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2011 NOV 16 AM 10:13
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

7 Attorneys for Plaintiffs
Manwin Licensing International S.à.r.l.
8 and Digital Playground, Inc.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12
13 MANWIN LICENSING
INTERNATIONAL S.A.R.L., a
14 Luxemburg limited liability company
(s.à.r.l.), and DIGITAL
15 PLAYGROUND, INC., a California
corporation,

16 Plaintiffs,

17 v.

18 ICM REGISTRY, LLC, d/b/a .XXX, a
19 Delaware limited liability corporation;
INTERNET CORPORATION FOR
20 ASSIGNED NAMES AND NUMBERS,
a California nonprofit public benefit
21 corporation; and Does 1-10,

22 Defendants.

Case No. **GV11-9514** -PSG
JCC(x)

COMPLAINT FOR:

**(1) VIOLATIONS OF SECTION 1
OF THE SHERMAN ANTITRUST
ACT [15 U.S.C. § 1];**

**(2) VIOLATIONS OF SECTION 2
OF THE SHERMAN ANTITRUST
ACT [15 U.S.C. § 2];**

**(3) VIOLATIONS OF THE
CARTWRIGHT ACT [CAL. BUS. &
PROF. CODE §§ 16720, 16722, AND
16726];**

**(4) UNFAIR COMPETITION [CAL.
BUS. & PROF. CODE §§ 17200,
17203]**

DEMAND FOR JURY TRIAL

28 Mitchell
Silberberg &
Knupp LLP

268925.1

1 Plaintiffs Manwin Licensing International S.à.r.l. (“Manwin”) and Digital
2 Playground, Inc. aver as follows:

3
4 **I. NATURE OF THE ACTION**

5 1. Manwin owns and licenses the trademarks and domain names used for
6 many of the most popular adult-oriented websites, including YouPorn.com, the
7 single most popular free adult video website on the Internet, as well as xTube.com,
8 Pornhub.com, and Brazzers.com, to cite only a few examples. Manwin also
9 manages online content under the “Playboy” trademark and runs Playboy TV
10 worldwide, both under license from Playboy Enterprises, Inc. This Complaint
11 refers to Manwin as “YouPorn.” YouPorn and other Manwin licensed companies
12 operate “tube” sites that offer free user-generated and searchable adult content.

13 2. In this lawsuit, YouPorn and Digital Playground seek redress for
14 monopolistic conduct, price gouging, and anti-competitive and unfair practices,
15 broadly harming competition, businesses, and consumers, and arising out of the
16 establishment of .XXX, a new Top-Level Domain Name (“TLD”) intended for
17 adult-oriented content. (Other TLDs are, for example, .com and .org.) The
18 business practices at issue have enormous and worldwide consequences for the
19 Internet, an essential engine in all domestic and international commerce.

20 3. Defendant the Internet Corporation for Assigned Names and Numbers
21 (“ICANN”) controls and is responsible for the entire worldwide Internet Domain
22 Name System (“DNS”). The DNS makes the Internet work by assigning unique
23 “domain names” to web sites, and by coordinating master computer servers which
24 ensure that all Internet users typing a domain name into their browsers reach the
25 same “host” computer and website. ICANN also determines whether to permit
26 new TLDs in the DNS. ICANN recently approved the .XXX TLD, and contracted
27 with defendant ICM Registry, LLC (“ICM”) to make ICM the sole “registry” or
28 operator of that TLD. As explained more fully below, that approval and that

1 contract were rife with unfair, inappropriate, and anticompetitive conduct. For
2 example, YouPorn is informed and believes as follows:

3 (a) The creation of the .XXX TLD is forcing owners of trademarks and
4 domain names in other TLDs to purchase from ICM expensive “defensive
5 registrations” (or the right to block or prevent the use by others) of those same
6 names in .XXX. Such defensive registrations are necessary to preclude others
7 from registering and using the owners’ names in .XXX, and prevents the confusion
8 or dilution in value of those names that would otherwise result. For example,
9 YouPorn.com needs to block anyone else from establishing a website using the
10 confusingly similar name YouPorn.xxx. Otherwise, consumers seeking
11 YouPorn.com may instead reach YouPorn.xxx, causing YouPorn.com to lose
12 business and harming its reputation.

13 (b) The significant costs and disadvantages of such defensive
14 registrations, and their detrimental effect on competition, outweigh any alleged
15 benefit of the .XXX TLD. Indeed, the .XXX TLD has been strenuously criticized
16 for extorting defensive registrations. For these and other reasons, governmental
17 bodies, the adult entertainment industry, and other interested constituencies largely
18 opposed the formation of .XXX, which primarily serves to enrich ICM and its
19 affiliates.

20 (c) In fact, ICM promoted .XXX in large measure first to create and then
21 exploit the need for just such defensive registrations. ICM has sold, during an
22 initial two-month pre-operation “Sunrise” period, almost 80,000 special .XXX
23 registrations at average fees to ICM of more than \$150 per registration. These
24 registrations are apparently largely for defensive purposes. They do not include
25 hundreds of millions of additional dollars in annual fees that ICM has announced it
26 expects to earn from later defensive and also later “affirmative” .XXX
27 registrations. (Name holders “affirmatively” register names for use in operating an

1 active .XXX website displaying new content, rather than for “defensively”
2 preventing someone else from exploiting the name in .XXX.)

3 (d) There is no reasonable substitute for defensive registration in .XXX.
4 For example, by blocking use of a domain name in a TLD other than .XXX, the
5 name holder does not prevent the harm suffered if a non-owner registers that name
6 in the .XXX TLD. The .XXX TLD thus constitutes a separate antitrust market for
7 defensive registrations. Also, ICM is actively attempting to establish and
8 monopolize, and has a dangerous probability of establishing and monopolizing, an
9 additional separate market for affirmative registrations in TLDs with names that
10 uniquely connote (or that are otherwise predominately intended for) adult content.
11 For example, the letters “.XXX” connote adult content, as could other hypothetical
12 TLD names such as “.sex” or “.porn.” However, .XXX is currently the only adult-
13 oriented TLD, giving ICM a present monopoly in such TLDs.

14 (e) ICM initially attempted to coerce ICANN to approve the .XXX TLD
15 and to approve ICM’s anti-competitive .XXX registry services. That coercion took
16 the form of misleading predatory conduct and aggressive litigation tactics,
17 described more fully below. Eventually, ICANN agreed to approve the .XXX
18 TLD, and to approve ICM as the .XXX registry, not only in response to those
19 improper and coercive tactics but also because ICM promised to pay ICANN what
20 is expected to be millions of dollars in fees.

