 notwithstanding their inferior services. The co-conspirators who have combined with
10 ICANN to restrain competition with respect to IDN services include, among others:
11 the China Internet Network Information Center ("CNNIC") and the Taiwan Network
12 Information Center ("TWNIC"), who operate, respectively, the .cn and .tw ccTLDs
13 (the "IDN co-conspirators") in competition with VeriSign's operation of the .com
14 gTLD.

15 158. In December 2002, the ICANN Board resolved that ICANN should form
16 an IDN Registry Implementation Committee ("RIC") to "consider and exchange
17 information on ways to resolve the issues associated with implementation of IDN
18 capabilities in existing top level domains." In January 2003, as part of forming the
19 RIC, the President of ICANN explained: "It is important to emphasize that the
20 committee is not intended to set hard rules for registries, but rather to facilitate
21 dialogue and information sharing so that IDNA project managers can educate and
22 learn from each other and develop common solutions to common problems."

23 159. On or about February 4, 2003, ICANN's RIC began work on
24 formulating a set of guidelines for the deployment of IDNs into TLDs around the
25 globe. VeriSign, as well as certain gTLDs and ccTLDs, including the IDN co-
26 conspirators, became participants in this group.

27 160. Prior to or upon the formation of RIC, the IDN co-conspirators
28 combined to pursue a common plan to delay VeriSign's introduction of IDN services

1 in order to secure a head start for the ccTLD registries they operate in the
2 introduction of their own competitive IDN services and thereby to allow the IDN co-
3 conspirators to be first to enter the market for such services with respect to the
4 language spoken in their countries. Pursuant to this combination, the IDN co-
5 conspirators determined to capture and control the IDN process at ICANN, including
6 the process of the RIC, and to secure the agreement of ICANN to impose conditions
7 delaying VeriSign's introduction of an IDN service. During times relevant to this
8 claim, ICANN and the IDN co-conspirators combined to accomplish, and in fact
9 accomplished, these unlawful objectives.

10 161. The ICANN guidelines, as originally conceived, were intended to be just
11 that -- guidelines, voluntary and providing guidance and suggestions but not legal
12 requirements or operational directives. Mandatory guidelines, by contrast, would
13 operate to VeriSign's competitive disadvantage, including as alleged more
14 specifically below.

15 162. On or about March 13, 2003, ICANN published a report acknowledging
16 its responsibility under Appendix K of the Registry Agreement "to expressly
17 authorize the registration of IDNA-compliant internationalized domain names."
18 Nonetheless, because of the combination alleged herein, including the domination
19 and control of the IDN co-conspirators over the processes of ICANN relating to IDN,
20 including the RIC, the report proposed that the "guidelines" be "*mandatory*
21 *requirements that the registries would be required to agree as the conditions for*
22 *ICANN authorization to begin accepting IDNA-compliant domain name*
23 *registrations.*"

24 163. On or about March 27, 2003, the ICANN Board simply adopted and
25 "endorsed the IDN implementation approach set forth in the draft Guidelines" and
26 authorized the President of ICANN "to implement the Guidelines by authorizing
27 registration of IDNs in registries with agreements with ICANN on the basis of those
28 Guidelines." At times relevant hereto, the consultant to the Board on IDN also served

1 as a consultant to CNNIC, one of the DNS co-conspirators, and participated in the
2 RIC meetings; and a representative of CNNIC joined the Board of ICANN.

3 164. On June 20, 2003, ICANN proceeded to use its approval authority
4 effectively to expand the scope of its authority under registry agreements, by
5 publishing *IDN Registry Implementation Committee (RIC) Guidelines for the*
6 *Deployment of IDNs* and establishing the “*Guidelines*” as the gating requirement for
7 approval under Appendix K of the 2001 .com Registry Agreement between VeriSign
8 and ICANN. The *Guidelines* specified numerous conditions to obtain ICANN
9 approval for IDN services.

