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LOS ANGELES

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11 Attorneys for Plaintiff  
NAME.SPACE, INC.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 NAME.SPACE, INC.,

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR  
19 ASSIGNED NAMES AND NUMBERS,

20 Defendant.  
21

Case No. **CV12-8676** - PA  
(PLAc)

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

22  
23 Plaintiff name.space, Inc. ("name.space"), by and through its undersigned  
24 counsel, brings this Complaint against Defendant Internet Corporation for Assigned  
25 Names and Numbers ("ICANN"), and alleges as follows:  
26  
27  
28

## INTRODUCTION

1  
2 1. name.space is the originator, operator and promoter of 482 Top Level  
3 Domains (“TLDs”), which is the highest level identifier in an Internet “domain  
4 name”—such as .com or .gov.

5 2. ICANN controls and purports to be responsible for the entire worldwide  
6 Internet Domain Name System (“DNS”). The DNS is an essential part of the  
7 logical infrastructure that makes the Internet work by assigning unique domain  
8 names to computers running web sites and other services including e-mail and  
9 voice-over-IP, and by coordinating master computer servers which ensure that all  
10 Internet users typing a domain name into their browsers reach the same “host”  
11 computer and service. ICANN has exclusive control in determining whether to  
12 permit new TLDs into the DNS and whether to permit interconnection with TLD  
13 operators like name.space. The DNS is the critical, essential intermediary that  
14 allows Internet users to reach a website or connect to other services—whose real  
15 address is identified by a set of numbers—by typing an alphanumeric domain name  
16 in their Internet browser’s address bar.

17 3. name.space’s TLDs have been shut out of the DNS by ICANN and its  
18 predecessors, and forced to operate its own network of TLDs, thereby effectively  
19 blocking and quarantining name.space TLDs and its registrants’ domains from the  
20 majority of Internet users. Instead, ICANN has given priority for any new TLDs to  
21 an exclusive group of insiders and industry incumbents who control ICANN, either  
22 directly or financially.

23 4. In 2000, name.space applied (the “2000 Application”) for 118 of its TLDs to  
24 be delegated onto the DNS master database known as the “root.zone file,” or simply  
25 “the Root.” Notwithstanding ICANN’s acknowledgement of name.space’s  
26 qualifications and payment of the \$50,000 application fee, ICANN refused to make  
27 a final determination of name.space’s 2000 Application. Meanwhile, the same  
28

1 handful of companies already dominating control of the Internet—many of which  
2 have close ties to ICANN’s board of directors—received the only new TLDs  
3 delegated by ICANN, further entrenching their status as Internet powerhouses and  
4 consummate insiders.

5 5. Nevertheless, when ICANN announced it would hold another round of TLD  
6 applications in 2012, name.space relied on representations from ICANN that its  
7 2000 Application remained pending, and had not been finally determined. At no  
8 point has name.space been informed of anything to the contrary.

9 6. Rather than adopting a procedure to account for the pending 2000  
10 Application and facilitate the expansion of TLD providers in the DNS, ICANN  
11 adopted a procedure so complex and expensive that it once again effectively  
12 prohibited newcomers from competing. It instead has permitted participation solely  
13 by ICANN insiders and industry titans.

14 7. ICANN raised the application fee to \$185,000—more than three times the  
15 previous amount. Further, unlike the 2000 round where applicants could apply for  
16 multiple TLD strings conforming to a uniform business model in a single  
17 application, this time each TLD application required its own non-refundable  
18 application fee. name.space’s application for the same 118 TLDs for which it  
19 applied in 2000 would thus cost over 436 times more in 2012. In adopting this  
20 process, ICANN effectively and intentionally precluded name.space from  
21 implementing its business model of incorporating the simultaneous operation of a  
22 significant number of TLDs, which was designed to drive not only name.space’s  
23 revenue stream but also its competitive appeal to other rights holders seeking to  
24 register domain names under multiple TLDs. This approach by ICANN was  
25 consciously adopted as an attack on name.space’s business model and a means by  
26 which to create and maintain market power in the TLD markets.