21 (f) ICANN has a monopoly over the DNS and over the approval of TLDs
22 and their registries. There was no competitive process for the award of the .XXX
23 registry contract. ICANN awarded ICM that contract without soliciting or
24 accepting competing bids, and without any market considerations whatsoever, thus
25 awarding ICM monopoly control and free rein to impose anti-competitive prices
26 and practices within the distinct .XXX TLD. The .XXX registry contract itself
27 places no restrictions upon (and in fact enhances) ICM’s abilities to exploit that
28 monopoly position to the disadvantage and harm of competition, consumers and

1 businesses. For example, the contract imposes no price restrictions of any kind on
2 ICM (despite such price restrictions in the contracts between ICANN and the
3 registries for other TLDs which host adult-content as well as other websites). It
4 also grants ICM a 10-year contract term which “shall” be perpetually renewed,
5 absent narrow exceptions, thus ensuring that ICM will continue to be forever
6 insulated from competition.

7 (g) ICM has reacted to these circumstances with the anti-competitive
8 behavior expected of a monopolist. It has, for example, improperly exploited the
9 newly created market for .XXX defensive registrations by making such
10 registrations unreasonably expensive and difficult, and by placing onerous burdens
11 on parties seeking to protect their intellectual property rights. It has required that
12 registrants of names in .XXX waive legal rights and claims against ICM as a
13 condition of registering. It has reserved to itself some of the most popular or
14 desirable domain names, which it has sold at prices substantially above those in a
15 competitive market. Its Chairman Stuart Lawley has announced that he expects to
16 be able (and intends) to prevent the establishment of any other (potentially
17 competing) adult-content TLDs, including through a contractual promise by
18 ICANN not to approve such TLDs. Lawley has also announced that he projects
19 that ICM will earn annual profits of \$200 million from operating the .XXX TLD –
20 profits to be earned by charging prices well above those in a competitive market.
21 Indeed, ICM is charging \$60 annually for .XXX registrations, more than ten times
22 the annual registration charges in other relevant TLDs. As Lawley admitted in a
23 March 18, 2011 *USA Today* article in responding to complaints about such prices:
24 “This was always going to be a very lucrative arrangement.”

25 (h) These activities have not only restrained trade among businesses by
26 making .XXX TLD services more expensive and of lower quality, but will
27 detrimentally affect consumers. For example, businesses forced to pay excessive
28 fees for .XXX defensive registrations will pass those expenses on to consumers,

1 either by charging consumers more or by offering consumers fewer or less costly
2 (and less appealing) services.

3 (i) Through their actions, ICANN and ICM have knowingly conspired to
4 eliminate competitive bidding and competition in the markets for certain .XXX
5 TLD registry services, with the intent to injure competition and consumers.
6

7 II. THE PARTIES

8 4. Plaintiff Manwin Licensing International S.à.r.l. is and at all relevant
9 times was a business entity organized as a “Société à responsabilité limitée” under
10 the laws of Luxembourg, and having its principal place of business in the City of
11 Luxembourg, Luxembourg. Manwin owns and licenses one of the largest
12 portfolios of premium adult-oriented website domain names and trademarks.
13 These include “YouPorn.com,” the domain name for the website which is the
14 world’s most popular source for free adult-oriented streaming videos. Indeed,
15 YouPorn.com is consistently one of the top 100 most visited sites on the entire
16 Internet. Domain names and trademarks owned by Manwin also include
17 Pornhub.com, xTube.com, Brazzers.com, and numerous other of the world’s most
18 popular adult entertainment websites. In addition, under license from Playboy
19 Enterprises, Inc., Manwin operates and manages all “Playboy” online content and
20 runs Playboy Television worldwide, using the “Playboy Premium Entertainment”
21 label. This Complaint refers to Manwin as “YouPorn.”

22 5. Plaintiff Digital Playground, Inc. (“Digital Playground”) is and at all
23 relevant times was a corporation organized and existing under the laws of
24 California, and having its principal place of business in Van Nuys, California,
25 within the Central District of California. Digital Playground is a world leader in
26 adult-oriented filmmaking and interactive formats, boasting one of the world’s
27 largest high definition libraries of original adult content. Digital Playground

1 operates and makes this content available through its websites, including
2 digitalplayground.com.

3 6. Defendant ICANN is a California non-profit public benefit
4 corporation, with its principal place of business in Marina Del Rey, California,
5 within the Central District of California. ICANN was created in 1998, in response
6 to a policy directive of the United States Department of Commerce, to administer
7 the Domain Name System. ICANN is charged by the Department of Commerce
8 with, among other things, selecting and entering into agreements with TLD registry
9 operators.

10 7. Defendant ICM Registry, LLC (“ICM”) is a Delaware limited liability
11 corporation, with its principal place of business in Palm Beach Gardens, Florida,
12 and doing business in the Central District of California. ICM currently acts under
13 contract with ICANN as the registry for the .XXX TLD.

14 8. Plaintiffs are unaware of the true names or capacities of the
15 Defendants sued under the fictitious names DOES 1 through 10, inclusive.
16 Plaintiffs are informed and believe that DOES 1 through 10, and each of them,
17 either participated in performing the acts averred in this Complaint or were acting
18 as the agent, principal, alter ego, employee, or representative of those who
19 participated in the acts averred in this Complaint. Accordingly, Defendants
20 DOES 1 through 10 are each liable for all of the acts averred in this Complaint.
21 Plaintiffs will amend this Complaint to state the true names of Defendants DOES 1
22 through 10 when their identity is discovered.

23 24 III. JURISDICTION AND VENUE

25 9. This is a case asserting claims under the Sherman Act, 15 U.S.C. §§ 1
26 and 2, et seq. This Court thus has subject matter jurisdiction pursuant to 28 U.S.C.
27 § 1331 because this is a case arising “arising under ... laws of the United States.”

1 10. This Court also has supplemental jurisdiction pursuant to 28 U.S.C.
2 § 1367 over Plaintiffs' claims that arise under the laws of the State of California.

3 11. Defendant ICANN is subject to personal jurisdiction in the State of
4 California, including because it is a public benefit corporation organized under the
5 laws of the State of California, because it has its principal place of business in
6 Marina del Rey, California, and because its acts and omissions and the events
7 which are the subject of this Complaint took place in substantial part and caused
8 impacts in the State of California.