10 165. Adopting the *Guidelines* as mandatory requirements for the offering of
11 IDN services operated to the competitive disadvantage of VeriSign. Unlike ccTLDs,
12 who would be VeriSign’s primary competitors for offering IDN services and would
13 offer the IDN services only for a single language, VeriSign, as the operator of the
14 global .com TLD, would be required to design its IDN services in such a manner as to
15 accommodate, and be operational for, a large number of languages with varying
16 requirements.

17 166. Mandatory individual guidelines further operated to VeriSign’s
18 competitive disadvantage. One of the guidelines required the use of variant tables to
19 be developed in cooperation with local Internet authorities and DNS registries in
20 individual countries. There are not identifiable authorities for the adoption of such
21 tables in certain countries, there are no country boundaries for certain languages, and
22 the DNS registries in individual countries are competitors of VeriSign and in a
23 position use the adoption of such tables to delay the introduction of an IDN service
24 by VeriSign or other gTLDs. For purposes of Chinese languages, for example,
25 VeriSign was required by the *Guidelines* to work with local stakeholders who
26 included the IDN co-conspirators and who were thus empowered by the *Guidelines* to
27 delay and impede VeriSign’s IDN efforts by their own conduct while they launched
28 their competitive IDN services.

1 167. The *Guidelines* further imposed on VeriSign long-term, fixed obligations
2 that would require the implementation of costly and burdensome procedures over and
3 above compliance with the extensive technical standards for IDN (the IDNA
4 standard) set by other groups. If implemented by VeriSign, these *Guidelines* would
5 hinder its ability to solve operational inefficiencies and to market its IDN services
6 effectively to serve the enormous preexisting demand worldwide for second level
7 domain names in non-Roman characters.

8 168. On or about June 20, 2003, ICANN provided written authorization to the
9 co-conspirator's to deploy IDNs. VeriSign would have launched its IDN service in or
10 before mid 2003, but for the delays imposed by the conduct of ICANN and the IDN
11 co-conspirators. Instead, as a consequence of the conduct alleged herein, VeriSign
12 was unable to launch IDN until approximately April 2004.

13 *Injury to Competition*

14 169. IDNs are a relevant product market. The relevant geographic market for
15 IDNs is worldwide.

16 170. IDN service offered by VeriSign is a new and innovative service that
17 will allow domain name registrants to use a .com domain name to reach Internet users
18 around the world even if those users do not speak or read English or any other
19 language using the Roman alphabet. IDN allows domain names represented by
20 characters used in other languages, such as Chinese, Japanese and others that use
21 non-ASCII character sets, to be recognized within the .com TLD registry. Thus, a
22 website in, for example, Chinese, could use a .com domain name as part of the
23 address for the website with Mandarin Chinese characters, that would resolve to the
24 registrant's website.

25 171. At times relevant hereto, ICANN repeatedly "recognized the importance
26 of adding to the domain-name system Internationalized Domain Name (IDN)
27 capabilities to enhance the accessibility of the domain-name system to all those using
28 non-Roman alphabets." Nonetheless, the conduct alleged herein delayed the

1 introduction of a system by VeriSign that would have brought IDN to millions of
2 Internet users using non-Roman alphabets worldwide.

3 172. IDN meets the important need for a global multilingual DNS solution,
4 supporting the billions of people who require or want Internet access in their native
5 languages. IDN enhances the ability of domain name registrants to reach audiences
6 around the world through a single web identity irrespective of the target audience's
7 language. It expands competition among TLD registries that could offer domain
8 names in non-ASCII character sets; at times relevant to this action, no TLDs offered
9 such services.

10 173. The operation of TLD registries also is a relevant product market. The
11 relevant geographic market is worldwide.

12 174. IDN significantly increases Internet availability and e-commerce
13 opportunities for speakers of non-English languages and for those who do business
14 with them, and it would therefore increase the value and attractiveness of second-
15 level domain names in the .com gTLD.