27 8. Even further, not only was the 2012 process anticompetitive, but ICANN  
28 allowed applicants to apply for TLDs *that name.space had originated and was*

1 *already operating and promoting.* In other words, the 482 TLDs that name.space  
2 originated and has been using in commerce continuously since 1996 were being  
3 auctioned off by ICANN to any takers who could afford it, in total disregard to  
4 name.space's trademark rights in those TLDs.

5 9. Finally, through its anticompetitive, self-interested actions, ICANN has  
6 created a scenario whereby name.space will be unable to ensure that its contracts  
7 with its existing and prospective customers can be performed. Specifically, if and  
8 when ICANN delegates a TLD on the DNS that is identical with a TLD that  
9 currently resolves on the name.space network, name.space's customer's websites  
10 and other services will effectively be preempted by websites and services that  
11 resolve on ICANN's DNS and point to different hosts. Once again, this serves to  
12 benefit only ICANN and the industry insiders and power players whose interests  
13 ICANN appears to represent.

14 10. In fact, on June 13, 2012, ICANN published its list of TLD strings for which  
15 applications were submitted to delegate those TLDs to the DNS. Included on this  
16 list were several TLDs that already resolve on the name.space network, including  
17 .art, .blog, .book, .design, .home, .inc. and .sucks. If and when those applications  
18 are approved, however, those TLDs will become associated not only with  
19 name.space—which has been operating and promoting those TLDs in commerce  
20 for over fifteen years—but also with the prospective registers that have paid  
21 ICANN \$185,000 per TLD.

22 11. Accordingly, name.space brings this action against ICANN, seeking damages  
23 and injunctive and declaratory relief, for violations of the Sherman Act and the  
24 Lanham Act, as well as state and common law trademark infringement, unfair  
25 competition and tortious interference claims.

JURISDICTION AND VENUE

1  
2 12. This Court has original subject matter jurisdiction under 28 U.S.C. §§ 1331  
3 and 1338(a) and (b) over the claims in this action arising under the Sherman Act, 15  
4 U.S.C. §§ 1 and 2, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*

5 13. This Court also has diversity subject matter jurisdiction over this action  
6 pursuant to 28 U.S.C. § 1332 in that it is a dispute between citizens of different  
7 States where the matter in controversy exceeds the sum of \$75,000, exclusive of  
8 interest and costs.

9 14. This Court also has supplemental jurisdiction over name.space’s state law  
10 claims pursuant to 28 U.S.C. § 1367(a), because those claims are so related to  
11 name.space’s federal law claims that they form part of the same case or controversy  
12 and derive from a common nucleus of operative facts.

13 15. This Court has personal jurisdiction over ICANN, because, on information  
14 and belief, ICANN is a California corporation with its principal place of business in  
15 this District.

16 16. The trade and interstate commerce relevant to this action are at least the  
17 following: (i) the international market for TLDs and markets for each individual  
18 TLD permitted by ICANN to participate in the DNS, and (ii) the markets for  
19 wholesale and retail registrations within each TLD. The activities of ICANN and  
20 its co-conspirators, as described herein, were within the flow of and had a  
21 substantial effect on interstate commerce.

22 17. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) because  
23 ICANN resides in this District and a substantial part of the events giving rise to  
24 name.space’s claims occurred in this District.

1 **PARTIES**

2 18. Plaintiff name.space is a corporation organized under the laws of the State of  
3 Delaware, with its principal place of business at 134 West 37th Street, Suite 200,  
4 New York, New York.

5 19. Upon information and belief, Defendant ICANN is a non-profit corporation  
6 organized under the laws of the state of California, with its principal place of  
7 business in Marina del Rey, California. ICANN has the exclusive control over the  
8 Internet's DNS. As discussed further below, ICANN derives its authority to  
9 manage the DNS from a series of agreements with the United States government.

10 **FACTUAL ALLEGATIONS**

11 **A. The Architecture of the Internet.**

12 **1. The DNS System.**

13 20. At heart, the Internet is a series of interconnected servers and computers.  
14 Each computer or host server connected to the Internet can be identified by at least  
15 one unique Internet protocol ("IP") address, which consists of a string of four sets  
16 of numbers between 0 and 255, separated by periods (e.g., 170.11.225.15).