9 12. Defendant ICM is subject to personal jurisdiction in the State of
10 California, including because its acts and omissions and the events which are the
11 subject of this Complaint took place in substantial part and caused impacts in the
12 State of California.

13 13. Venue is proper in this judicial district pursuant to 28 U.S.C.
14 § 1391(b) and 15 U.S.C. § 22 in that: (a) Defendants may be found and transact
15 business in this judicial district and are subject to personal jurisdiction in this
16 judicial district; and (b) a substantial part of the acts, omissions and events giving
17 rise to the claims asserted in this complaint occurred in this judicial district.

18 19 **IV. FACTUAL BACKGROUND**

20 **A. The DNS System**

21 14. The Internet is an international network of interconnected servers and
22 computers.

23 15. The World Wide Web is a collection of files, or "websites," hosted on
24 computers and servers and made available to consumers via the Internet,
25 containing text, graphics, audio, and video.

26 16. Consumers typically access the World Wide Web using a software
27 application known as a browser (e.g., Microsoft Internet Explorer, Google Chrome
28 or Apple Safari).

1 17. Each computer or host server connected to the Internet has a unique
2 identity, established by its Internet Protocol address (“IP address”). An IP address
3 consists of four numbers between 0 and 255, separated by periods (e.g.,
4 123.45.67.89). The unique IP address ensures that users are directed to the
5 computer or host server for the particular website they intend to visit.

6 18. Because the string of numbers contained in IP addresses is difficult to
7 remember, the Domain Name System (“DNS”) was introduced to allow individual
8 users to identify a computer using an easier-to-remember alphanumeric “domain
9 name” such as “YouPorn.com.” The unique domain name is incorporated into a
10 Uniform Resource Locator (“URL”). Internet users connect to a website by typing
11 the URL into (or linking to the URL through) their browser. The DNS ensures that
12 each unique alphanumeric “domain name” and URL corresponds to a specific
13 numerical IP address.

14 19. When an Internet user enters a domain name and URL into a browser,
15 the URL is sent to a DNS server. The server looks up the IP address assigned to
16 that domain name. The browser then links to the server having that IP address and
17 which hosts the desired website.

18 **B. Top Level Domains**

19 20. Within each domain name, the alphanumeric field to the far right is
20 the Top Level Domain (“TLD”). The field to the left of the period preceding the
21 TLD is the Second Level Domain (“SLD”). The field (if any) to the left of the
22 period preceding the SLD is the Third Level Domain, and so on. For example, in
23 the domain name “YouPorn.com,” the TLD is “.com,” and the SLD is “YouPorn.”
24 (That name has no Third Level Domain.) Accordingly, TLDs are the highest
25 subdivisions of Internet domain names.

26 21. Most TLDs with three or more characters are referred to as “generic”
27 TLDs (“gTLDs”). Common gTLDs include .com, .org, and .biz. gTLDs can
28 either be “sponsored” or “unsponsored.” A sponsored TLD (“sTLD”) is a

1 specialized TLD that has a sponsor, usually an organization representing by
2 consensus the narrower industry, interest group, or community most affected by or
3 interested in the particular TLD. The sponsor makes policy decisions for the
4 sTLD. An example of an sTLD is .museum, the sTLD sponsored by and for the
5 use of museums, museum associations and museum professionals.¹

6 22. There are currently twenty-two gTLDs, fourteen of which are sTLDs.

7 23. A particular assigned organization is responsible for operating each
8 TLD. These operating responsibilities include overseeing the sale and allocation
9 of domain names in the TLD and maintaining a database directory or “zone file,”
10 also commonly known as a “registry,” ensuring that each Second Level Domain
11 name within the TLD is assigned and “resolves” to a unique numerical IP Address.
12 The organization responsible for operating a particular TLD is referred to as a
13 “registry operator” or “registry.” Registries in turn authorize separate companies
14 called “registrars” to directly sell the TLD domain names to the ultimate
15 businesses or consumers owning and using those names in the TLD. The ultimate
16 owners or users are called “registrants.” Registrars like GoDaddy.com and
17 Network Solutions are approved by many TLDs to sell Second Level Domain
18 Names in those TLDs. Registrants buy domain names through such registrars
19 which then register those names with the TLD registry. Registrants pay fees to
20 registrars, which themselves then pay fees to the registries (usually on an annual or
21 other periodic basis), to register domain names within particular TLDs. The
22 registries for the TLDs in turn pay fees to ICANN, periodically (e.g. quarterly) on
23 a per-registration or per-renewal basis.

24 **C. ICANN’s Internet Role**

25 24. Before ICANN’s formation in 1998, overall management of the
26 Domain Name System was carried out under contractual arrangements between the

27 _____
28 ¹ See <http://about.museum/background/>

1 United States Government, which developed and initially controlled the Internet,
2 and other parties.

3 25. In 1998, the U.S. Department of Commerce (“DOC”) and ICANN
4 entered into the first of a series of agreements that assigned to ICANN overall
5 authority to manage the DNS. Under those agreements, ICANN’s duties include
6 determining what new TLDs to approve, choosing registries for existing or newly
7 approved TLDs, and contracting with the registries to operate the TLDs. ICANN
8 also has some responsibility over the root server system. The root server system is
9 the physical system of related computers which store the authoritative master list
10 of all TLDs and which thus permit users of the Internet to reach the intended
11 websites and email addresses.

12 26. According to its Articles of Incorporation, ICANN was established
13 “for the benefit of the Internet industry as a whole.” ICANN’s Articles of
14 Incorporation state its purposes as follows: “the Corporation shall . . . pursue the
15 charitable and public purposes of lessening the burdens of government and
16 promoting the global public interest in the operational stability of the Internet by
17 (i) coordinating the assignment of Internet technical parameters as needed to
18 maintain universal connectivity on the Internet; (ii) performing and overseeing
19 functions related to the coordination of the Internet Protocol (‘IP’) address space;
20 (iii) performing and overseeing functions related to the coordination of the Internet
21 domain name system (‘DNS’), including the development of policies for
22 determining the circumstances under which new top-level domains are added to the
23 DNS root system; (iv) overseeing operation of the authoritative Internet DNS root
24 server system; and (v) engaging in any other related lawful activity in furtherance
25 of items (i) through (iv).”