16 175. In contrast, without IDN, a business that wants its website to be
17 accessible to Internet users who speak and read languages that do not use ASCII
18 character sets is forced separately to register an additional domain name in one of the
19 few TLDs that utilize the language of the desired target audience. For example,
20 without IDN, a registrant seeking to reach native speakers of Mandarin Chinese
21 would be forced to register a domain name in the .cn TLD or .tw TLD. Similarly, at
22 times relevant hereto, .jp has been the only TLD registry using Japanese characters
23 for web addresses.

24 176. The IDN co-conspirators had a strong economic and competitive interest
25 in preventing VeriSign from offering IDN. The greatest demand for IDN services is
26 in East Asian languages, and the IDN co-conspirators are major competitors of
27 VeriSign in the offering of IDN services to domain name registrants seeking to reach
28 Internet users in Asia. By controlling and manipulating the processes of ICANN,

1 including the RIC, as set forth above, and by combining and conspiring with ICANN,
2 the conspirators eliminated VeriSign from offering IDN services in that market (or
3 elsewhere) for almost an entire year after such services first became available to
4 registrants, enabling the IDN co-conspirators to capture for their ccTLD registries
5 increased registrations, market share, and revenues than they would have been able to
6 obtain in competition with VeriSign.

7 177. Most registrants of Internet domain names find ASCII characters
8 completely satisfactory for their needs and do not have any need for IDNs. Those
9 registrants who wish to reach multilingual audiences and who seek to maintain a
10 single, consistent web identity are the potential consumers of IDNs. Without IDN,
11 these registrants are required to register domain names in multiple TLDs supporting
12 each language and character set that they need. The IDN co-conspirators used the
13 delay in VeriSign's receipt of authorization from ICANN to offer IDN services – a
14 delay they had brought about in combination and conspiracy with ICANN – to reduce
15 the output of IDN services to registrants and to channel registrants to their ccTLDs
16 and away from VeriSign's .com gTLD.

17 178. As of the commencement of this action, VeriSign had not yet received
18 formal authorization to implement its IDN service, while other registries, expressing
19 their mere "support" for but not agreement to comply with the Guidelines, received
20 immediate written authorization from ICANN to launch competitive IDN services.
21 Indeed, ICANN attempted to impose on VeriSign's offering of IDN services
22 conditions over and beyond even those set forth in the *Guidelines*.

23 179. The delay in approving VeriSign's entry into the relevant market and
24 submarkets for IDN has had the effect of artificially raising prices for and restricting
25 output for IDN services for the following, among other, reasons. First, VeriSign's
26 IDN service was a small fraction of the price charged by CNNIC prior to VeriSign's
27 entry into the market. Second, the increase in usage of IDN services once VeriSign
28 entered the market demonstrates the unmet demand of consumers while ICANN and

1 the IDN co-conspirators delayed VeriSign's entry into the IDN market. Third,
2 consumers were denied important product choices by the delay of VeriSign's entry
3 into the market. VeriSign's IDN product was superior to the IDN product offered by
4 CNNIC, including in terms of its reliability and features. Consumers also would have
5 been able to choose from a wider group of registrars and ISPs if VeriSign's entry had
6 not been delayed.

7 180. The delay in introducing IDN caused by the conduct of ICANN and the
8 IDN co-conspirators has therefore deprived consumers of a beneficial new service
9 and has deprived VeriSign of the revenues and profits it would have generated from
10 and in connection with IDN. In addition, by unjustifiably imposing the numerous
11 conditions of the *Guidelines* on the service, ICANN has attempted to deprive
12 VeriSign of the ability to formulate and to offer a service in the manner best designed
13 to meet the needs of customers and the competitive and financial goals of VeriSign.
14 At the same time, the delay has benefited other registries and businesses that offer
15 similar or competitive services, including those who have acted in concert with
16 ICANN to cause ICANN to impose the foregoing conditions and impediments on
17 VeriSign.

18 181. During the delays in launching its IDN service due to the conspiracy of
19 ICANN and the IDN co-conspirators alleged above, VeriSign lost significant
20 numbers of both IDN and other registrations by registrants interested in IDN, as well
21 as related market share. Furthermore, during the delay, VeriSign's largest registrars,
22 questioning whether VeriSign would ever get to offer IDN, simply dropped out of the
23 intended IDN program.