17 21. For ease of reference, a DNS was created to link an IP address with a unique  
18 alphanumeric "domain name," such as "nytimes.com." The DNS is a simple,  
19 efficient way for Internet users to navigate the web: remembering that  
20 "nytimes.com" is the address for The New York Times website is much easier than  
21 remembering its numeric IP address.

22 22. The domain name is incorporated into a Uniform Resource Locator ("URL").  
23 When an Internet user types the URL into his or her web browser application (such  
24 as Internet Explorer or Firefox), the URL is sent to a DNS server. The DNS server  
25 looks up the IP address assigned to that domain name, and the browser then  
26 connects to the server having that IP address, which hosts the desired website.

## 2. Top-Level Domains.

23. The DNS uses a hierarchical structure. The alphanumeric field to the far right is known as the “Top Level Domain” (“TLD”)—such as .com, .net, or .edu. The other, lower-level fields follow to the left of the TLD, separated by periods. The first field to the left of the TLD is the Second Level Domain (“SLD”), followed by the Third Level Domain, and so on. Thus, using the nytimes.com example, “.com” is the TLD, and “nytimes” is the SLD. (There is no Third Level Domain in this example.)

24. In order to link a domain name to an IP address, the DNS server must have access to the Root, which serves as the highest level of the DNS hierarchy and contains a “master list” of all the TLDs. The Root enables the connection of domain names to IP addresses by first directing an Internet user’s request to the appropriate TLD, which then routes the user to the desired host computer via the second (and possibly third or fourth) level domain.

25. Currently, the number of TLDs (other than country code TLDs, discussed below) has been arbitrarily limited to twenty-two. Upon information and belief, there are no financial, technical or other constraints to adding new TLDs to the current architecture of the Internet via access to the Root.

26. A limited number of corporations and organizations operate these TLDs, and they must pay a fee to ICANN in order to do so. These organizations and corporations are “wholesale” providers of TLDs—they sell the ability to register a domain name with a particular TLD and maintain a “zone file,” or registry, of all the domain names associated with that TLD. TLD wholesalers are commonly referred to as TLD “registries.”

27. The “retail” sellers of domain names, called “registrars,” are companies that sell the second-level domain names directly to the companies and content providers that want to create a website or provide other services. Registrars, such as “godaddy.com,” must be approved by the TLD registries to sell domain names.

1 The “registrants”—individual companies and content producers, such as The New  
2 York Times, that purchase a domain name through the registrar—rent that domain  
3 name by paying an annual fee to the registrar.

4 28. The TLD market is extremely lucrative, and, at present, is controlled by a  
5 small group of industry insiders. For example, wholesale TLD registries receive  
6 approximately \$5-7 per year for every domain name in that particular TLD registry.  
7 Considering that there are over a hundred million websites using the “.com” TLD,  
8 annual revenue for Verisign, Inc. (“Verisign”)—the only ICANN-authorized .com  
9 TLD registry—is approximately between \$500 and \$700 million.

10 29. There are three different categories of TLDs:

11 (a) Fourteen of the twenty-two TLDs are “sponsored top level domains”  
12 (“sTLDs”), such as .gov and .edu, that are restricted to specific classes of  
13 users who must meet a given criterion in order to register with them (*e.g.*, be  
14 a U.S. government agency to receive a .gov domain, or be an accredited  
15 educational institution to receive a .edu domain).

16 (b) The other eight TLDs are “generic top level domains” (“gTLDs”),  
17 such as .com and .net, that permit anyone to register.

18 (c) Additionally, separate from the twenty-two TLDs controlled by  
19 corporate entities, there are unique “country-code top level domains”  
20 (“ccTLDs”) that are operated by sovereign nations, or companies with the  
21 authority to operate the TLD on behalf of those countries. Each country or  
22 designated entity with the authority to operate a ccTLD may set its own  
23 registration restrictions and dictate the registration fee.