26 27. Pursuant to its Bylaws, ICANN receives input from several Advisory
27 Committees. One of those committees is the Governmental Advisory Committee
28 (“GAC”). Membership in the GAC is open to all national governments. In

1 addition, other multinational inter-governmental or economic organizations may
2 under certain circumstances participate in the GAC. ICANN's Bylaws provide
3 that "the advice of the Governmental Advisory Committee on public policy matters
4 shall be duly taken into account, both in the formulation and adoption of policies."

5 28. In 2009, in one of its agreements with the DOC, ICANN reaffirmed
6 its commitments to the DOC that: "ICANN will ensure that as it contemplates
7 expanding the top-level domain space, the various issues that are involved
8 (including competition, consumer protection, security, stability and resiliency,
9 malicious abuse issues, sovereignty concerns, and rights protection) will be
10 adequately addressed prior to implementation." In other bylaws and agreements
11 with the DOC, ICANN also confirms that its activities in approving TLDs and
12 registries will appropriately consider the need for market competition and the
13 protection of rights in names and other intellectual property.

14 29. In order to fulfill its commitments under its agreements with the DOC
15 and to comply with its Articles of Incorporation and Bylaws, the ICANN Board in
16 2006 instructed ICANN to conduct economic studies regarding TLD competition
17 issues. These issues included the question whether individual TLDs compete with
18 one another or function as self-contained markets. The U.S. Department of Justice
19 reiterated the need for such studies in 2008.

20 **D. History Of The .XXX TLD**

21 **1. ICM Fails To Obtain .XXX Approval In 2000.**

22 30. In about 2000, ICM first applied to ICANN for approval of a new
23 .XXX TLD, intended primarily for adult content. ICANN rejected the application,
24 finding among other things that "ICM Registry's application for an .xxx TLD does
25 not appear to meet unmet needs. Adult content is readily available on the
26 Internet." ICANN also "not[ed] the opposition of at least some segments of the
27 adult online content industry to a .xxx TLD." That opposition was based in part on
28 concerns that a .XXX TLD could lead to "ghettoization" of adult content solely

1 within a single TLD, and thus to enhanced risks that such materials could be easily
2 and improperly censored.

3 **2. ICM Fails to Obtain .XXX Approval In 2004.**

4 31. In 2004, ICM applied again to have ICANN approve the .XXX TLD,
5 this time as a sponsored TLD. Under its rules, ICANN would not approve
6 sponsored TLDs unless they “address[ed] the needs and interests of a clearly
7 defined industry (the Sponsored TLD Community), which can benefit from the
8 establishment of a TLD operating in a policy formulation environment in which
9 the community would participate.” The ICANN rules also required that the
10 “Sponsored TLD Community” be “precisely defined”; that the Community have
11 “differentiated” needs that would benefit from a separate sTLD; that the sTLD
12 applicant propose a “sponsoring organization” that would produce sTLD polices
13 benefitting and that would represent the Sponsored Community; and that the
14 proposed sTLD enjoy “broad-based support” from the Sponsored Community.

15 32. As part of its application, ICM proposed the International Foundation
16 for Online Responsibility (“IFFOR”) as the required sponsoring organization for
17 the .XXX TLD. IFFOR supposedly was an independent organization representing
18 the “responsible” adult entertainment community. However, Plaintiffs are
19 informed and believe that ICM and its Chairman Stuart Lawley in fact created
20 IFFOR for the sole purpose of the .XXX TLD application, and that they dominated
21 and manipulated IFFOR as expedient for the attempted approval of the .XXX
22 TLD. Plaintiffs are informed and believe that IFFOR does not represent the
23 responsible (or any significant) adult entertainment community.

24 33. On or about August 27, 2004, ICANN rejected ICM’s 2004
25 application for a .XXX TLD in part because ICM had failed to demonstrate a
26 defined sponsorship community which broadly supported and would benefit from
27 .XXX.

1 **3. ICM's Misleading And Predatory Campaign To Obtain**
2 **.XXX Approval.**

3 34. Plaintiffs state the averments in paragraphs 35-45 below on
4 information and belief.

5 35. Leading to and after the rejection of its 2004 application, ICM
6 embarked on a predatory campaign of misrepresentations and other misconduct in
7 an effort to persuade ICANN that ICM and the .XXX TLD met the sponsorship
8 criteria. More specifically:

9 (a) Anticipating ultimate ICANN approval of its proposed .XXX TLD,
10 ICM permitted members of the adult entertainment industry to preregister in .XXX
11 names that such members already used for other websites. Members desired such
12 pre-registration in order to prevent their names from being misappropriated by
13 others in the .XXX TLD. While desiring to thus protect their names, many such
14 members also opposed .XXX, and ICM promised them that it would not "count"
15 their registrations as support for the .XXX proposal. Despite that promise, ICM
16 represented to ICANN that the pre-registrants supported .XXX.

17 (b) ICM continued to claim support from several major adult
18 entertainment industry companies, when in fact those companies subsequently
19 opposed the .XXX application or took neutral positions.

20 (c) ICM attempted to obtain support for .XXX from the Free Speech
21 Coalition ("FSC"), an adult entertainment industry umbrella group, by offering
22 various inducements, including cash and Board memberships on IFFOR, and by
23 attempting to "stack" FSC meetings with supporters.

24 (d) ICM generated fake comments in support of its application by posting
25 a link that purported to lead to additional information about the .XXX proposal, but
26 which in fact automatically generated emails to ICANN supporting ICM's .XXX
27 application.

1 (e) ICM submitted misleadingly edited videos and/or photos of an adult
2 industry conference to falsely suggest that there was limited opposition to its
3 application.

4 (f) ICM submitted partial and redacted information concerning persons
5 purportedly supportive of its application who were allegedly involved in the adult
6 entertainment industry, but who in fact appeared not to have been involved in the
7 industry.

8 (g) ICM touted support from some actual and alleged participants in the
9 adult entertainment industry and related fields but without properly disclosing that
10 at the time or later such supporters were employed or paid by (or otherwise in
11 receipt of benefits or promises from) ICM.

12 (h) ICM offered various inappropriate inducements to persons and entities
13 to support ICM's application.

14 (i) ICM asserted that IFFOR was an independent "sponsoring" entity for
15 the .XXX TLD when in fact IFFOR was created and controlled by ICM and its
16 Chairman Stuart Lawley.

17 (j) When questioned about these tactics, ICM refused to publicly disclose
18 the identities of its alleged supporters, ostensibly on privacy grounds, making it
19 difficult if not impossible for opponents to challenge the veracity of ICM's claims.

20 (k) ICM engaged in other predatory, improper, and/or misleading
21 conduct.