24 182. By preventing and delaying VeriSign from offering IDN, ICANN and
25 the IDN co-conspirators restrained and eliminated competition in the market for the
26 operation of TLD registries and submarkets thereof, and have deprived consumers of
27 the benefits of free and open competition in violation of Section 1 of the Sherman
28 Act, 15 U.S.C. § 1.

EXHIBIT B

ORIGINAL

NO. 04-56761

RECEIVED
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 20 2004
FILED 12/20/04
DOCKETED 12/23
DATE INITIAL

VERISIGN, INC.,
Plaintiff-Appellant,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES & NUMBERS,
Defendant-Appellee.

RECEIVED
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS
DEC 20 2004
FILED
DOCKETED
DATE
INITIAL

Appeal from the United States District Court
for the Central District of California
No. CV 04-1292 AHM
Honorable Howard A. Matz

OPENING BRIEF OF APPELLANT VERISIGN, INC.

ARNOLD & PORTER LLP
Ronald L. Johnston (State Bar No. 057418)
Laurence J. Hutt (State Bar No. 066269)
Ronald C. Redcay (State Bar No. 067236)
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017
Telephone: (213) 243-4000
Facsimile: (213) 243-4199

VERISIGN, INC.
Brian A. Davis
21355 Ridgetop Circle
Dulles, Virginia 20166
Telephone: (703) 948-3200
Facsimile: (703) 450-7326

Counsel for Plaintiff-Appellant VeriSign, Inc.

NO. 04-56761

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VERISIGN, INC.,

Plaintiff-Appellant,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES & NUMBERS,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of California
No. CV 04-1292 AHM
Honorable Howard A. Matz

OPENING BRIEF OF APPELLANT VERISIGN, INC.

ARNOLD & PORTER LLP
Ronald L. Johnston (State Bar No. 057418)
Laurence J. Hutt (State Bar No. 066269)
Ronald C. Redcay (State Bar No. 067236)
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017
Telephone: (213) 243-4000
Facsimile: (213) 243-4199

VERISIGN, INC.
Brian A. Davis
21355 Ridgetop Circle
Dulles, Virginia 20166
Telephone: (703) 948-3200
Facsimile: (703) 450-7326

Counsel for Plaintiff-Appellant VeriSign, Inc.

adequately to plead concerted action. Whether VeriSign can ultimately prove capture is not the question on a motion to dismiss. *See Swierkiewicz*, 534 U.S. at 515. That, however, appears to be the standard applied by the district court.

C. The FAC Pleads an Injury to Competition

The district court found it unnecessary to determine the sufficiency of the allegations of injury to competition in the FAC. (ER267.) However, those allegations are sufficient and, furthermore, establish that VeriSign's injury is "antitrust injury" because it flows directly from the adverse effects on competition of ICANN's conduct.²⁵

Injury to competition can be shown by proof of either (i) a relevant market and harm to competition in that market, or (ii) "actual detrimental effects, such as a reduction of output, [which] can obviate the need . . . [for]

(Footnote Cont'd From Previous Page)

"majority" of funding was necessary to control or greatly influence ICANN's decisions.

²⁵ Injury to competition, either as proven in a rule of reason case or presumed in a *per se* case, necessary for a violation of Sherman Act Section 1 focuses on competition in general (*i.e.*, consumer welfare). Antitrust injury necessary for standing under Clayton Act Section 4, 15 U.S.C. §15, by comparison, requires that the specific plaintiff prove that its injury flows from the violation or, stated differently, that the injury to the plaintiff reflects the reason why the challenged conduct is illegal. Antitrust injury, therefore, focuses not on the market but on the specific plaintiff and the source of its injury. *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 342 (1990) ("antitrust injury requirement is . . . [to ensure] that the harm