24 30. Despite the limited number of available TLDs, there exists competition for  
25 the most commercially “desirable” TLDs. Consumers, for example, may be more  
26 likely to trust an e-commerce site with a “.com” domain name, rather than a “.biz”  
27 domain name. The “.com” suggests a legitimacy that other TLDs may not have.  
28 On information and belief, most Internet users expect that a website will use .com



1 and reflexively append .com to particular content producer's trademarked brand  
2 name when seeking access to that content producer's website.

3 31. Additionally, there are no technological or legal reasons that might prevent a  
4 gTLD registry from offering hundreds of gTLDs; as described below, this is, in  
5 fact, name.space's business model.

6 **B. name.space Begins Operating as a Registry.**

7 32. In 1996, Paul Garrin, founder of name.space, established a network of  
8 servers in five countries on two continents to provide a competing registry with that  
9 of Network Solutions, Inc. ("Network Solutions"), which, in 1992, had been  
10 granted exclusive control over the Root by the National Science Foundation  
11 ("NSF"), a U.S. government agency. In 1995, Network Solutions was permitted to  
12 operate for profit as a TLD registry, and began charging fees to register domain  
13 names on the Root's limited number of TLDs.

14 33. In contrast to Network Solution's arbitrarily limited TLDs, name.space  
15 offered over five hundred different and "expressive" TLDs, such as .art, .food,  
16 .magic, .music, .now and .sucks. Name.space's business model offered a wide  
17 array of TLDs for content providers, allowing for increased consumer accessibility  
18 to specific Internet sites, as well as stronger expressiveness, marketability and  
19 branding. For example, at the time, name.space's domain name in the Network  
20 Solutions registry was "namespace.pgpmmedia.com," while its domain name through  
21 name.space's registry was simply "name.space" (where .space, rather than .com,  
22 was the TLD).

23 34. Unfortunately, name.space was effectively unable to compete with Network  
24 Solutions because name.space's TLDs were not on the Root and therefore  
25 segregated from the majority of the global Internet. When an Internet user enters a  
26 URL into his or her web browser, the web browser will by default look to the Root  
27 to resolve that URL. Only by changing the DNS settings on each individual's  
28 computer with the IP addresses of name.space DNS resolvers, and bypassing the

1 DNS settings assigned by the user's service provider (which by default point to the  
2 Network Solutions-controlled Root), can the URL resolve domain names in service  
3 on name.space's registry. Practically speaking, for 99.9% of the world, the Root is  
4 the Internet. Domain names under name.space's TLDs were by default not  
5 universally resolvable on the Internet, thereby eliminating any chance of  
6 name.space competing with Network Solutions, and enabling Network Solutions to  
7 operate its government-granted monopoly with impunity.

### 8 C. ICANN Takes Over Management of the DNS on the Root.

9 35. In 1997, the U.S. government issued a report entitled "A Framework for  
10 Global Electronic Commerce," which transferred control of Internet governance  
11 from NSF to the Department of Commerce (the "DOC"). Soon after, the DOC  
12 solicited comments from stakeholders and published a "white paper" that reflected  
13 the commentators' consensus that a new, not-for-profit corporation should have the  
14 exclusive authority to manage the DNS.

15 36. In 1998, the DOC assigned ICANN the exclusive authority to manage the  
16 DNS system. According to the National Telecommunications and Information  
17 Administration ("NTIA")—a division of the DOC that is responsible for  
18 "promoting the stability and security" of the DNS "through its participation on  
19 behalf of the U.S. government in Internet Corporation for Assigned Names and  
20 Numbers (ICANN) activities"—ICANN "is the not-for-profit entity responsible for  
21 coordinating the technical management of the Internet's domain name system  
22 (DNS) and for ensuring its continued security, stability and integrity." In reality,  
23 ICANN has not been operating as a truly disinterested "not-for-profit entity."

24 37. Pursuant to its agreements with the U.S. government, ICANN has the  
25 exclusive authority to determine whether to introduce new TLDs into the Internet's  
26 current architecture. And, significantly, ICANN also has the exclusive authority to  
27 determine what companies will operate as registries for these TLDs.  
28

1 38. According to the U.S. government white paper that addresses ICANN's role  
2 as the government-sanctioned gatekeeper to the Internet, "[t]he new corporation  
3 [ICANN] does not need any special grant of immunity from the antitrust laws so  
4 long as its policies and practices are reasonably based on, and no broader than  
5 necessary to promote the legitimate coordinating objectives of the new  
6 corporation."