22 36. In reliance on certain of ICM's lobbying efforts described above, and
23 without knowing that some of ICM's tactics or representations were false or
24 misleading, ICANN in June 2005 took the preliminary step of authorizing its
25 President and General Counsel to enter into negotiations with ICM for the .XXX
26 TLD.

1 **4. ICM Fails To Obtain .XXX Approval In 2006 and 2007.**

2 37. After its June 2005 preliminary authorization to negotiate with ICM,
3 ICANN received significant and widespread opposition to an .XXX TLD.
4 Opposition came from members of the GAC, from various individual governments
5 (including the United States Department of Commerce), from members of the adult
6 entertainment industry, and from the broader public. For example, in March 2006,
7 the GAC issued the so-called Wellington Communiqué which noted that several
8 GAC members were “emphatically opposed from a public policy perspective to the
9 introduction of a .XXX sTLD.” ICANN deferred a final decision on the ICM
10 application to consider these objections.

11 38. While ICANN considered these objections, ICM applied improper
12 pressure in an effort to coerce ICANN’s approval of .XXX. For example, ICM
13 knew that the United States Government was under international political pressure
14 to avoid exercising control over the DNS and Internet. ICM made Freedom of
15 Information Act requests intended to obtain documents that would embarrass the
16 Department of Commerce and the Department of State by demonstrating their
17 interest in the .XXX issue, despite international concern about such activity, and
18 with the intent of muting the Department of Commerce and the Department of
19 State. ICM eventually filed a lawsuit against the Department of State and
20 Department of Commerce in an effort to force disclosure of the documents
21 requested under the Freedom of Information Act. ICM also submitted a complaint
22 to the ICANN ombudsman about ICANN’s treatment of ICM’s .XXX application.

23 39. Despite these efforts, on May 10, 2006, ICANN again rejected ICM’s
24 .XXX proposal. On May 19, 2006, ICM filed with ICANN a request for
25 reconsideration, later withdrawn. Governmental entities, members of the adult
26 entertainment industry, and others continued to voice strong and widespread
27 opposition to the .XXX TLD through March 30, 2007, when ICANN again
28 rejected the .XXX TLD.

1 **5. ICM's 2008 IRP.**

2 40. On June 6, 2008, ICM filed an Independent Review Proceeding
3 (“IRP”) challenging ICANN’s rejection of the .XXX TLD. ICANN has
4 established IRPs as a non-binding quasi-arbitral process for attempting to resolve
5 disputes concerning its activities. In the IRP filed by ICM, ICM contended that
6 ICANN had approved ICM’s application for the .XXX TLD in June of 2005; when
7 ICANN’s Board had directed that its President and General Counsel begin
8 negotiating an agreement with ICM, and that ICANN had thereafter improperly
9 “reconsidered” that decision. On February 19, 2010, the majority of the three-
10 person Independent Review Panel, over a strong dissent, issued an expressly non-
11 binding Declaration that ICANN had in June 2005 determined that ICM met the
12 sponsorship criteria, and that ICANN could not thereafter properly reopen the
13 issue. The Declaration did not address whether ICM had in fact met the
14 sponsorship criteria or whether its sponsorship evidence was fraudulent or
15 misleading. The Panel did not hear from the GAC, other governments, members
16 of the adult entertainment industry, or others vitally concerned with and opposed to
17 the .XXX TLD.

18 41. On March 26, 2010, ICANN publicly posted a document listing its
19 options for responding to the non-binding IRP Declaration. The ICANN posting
20 noted that, among other things, ICANN could accept the majority decision and
21 approve .XXX; could adopt the dissenting decision and reject .XXX; or could take
22 other courses. ICM then sent ICANN a “response” stating that it was “self-
23 evident” that litigation would result if ICANN did not adopt the IRP majority
24 Declaration. ICM made additional threats of litigation against ICANN, its Board
25 members, and others it perceived as responsible in some way for the denial of
26 ICM’s .XXX application.

1 **6. ICANN Approves .XXX To Avoid Further Threats And**
2 **Enrich Itself.**

3 42. On March 18 and 19, 2011, ICANN approved ICM's application for
4 the .XXX TLD. On March 31, 2011, ICANN and ICM signed a registry contract
5 under which ICM agreed to provide registry services for the .XXX TLD.

6 43. ICANN approved the .XXX TLD and the ICM registry contract
7 despite ongoing, extensive, strenuous, and legitimate objections to both. These
8 objections came from the public at large, from members of the GAC, from the
9 adult entertainment industry, from the business community, and from others.
10 These objections were expressed in writing, orally, on the Internet, and in various
11 public forums. The objections included legitimate concerns that .XXX served
12 limited purposes because adult content could be and was distributed in other TLDs;
13 that establishing .XXX would require trademark holders and others with name
14 rights to take expensive and otherwise unnecessary and economically detrimental
15 steps to block use of those names in the .XXX TLD; that .XXX had obtained and
16 would (for reasons explained below) retain a monopoly on TLDs intended for adult
17 content; that ICM had engaged in anti-competitive, predatory, and other improper
18 and misleading conduct; that adult content might, in violation of free speech rights,
19 be forced exclusively into the .XXX TLD and then more readily censored; and that
20 the adult entertainment industry generally opposed ICM and the .XXX TLD.

21 44. Before approving the .XXX TLD, ICANN failed to conduct proper
22 economic studies about the competitive effects of or economic needs for new
23 TLDs, including the .XXX TLD, despite the conclusion of ICANN's Board and the
24 U.S. Department of Justice that such studies were required by ICANN's bylaws, its
25 contractual commitments, and legitimate competition concerns. ICANN did
26 perform some perfunctory studies that never properly or fully addressed the
27 important economic and competition issues posed by the .XXX TLD.

1 45. ICANN approved .XXX and the ICM registry contract, despite these
2 legitimate and strenuously voiced concerns, in violation of its bylaws and
3 contractual obligations, and despite the lack of complete and requisite economic
4 studies, only because: (a) ICANN was intimidated and coerced by ICM's improper
5 conduct (described above) which threatened ICANN, imposed significant
6 economic expense on ICANN, and promised to continue such tactics if ICANN did
7 not consent to .XXX; and (b) ICM promised ICANN significant financial
8 payments, likely to amount to millions of dollars, under the .XXX registry
9 contract. Reflecting that ICANN's approvals were in part a reaction to improper
10 ICM pressure, ICANN insisted upon and obtained a release from ICM – barring
11 ICM from further litigation threats – as a condition to signing the .XXX registry
12 contract.