elaborate market analysis.” *FTC v. Ind. Fed’n of Dentists*, 476 U.S. 447, 460-61 (1986); *see also Oltz v. St. Peter’s Cmty. Hosp.*, 861 F.2d 1440, 1448 (9th Cir. 1988) (“Given that the ability to raise price and to exclude competition are hallmarks of market power, the finding of actual harm to competition suffices under Sherman Act §1 even in the absence of extended market analysis.”); *Les Shockley Racing, Inc. v. Nat’l Hot Rod Ass’n*, 884 F.2d 504, 508 (9th Cir. 1989); *Sherman v. British Leland Motors, Ltd.*, 601 F.2d 429, 449 (9th Cir. 1979). The FAC pleads injury to competition in both forms for each of the services.

WLS. The FAC contains detailed allegations of injury to competition from the restraints ICANN and the WLS co-conspirators placed on WLS. (ER139-44/¶¶106-27.) For example, the FAC defines the relevant markets (ER139/¶106 (secondary domain name market), 142/¶120 (operation of TLD registries)), identifies the competitors and competitive products (ER139/¶108), and alleges how those markets operate (ER139/¶107; 140/¶¶109-11; 141-43/¶¶113-21). The FAC also specifically alleges actual anticompetitive effects, and thus injury to competition, from the foreclosure

(Footnote Cont'd From Previous Page)
claimed by the plaintiff corresponds to the rationale for finding a violation of the antitrust laws. . . .”).

of WLS. Among other allegations, the FAC avers with particularity the foreclosure from the market of superior services, resulting in artificially inflated prices, less efficient services and reduced output in the relevant markets. (ER141/¶¶112-14; 142/¶118; 143/¶123; 144/¶126.) In addition, the FAC specifically alleges the respects in which WLS had superior features to competitive products otherwise available and would have stimulated competition in the market as a whole had its introduction not been blocked by ICANN and its co-conspirators. (*Id.*) Finally, the FAC alleges admissions by ICANN of the unique and innovative qualities of WLS that would have caused “new competition” by a superior product (ER141-42/¶116).

Site Finder. The FAC contains independently sufficient allegations that ICANN and the Site Finder co-conspirators harmed competition in the market for the operation of TLD registries (ER150/¶148) and the market for the provision of web address directory assistance services (ER148-149/¶143). For example, the FAC alleges the relevant markets for Site Finder, relevant competitors and competitive products (ER148/¶141; 150/¶149), and how those markets operate (ER148-49/¶¶142-44; 150/¶¶149-50). Additionally, the FAC specifically alleges actual anticompetitive effects, and thus injury to competition, as a result of the foreclosure of a beneficial new service for

Internet users, holders of second-level domain names in the .com registry, as well as advertisers and sponsors of web links. (ER148-49/¶143; 149/¶¶145, 147; 150-151/¶¶151-52.) Among other anticompetitive effects of Site Finder's foreclosure from the market, the efficiency and beneficial features of Site Finder were lost for 32,000,000 holders of second-level domain names in the .com registry (whom Internet users may try to locate) and the 40,000,000 Internet consumers who used the service during the brief period it was running, before Site Finder was shut down by ICANN and its co-conspirators. (ER150/¶152.)

IDN. Finally, the FAC contains sufficient allegations that ICANN and the IDN co-conspirators harmed competition in the market for the operation of TLD registries (ER156/¶173) and in the IDN market (ER155/¶169). For example, the FAC alleges the relevant markets, competitors and products (ER151-52/¶157; 155/¶170; 156-57/¶¶175-76), and the manner in which those markets operate (ER155/¶170; 156/¶172; 156/¶¶174-75; 157/¶177). It further alleges anticompetitive effects, and thus injury to competition, as a direct result of the unlawful acts of the conspirators, including: the denial of a beneficial and more efficient new service to millions of Internet users; restrictions in output of services in relevant markets; and inflated prices for competitive services.