7 39. Further, the white paper states that: "[a]pplicable antitrust law will provide  
8 accountability to and protection for the international Internet community. Legal  
9 challenges and lawsuits can be expected within the normal course of business for  
10 any enterprise and the new corporation [ICANN] should anticipate this reality."

11 40. Regarding the process by which ICANN determines what new TLDs to  
12 authorize, the white paper states that: "the decision making process would need to  
13 reflect a balance of interests and should not be dominated by any single interest  
14 category."

15 41. Moreover, ICANN's "activities would need to be open to all persons who are  
16 directly affected by the entity, with *no undue financial barriers to participation* or  
17 unreasonable restrictions on participation."

18 42. Similarly, a U.S. government "green paper" recognized that "the new  
19 corporation's [ICANN's] processes should be fair, open and pro-competitive. Its  
20 decision-making processes should be sound and transparent." The green paper also  
21 warns ICANN to guard against "capture by a self-interested faction."

22 43. Far from being fair and open with no undue financial barriers to  
23 participation, the process leading to the 2012 application round has been shrouded  
24 in secrecy, with significant financial and administrative barriers to entry added  
25 since the 2000 process that conflict with ICANN's mandate.

26 44. Upon information and belief, ICANN is controlled by a board of directors  
27 with significant conflicts of interest; the ICANN Board is comprised of industry  
28 insiders that seek to entrench their power to the detriment of the Internet

1 community and the general public. ICANN Board members have close business  
2 and financial connections with the existing TLD registries, as well as domain name  
3 registrants. These conflicts of interest have resulted in a commercial environment  
4 that unlawfully insulates industry insiders, stifles competition and, as discussed  
5 below, has precluded name.space from implementing its business model and  
6 competing as a domain name registry.

7 **D. ICANN Introduces a Limited Number of New TLDs and Grants**  
8 **Only Industry Insiders the Authority to Operate as the New TLD**  
9 **Registries.**

10 **1. The 2000 Application Round Opens.**

11 45. In 2000, ICANN sought to expand the number of available TLDs and  
12 adopted a policy for the introduction of new TLDs through an application process  
13 (the “2000 Application Round”).

14 46. To be selected as a new TLD registry, applicants had to establish their ability  
15 to provide the technical expertise necessary to operate a TLD, as well as their  
16 financial and business management strengths. The 2000 Application Round  
17 instructions were approximately seven pages long.

18 47. The application fee for the 2000 Application Round was \$50,000, and  
19 applicants could submit multiple TLD strings in a single application without paying  
20 any additional fees.

21 48. One of the stated goals of the 2000 Application Round was to “provide a  
22 vehicle for providing a diverse range of concepts for innovative uses of the DNS.”  
23 ICANN emphasized that it was “seek[ing] diversity and hop[ing] to rely on the  
24 creative approach of the applications to all aspects of the introduction and operation  
25 of new TLDs.” ICANN encouraged applicants to “[b]e creative.”

26 **2. name.space Applies for 118 gTLDs.**

27 49. After four years of efforts seeking inclusion of its TLDs into the Root  
28 through administrative and legal means, name.space finally had a chance to add a

1 portion of its exclusive catalog of TLDs to the DNS and to begin competing with  
2 other TLD registries.

3 50. In 2000, as part of the 2000 Application Round, name.space submitted a  
4 complete and timely application with ICANN to operate as the registry for 118  
5 gTLDs, and paid the \$50,000 application fee. A full list of all 118 gTLDs from  
6 name.space's 2000 Application is attached as Exhibit A.

7 51. ICANN accepted name.space's 2000 Application, and in fact selected  
8 name.space's 2000 Application as one of the "strong candidates" and one of the  
9 top-ten applications submitted in the 2000 Application Round.

10 52. Moreover, a former Chairperson of ICANN's board of directors, strongly  
11 supported name.space's 2000 Application and stated that name.space represents  
12 diversity and free speech on the Internet. The former Chair also stated that  
13 name.space would likely be a successful business that would support both  
14 commerce and free speech.