13
14 **V. THE ANTI-COMPETITIVE .XXX REGISTRY CONTRACT**

15 46. Plaintiffs state the averments in paragraphs 47 to 53 below on
16 information and belief.

17 47. Only ICANN can approve new TLDs. With the exception of certain
18 limited legacy TLDs, no one may operate a TLD without ICANN approval. There
19 is no practical way to use the Internet without using the DNS and an ICANN-
20 approved TLD. Because ICANN controls the DNS and TLD approvals, ICANN
21 has significant monopoly control over the Internet and DNS.

22 48. The contracts between ICANN and TLD registries generally provide
23 for the registry to pay fees to ICANN (often in part on a periodic (e.g quarterly)
24 and per-registration basis). Those contracts also generally provide that the registry
25 will, through registrars, offer prescribed services (including of course the
26 registration of domain names) to TLD registrants.

27 49. ICANN in other registry contracts has attempted to address issues
28 posed by its sole power to approve TLD registries, which may in turn exert

1 (through registrars) monopolistic and anti-competitive power over registrants. For
2 example, in some cases, ICANN has required competitive bids for TLD registry
3 contracts. The bidding process may include competition among registry applicants
4 over the services and prices to be offered, through registrars, to registrants. In
5 other cases, ICANN has imposed price caps upon what registries may charge for
6 TLD services, or has imposed requirements for the services registries must offer.
7 In a competitive market, registries would compete not only on price but services.
8 For example, registries may adopt different processes for allocating domain names
9 among competing registrants.

10 50. ICANN did not solicit, approve, or consider any adult-content TLDs
11 other than .XXX. ICANN entertained no competitive bids for the .XXX registry
12 contract. ICANN had no process for separating approval of the .XXX TLD from
13 approval of ICM as the .XXX registry. After it approved the .XXX TLD, ICANN
14 did not offer any parties but ICM an opportunity to become the .XXX registry.
15 ICANN's approval of the .XXX TLD was thus also approval of ICM as the .XXX
16 registry. The negotiation of the .XXX registry contract was a closed process. The
17 lack of competitive bidding eliminated any market restraints that would have
18 prevented ICM from engaging in monopolistic and anti-competitive pricing and
19 practices in the sale of .XXX registry services. ICANN could have required
20 competing bids for the rights to act as the .XXX registry, just as it has required
21 competing bids for the right to act as the registry of other TLDs.

22 51. Not only did the selection of ICM lack any market restraints, the
23 ICM/ICANN contract contains no substitute for such restraints (e.g., price caps)
24 such as those imposed by ICANN in other TLD registry contracts. In fact, the
25 terms of the ICM/ICANN contract bolster ICM's ability to engage in anti-
26 competitive and monopolistic practices in the sale of .XXX TLD registry services.
27 In particular and without limitation:

1 (a) The ICM/ICANN contract contains no price caps or other restrictions
2 of any kind on what ICM can charge for .XXX registry services. ICM has
3 complete price discretion and no fetters on its ability to charge monopolistic prices
4 considerably higher than those which would exist in a competitive market. Such
5 higher prices raise costs for registrants and harm consumers through higher prices
6 and/or fewer choices.

7 (b) The ICM/ICANN contract leaves ICM with broad discretion to
8 fashion and limit in a non-competitive, unreasonable manner the nature, quality
9 and scope of .XXX registry services it offers registrars and registrants. Such
10 restrictions raise costs and limit innovation, thus harming registrants and
11 consumers.

12 (c) Under the terms of the ICM/ICANN contract, ICM may cancel the
13 contract at any time, and for any reason, on 120 days notice. By contrast, ICANN
14 may not terminate the contract unless ICM fails to cure adjudicated, material
15 breaches of its limited contractual obligations. Moreover, the ICM/ICANN
16 contract lasts for a minimum 10-year term, but “shall” be renewed perpetually
17 subject only to an ambiguous obligation to negotiate in good faith certain new
18 terms, none of which appear necessarily to provide registrant or consumer
19 protections. The unlimited term of the ICM/ICANN agreement permits ICM to
20 continue insulating itself from market restraints and from any threat of competition
21 in .XXX registry services.

22 (d) The ICM/ICANN contract contains a provision which ICM contends
23 will preclude ICANN from approving any arguably competing TLD designated for
24 adult content, such as “.sex” or “.porn.” This restriction limits future competition,
25 enabling ICM to bar the threatened entry of new market competitors.

26 52. ICANN failed to take any reasonable contractual or other steps to
27 restrain ICM from engaging in monopolistic and anti-competitive conduct, not
28 only because ICANN was intimidated by ICM’s previous pressure tactics and

1 strategies but also because ICM agreed to pay ICANN very significant
2 compensation for the right to act as the .XXX registry, as more particularly averred
3 above.

4 53. Through the above-described processes for approving the .XXX TLD
5 and the .XXX registry contract, and through the terms of the .XXX registry
6 contract, ICANN and ICM conspired, intentionally agreed, and intended to
7 eliminate competitive bidding and competition in the .XXX TLD and in .XXX
8 TLD registry services and to create illegal monopolies. ICANN and ICM also
9 knew and intended that such processes and terms would harm competition, restrain
10 trade, and result in higher-cost and lower quality services both to registrants and to
11 consumers.

12 VI. RELEVANT MARKETS

13
14 54. Plaintiffs state the averments in paragraphs 55 to 61 below on
15 information and belief.

16 55. The .XXX TLD registry services comprise a separate market for
17 blocking services and defensive registrations in .XXX. Owners of trademarks, of
18 domain names in other TLDs, or of other name rights purchase services in .XXX
19 for defensive or blocking purposes – i.e., to prevent others from registering or
20 using those same names in the .XXX TLD. Such defensive purchases are not
21 intended to make use of a registered name for an operating .XXX website with new
22 content, but only to prevent or block such use by others. Owners suffer dilution in
23 their names' value or goodwill if others register or use their names in the .XXX
24 TLD. Owners are also damaged by consumer confusion if others register or use
25 their names in the .XXX TLD. Consumers intending to reach the owners' website
26 may instead reach the website of others who are using the owners' names in the
27 .XXX TLD.