(ER156/¶¶172, 174; 157-58/¶¶177, 179.) Finally, the FAC alleges specific admissions by ICANN of the “importance of [IDN] . . . to enhance the accessibility of the domain-name system to all those using non-Roman alphabets.” (ER155/¶171.)

VII. CONCLUSION

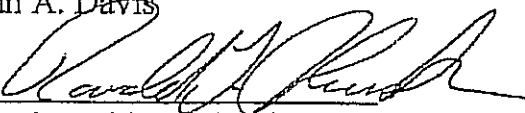
Based on the foregoing, plaintiff-appellant respectfully requests that the district court’s judgment be reversed and that this case be remanded to the district court for further proceedings.

Dated: December 17, 2004.

Respectfully submitted,

ARNOLD & PORTER LLP
Ronald L. Johnston
Laurence J. Hutt
Ronald C. Redcay

VERISIGN, INC.
Brian A. Davis

By: 
Ronald L. Johnston
Attorneys for Appellant
VeriSign, Inc.

#342631

EXHIBIT C

CATHCART COLLINS & KNEAFSEY LLP
444 South Flower Street, 42nd Flr.
Los Angeles, California 90071

1 PATRICK A. CATHCART (CA SBN 65413)
BRET A. FAUSETT (CA SBN 198410)
2 IMANI GANDY (CA SBN 223084)
CATHCART COLLINS & KNEAFSEY LLP
3 444 South Flower Street, 42nd Floor
Los Angeles, California 90071
4 Telephone: (213) 225-6600
Facsimile: (213) 225-6601

5 Attorneys for Plaintiff
6 Coalition for ICANN Transparency, Inc.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 COALITION FOR ICANN TRANSPARENCY,
INC., a Delaware Corporation,

13 Plaintiff,

14 v.

15 VERISIGN, INC., a Delaware Corporation;
16 INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS, a California
17 Corporation,

18 Defendants.

Case No. 05-4826 (RMW) PVT

**DECLARATION OF IMANI GANDY IN
SUPPORT OF REQUEST FOR
JUDICIAL NOTICE**

Honorable Ronald M. Whyte

19
20 I, Imani Gandy, declare:

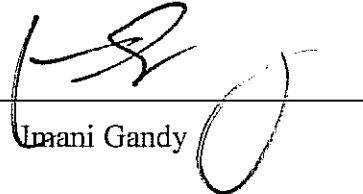
21 1. I am an attorney with Cathcart Collins & Kneafsey LLP, counsel of record for
22 Plaintiff Coalition for ICANN Transparency Inc. ("CFIT") in the above-entitled case. I am
23 admitted to practice before the United States District Court for the Northern District of California.
24 I make this declaration in support of Plaintiff CFIT's Request for Judicial Notice in Support of
25 Opposition to Defendants' Motion to Dismiss CFIT's First Amended Complaint ("RJN".) I have
26 personal knowledge of the facts stated herein and if called upon as a witness could testify
27 competently thereto.
28

1 2. Attached as Exhibit A to the RJN is a true and correct copy of excerpts of a
2 document entitled “First Amended Complaint for Violation of the Antitrust Laws, Specific
3 Performance of Contract, Damages for Breach of Contract, Interference with Contractual
4 Relations, Declaratory and Injunctive Relief,” bearing the caption *VeriSign Inc. v. Internet Corp.*
5 *for Assigned Names and Numbers*, Case No. CV 04-1292 (AHM) (CTx) (C.D. Cal.), and dated
6 June 14, 2004.

7 3. Attached as Exhibit B to the RJN is a true and correct copy of excerpts of a
8 document entitled “Opening Brief of Appellant Verisign, Inc.” bearing the caption *VeriSign, Inc.*
9 *v. Internet Corp. for Assigned Names and Numbers*, Ninth Circuit Case No. 04-56761, and dated
10 December 17, 2004.

11 Executed this 17th day of May, 2006, at Los Angeles, California.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Imani Gandy

CATHCART COLLINS & KNEAFSEY LLP
444 South Flower Street, 42nd Fl.
Los Angeles, California 90071