15 53. Notwithstanding the status and credentials of name.space's 2000 Application,  
16 ICANN simply dragged its feet on making a determination. ICANN never rejected  
17 name.space's 2000 Application, but neither advanced name.space's 2000  
18 Application for delegation nor awarded name.space the authority to operate any of  
19 name.space's TLDs over the DNS.

20 54. In fact, to this day, on information and belief, name.space's 2000 Application  
21 is still pending. As one ICANN committee member stated with respect to  
22 name.space's 2000 Application, "we'll wait them out."

23 55. Rather than delegating name.space's 118 gTLDs, ICANN ignored its own  
24 mandates of "seeking diversity" and relying on creative approaches to the  
25 introduction and operation of new TLDs, and instead approved only seven new  
26 TLDs: the gTLDs .biz and .info and the sTLDs .aero, .coop, .museum, .name and  
27 .pro.

28

1 56. As Professor Milton Mueller of Syracuse University wrote in his 2004 book,  
2 *Ruling the Root*, “[a]dding the name.space TLDs to the [] root.zone would have  
3 transformed the commercial environment of the DNS. As the only registry for  
4 hundreds of top-level domains, name.space would have been quickly elevated to the  
5 status of peer of Network Solutions .”

6 57. Significantly, almost no new industry players emerged from the 2000  
7 Application Round as TLD registries. ICANN awarded the overwhelming  
8 majority—over 99%—of the “new” TLDs to existing dominant firms in the TLD  
9 and domain name registrar industries.

10 58. In 2000, Verisign acquired Network Solutions, including Network Solutions’  
11 control of the .com, .net and .org TLDs. Verisign’s acquisition of Network  
12 Solutions added to its already significant TLD business: Verisign also has the  
13 exclusive contracts to operate the .name and .gov sTLDs and the .cc and .tv  
14 ccTLDs.

15 **E. ICANN Launches the 2012 Application Round for New TLDs**  
16 **While Placing Significant Barriers to Entry.**

17 59. Since 2000, ICANN’s policies and actions regarding the TLD market have  
18 come under increasing scrutiny from the Internet community, members of Congress  
19 and international agencies.

20 60. ICANN has ties to and benefits from payments from the select few industry  
21 players that are able to operate domain name registries. Such conflicts of interest  
22 have been widely reported. Notably, ICANN’s outgoing president and CEO has  
23 been quoted as stating: “ICANN must be able to act for the public good while  
24 placing commercial and financial interests in the appropriate context. How can it  
25 do this if all top leadership is from the very domain name industry it is supposed to  
26 coordinate independently?”

27 61. Upon information and belief, some of those conflicts include Chair Steve  
28 Crocker, who runs the consulting firm Shinkuro, which has a silent investment from

1 domain name registry provider Afilias Limited (“Afilias”), the owner of .org and  
2 .info, and Vice-chair Bruce Tonkin, a senior executive with Melbourne IT, an  
3 Australian company that has advertised its ability to help clients secure gTLD  
4 registry accreditation from ICANN. Ram Mohan, Afilias’s Executive Vice  
5 President and Chief Technology Officer, also sits on the ICANN board of directors.  
6 Further, Peter Dengate Thrush, former Chairman of ICANN’s board of directors, is  
7 now the Executive Chairman of Top Level Domain Holdings, Inc., which filed  
8 ninety-two applications for new gTLDs in 2012.

9 62. Amidst this widespread criticism, ICANN opened a new round of  
10 applications for TLD registries (the “2012 Application Round”). The application  
11 window ran from January 12, 2012 through April 12, 2012.

12 63. In a 2009 agreement with the DOC, ICANN emphasized that it would  
13 “ensure that as it contemplates expanding the top-level domain space, the various  
14 issues that are involved (including competition, consumer protection, security,  
15 stability and resiliency, malicious abuse issues, sovereignty concerns, and rights  
16 protection) will be adequately addressed prior to implementation.”

17 64. In contrast to the seven-page instruction manual from the 2000 Application  
18 Round, the rules and procedures for the 2012 Application Round were set forth in a  
19 massive 349-page guidebook.