1 56. The market for blocking services or defensive registrations in the
2 .XXX TLD is a distinct and separate market in part because there is no reasonable
3 substitute for such registrations. For example, blocking or preventing others' use
4 of names in a non-.XXX TLD is not such a substitute. Blocking use of a name in a
5 non-.XXX TLD does not prevent use of the name in the .XXX TLD. Blocking use
6 of a name in a non-.XXX TLD also does not prevent the harm caused by others'
7 registration or use of the name in the .XXX TLD. Even if name owners can
8 preclude their names' registration or use by others in every non-.XXX TLD, they
9 still need to defensively register or block such names in the .XXX TLD in order to
10 prevent dilution and consumer confusion.

11 57. The need for defensive registrations is particularly acute in .XXX,
12 both for those within and without the adult entertainment industry. Owners of
13 names not associated with adult content need to prevent the names' use in .XXX in
14 order to avoid an undesirable association. For example, prominent celebrities may
15 wish to avoid .XXX websites under their names. Owners of children's character
16 names may wish to bar registration of such names in .XXX to prevent any
17 resulting adult or sexual connotation to the character. Those owning names
18 already associated with adult content also have a particularly acute need to
19 defensively register in .XXX. Because the letters "XXX" universally connote
20 adult content, owners of names already associated with adult content face a
21 heightened risk of consumer confusion, dilution, and free-riding if their names are
22 used by others in the .XXX TLD.

23 58. ICM has a complete monopoly in the market for the sale of .XXX
24 TLD blocking or defensive registration services through registrars. No other
25 company or entity can or does provide such services.

26 59. ICM is also attempting to establish and monopolize a separate market
27 for "affirmative registrations" of names (i.e., registrations of names for use in
28 identifying operating websites showing new content) within TLDs connoting or

1 intended predominately for adult content. There is a serious danger that ICM will
2 establish and monopolize such a distinct market. As consumers seeking adult
3 content become more aware of the .XXX TLD, registering and displaying websites
4 in other generic TLDs may not easily be substituted for registration in the .XXX
5 TLD. That is because of the unique association of the “XXX” name with adult
6 content. Furthermore, as explained below, contractual provisions and other forces
7 make it unlikely that other potential TLDs with names that could similarly connote
8 adult content, such as .sex or .porn, will be established.

9 60. ICM currently has a complete monopoly in TLDs that have a name
10 connoting adult content. There are currently no other TLDs beside .XXX with
11 names that connote adult content. No other company or entity besides ICM
12 currently can or does provide, through registrars, affirmative registrations in TLDs
13 that connote adult content. This control makes it more likely that ICM will extend
14 its monopoly on blocking or defensive registrations into a distinct monopoly for
15 affirmative registrations in TLDs connoting or predominately intended for adult
16 content.

17 61. ICM’s Chairman and Chief Executive Officer Stuart Lawley has
18 expressly announced his intention to establish a separate market for affirmative
19 registrations in TLDs intended for adult content and to monopolize that market.
20 Mr. Lawley has stated that he can legally prevent, through provisions in the
21 ICM/ICANN contract, ICANN’s approval of any TLDs which compete with .XXX
22 by also having names – e.g. .sex or .porn – that connote adult content. He has also
23 stated that for a variety of other reasons he does not ever expect any such approval.
24 Those reasons include the controversy surrounding the approval of .XXX (making
25 future approval of other adult-content TLD names less likely), and new rules
26 restricting the creation of any “controversial” TLD strings. There is also the
27 possibility that .XXX could, for various regulatory or other reasons, become the
28 exclusive permitted TLD for adult web content.

1 **VII. ICM'S ANTI-COMPETITIVE PRACTICES IN THESE MARKETS**

2 62. Plaintiffs state the averments in paragraphs 63 to 78 below on
3 information and belief.

4 63. ICM has in fact exploited its above-described monopoly or incipient
5 monopoly in the TLD registry services, and the lack of market or other restraints
6 on its conduct, by engaging in anti-competitive and predatory behavior
7 unreasonably injurious and harmful to the economy, competition, consumers and
8 businesses, as averred in the paragraphs below. ICANN has conspired to engage in
9 these illegal practices by its conduct in eliminating competition for .XXX registry
10 services and by agreeing with ICM to refrain from adopting any other measures to
11 prevent anti-competitive conduct in the .XXX registry. Both ICM and ICANN
12 knew and intended that their actions would restrain trade, and harm competition,
13 businesses, and consumers, through (among other things) creating higher prices
14 and more limited services than would exist in a competitive market, as more
15 particularly averred below.

16 **A. Unreasonable Pricing For And Restrictions Upon Permanent**
17 **Blocking**

18 64. ICM incurs very little cost for permanently blocking names from the
19 .XXX TLD. For that reason, ICM has determined that it will permanently block,
20 entirely on its own accord and at no charge, certain celebrity and other names from
21 .XXX use or registration except by the actual celebrity or name owner.
22 Nevertheless, ICM is charging other name owners (through registrars) supra-
23 competitive, monopoly prices for permanent name blocking services. More
24 particularly, subject to certain restrictions described below, ICM has sold through
25 approved registrars, and in exchange for a one-time fee of about \$150, the
26 permanent right to block use of names in the .XXX TLD. For example, by paying
27 a registrar which in turn pays ICM about a \$150 fee, Mercedes Benz could have
28 purchased the right to preclude anyone from operating a "MercedesBenz.xxx"

1 website. The approximately \$150 price charged by ICM for such permanent
2 blocking is far higher than that which would exist in a competitive market, and so
3 constitutes an unreasonable restraint on trade and also harms competition.

4 65. ICM is not only charging these supra-competitive prices for the
5 permanent blocking services it does sell, but (in an apparent effort to maximize its
6 monopoly profits) has unreasonably limited the sale of such permanent blocking.
7 For example, ICM has refused to sell permanent blocking to address so-called
8 “typo-squatting.” Typo-squatting is the practice of registering close variants or
9 misspelling of another’s name, e.g. someone other than Mercedes Benz registering
10 “Mercedez Benz” instead of “Mercedes Benz.” Typo-squatters hope that
11 consumers may accidentally misspell or slightly mis-recall the intended name and
12 thus be diverted from the name holder’s website to the typo-squatter’s website.
13 Name owners must often register or block all possible misspellings or name
14 variants in order to prevent confusion and name dilution through typo-squatting
15 and similar activities.

16 66. However, ICM would only sell trademark owners the permanent right
17 to block the *exact* trademark. It would not sell them the right to block other
18 closely-related names as necessary to prevent typo-squatting or similar
19 misconduct. The ICM policies also precluded permanent blocking even of exact
20 names if included in a longer domain-name string. For example, ICM would have
21 permitted Mercedes Benz to purchase the right to permanently block
22 “MercedesBenz.XXX” but not to purchase the right to permanently block
23 “sexinaMercedesBenz.XXX.”