20 65. ICANN purports to operate by consensus. In fact, ICANN’s creation of the  
21 2012 Application Round, its announcements regarding the 2012 Application Round  
22 and the rules that ICANN adopted were the result of an unlawful series of  
23 agreements between ICANN and its co-conspirators, some of whom had already  
24 left ICANN and some of whom were in the ICANN organization when the 2012  
25 Application Round was decided and announced, but thereafter left ICANN.

26 66. Upon information and belief, ICANN and the co-conspirators entered into  
27 and furthered their conspiracy on at least the following occasions:

- 28 - March 12, 2010: the ICANN board of directors met in Nairobi, Kenya;

- 1 - September 24, 2010: a special meeting of the ICANN board of directors  
2 was held in Trondheim, Norway;
- 3 - October 28, 2010: a special meeting of the ICANN board of directors was  
4 held via teleconference;
- 5 - December 10, 2010: the ICANN board of directors met in Brussels,  
6 Belgium;
- 7 - January 25, 2011: a special meeting of the ICANN board of directors was  
8 held via teleconference;
- 9 - March 18, 2011: the ICANN board of directors met in San Francisco,  
10 California;
- 11 - October 11, 2011: a special meeting of the ICANN board of directors was  
12 held in Santa Monica, California;
- 13 - October 28, 2011: the ICANN board of directors met in Dakar, Senegal;
- 14 - December 8, 2011: a special meeting of the ICANN board of directors  
15 was held via teleconference.

16 67. In order to apply in the 2012 Application Round, ICANN required applicants  
17 to pay a whopping \$185,000 per TLD fee—over three times more than the 2000  
18 Application Round’s \$50,000 fee. More importantly, unlike the 2000 Application  
19 Round, ICANN forbid applicants from submitting multiple TLD strings in the same  
20 application.

21 68. Therefore, had name.space re-applied in the 2012 Application Round for  
22 delegation of the same 118 gTLDs that remain pending from name.space’s 2000  
23 Application, it would have cost name.space almost \$22 million, more than 436  
24 times the price of name.space’s 2000 Application for the same 118 gTLDs.

25 69. Upon information and belief, the 2012 Application Round, by requiring  
26 application fees for each TLD for which an application has been submitted, was  
27 designed intentionally to preclude or at least impede name.space’s business  
28 model—which incorporates the simultaneous operation of a significant number of



1 gTLDs. Indeed, name.space appears to be uniquely situated in this regard as its  
2 2000 Application contains 118 gTLDs already in service that predate the ICANN  
3 application process and the formation of ICANN itself.

4 70. In a transparent attempt to avoid the conflict between the pending 2000  
5 applications and the new, more expensive 2012 applications, ICANN offered a one-  
6 time \$86,000 reduction in the application fee for the 2012 Application Round for  
7 those applicants that previously applied in 2000, but whose TLDs were not  
8 delegated into the Root. This fee reduction could only be used for a single TLD  
9 application. If the applicant chose to accept this one-time fee reduction, it would  
10 waive any claim it had to its 2000 application. Otherwise, the 349-page guidebook  
11 did not mention how ICANN would treat any previous applicants from the 2000  
12 Application Round whose applications, like name.space's, are still pending.

13 71. In addition, in the 2012 Application Round, ICANN instituted a binding  
14 dispute resolution process to resolve any conflicts with regard to a 2012  
15 application. Upon information and belief, ICANN is attempting to use the 2012  
16 Application Round to force previous applicants from the 2000 Application Round  
17 to submit to this new dispute resolution process.

18 72. Further, ICANN did not prevent 2012 applicants from applying for  
19 delegation of TLDs that were already included in other applicants' pending 2000  
20 applications.

21 73. Upon information and belief, ICANN knowingly and willingly created the  
22 application process for the 2012 Application Round without adequate safeguards in  
23 place to protect the 2000 applicants' rights in their proposed or already operating  
24 TLDs.

25 74. Upon information and belief, it costs as much or more to apply for one gTLD  
26 string in the 2012 Application Round than it does to launch a TLD registry in the  
27 market.

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