24 67. ICM’s policies also impose other unreasonable and anti-competitive
25 restrictions on the purchase of permanent blocking. More specifically:

26 (a) Members of the adult entertainment community may not purchase
27 permanent blocking.

1 (b) Permanent blocking is limited to registered trademark owners, and
2 does not extend to owners of other name rights (e.g., domain names used in other
3 TLDs).

4 (c) Permanent blocking is not available to those with pending but not yet
5 final trademark registrations.

6 (d) Companies purchasing affirmative registrations for operating active
7 .XXX websites under certain names may not purchase permanent blocking of other
8 names.

9 (d) ICM limited the sale of permanent blocking rights to an
10 approximately two month, pre-operation "Sunrise" period, now expired. Thus, no
11 one can any longer purchase permanent blocking.

12 (f) Any party purchasing a defensive or blocking registration of a name
13 in .XXX is permanently barred from translating that name into an affirmative
14 registration for use as an operating website displaying content.

15 68. A name holder precluded by ICM policies from buying required
16 permanent blocking services has few and inadequate options. Name holders
17 unable to buy permanent blocking services for a one-time fee may instead purchase
18 annual registrations, for an annual fee, of names or near names. These annual
19 registrations can be used defensively in either of two ways. First, the owner may
20 create a standard "non-resolving" message that will be received by those who
21 attempt to access the name in .XXX. For example, Mercedes Benz could annually
22 register its name and then configure its "MercedesBenz.xxx" web address so that
23 those trying to reach that site would receive a "no such page" or similar message.
24 Second, certain owners could create a "redirection" site that automatically redirects
25 those who reach the .XXX site to an active site in another TLD. For example,
26 YouPorn could configure its site so that any web user seeking "YouPorn.xxx"
27 would instead be redirected to the pre-existing and active "YouPorn.com" site.

1 However, only members of the adult entertainment community may purchase such
2 a redirecting site.

3 69. ICM currently charges registrars \$60 in recurring annual fees for such
4 “non-resolving” or “redirecting” defensive registrations. Thus, in about three
5 years, these annual fees will in the aggregate be more than the already excessive
6 one-time approximately \$150 permanent blocking fee charged by ICM. That is
7 true even if ICM does not in future years raise the annual registration fees, which
8 ICM reserves the right to do. ICM has in fact limited sales of permanent blocking
9 services with the very intent of forcing name owners to purchase more expensive
10 annual registrations for defensive purposes. The annual fees charged by ICM for
11 defensive registrations are many times higher than those which would exist in a
12 competitive market and thus harm competition and restrain trade. Moreover, those
13 purchasing annual registrations, even for certain defensive purposes, are forced by
14 ICM to agree to comply with policies of IFFOR, the allegedly independent
15 “sponsoring” organization for the .XXX TLD. Many registrants do not wish to be
16 subject to IFFOR policies.

17 70. Those name holders not willing or able to purchase annual
18 registrations for defensive purposes may need to engage in costly legal efforts to
19 prevent improper exploitation of their names in .XXX.

20 71. Holders of valuable names may need to defensively register or
21 permanently block many dozens of near-name variants. Businesses owning
22 multiple trademarks or domain names may need to purchase many hundreds or
23 thousands of permanent blocking rights or other defensive registrations. The
24 charges imposed by ICM for permanent blocking services and other defensive
25 registrations are thus huge and extremely significant in the aggregate. They create
26 a “deadweight” economic loss and cost increase that would not exist but for the
27 .XXX TLD and its anti-competitive registry practices.

28

1 72. By thus unreasonably restricting and pricing the purchase of blocking
2 services or defensive registrations, ICM has created an unjustified and
3 unreasonable restraint on trade and has harmed competition.

4 73. The huge problem and expense posed by the need for defensive
5 registrations in .XXX imposes unreasonable “deadweight” economic and market
6 costs and burdens exceeding any perceived benefit of the TLD. The establishment
7 of the XXX TLD is therefore alone anti-competitive and in restraint of trade. In
8 fact, ICM sought approval of the .XXX TLD in no small part to extract monopoly
9 profits from otherwise unnecessary defensive registrations. Stuart Lawley, the
10 Chairman and Chief Executive Officer of ICM, has expressly recognized that he
11 expects most businesses registering in .XXX to already have operating websites
12 showing the same content and under the same Second Level Domain name, but in
13 another TLD. This confirms that Lawley expects most registrations in .XXX to be
14 defensive (and thus unnecessary but for .XXX). Also, other sTLDs do not sell
15 permanent “blocking” registrations to those who are not part of the sponsored
16 community. That .XXX sells such services underscores that .XXX is designed to
17 create and, then exploit in an anti-competitive manner, a unique need for defensive
18 registrations.

19 74. Numerous businesses have legitimately complained about the .XXX
20 defensive registration practices. For example:

21 (a) Hustler President Michael Klein has stated: “[I]t appears that
22 the .XXX TLD will do nothing but drive up costs to the adult community and will
23 force us to fight infringement on yet another front.... [N]or will...we be shaken
24 down by ICM.” Quoted in *xBiz* (July 12, 2011) at [http://www.xbiz.com/news/
25 136179](http://www.xbiz.com/news/136179).

26 (b) “Porn and mainstream businesses alike complain they are being forced
27 to buy domain names they don’t want, don’t need and won’t use – and compare the
28 process to a hold-up. ... ‘Many feel they’re being blackmailed to protect their

1 brands,' said Kristina Rosette, a trademark lawyer at the law firm Covington &
2 Burlington." Quoted in *Reuters* (August 15, 2011), "Businesses in U.S. Complain of
3 .xxx Shakedown," at [http://www.reuters.com/article/2011/08/15/us-internet-xxx-](http://www.reuters.com/article/2011/08/15/us-internet-xxx-idUSTRE77E5W920110815)
4 [idUSTRE77E5W920110815](http://www.reuters.com/article/2011/08/15/us-internet-xxx-idUSTRE77E5W920110815).

5 (c) "What's bugging many businesses about the new porn domain is that
6 they're being forced to cough up \$200 or so to protect their brands from being
7 exploited by smut peddlers. In fact, initial returns in the UK indicate that four of
8 five businesses that have pre-registered for the XXX domain have no relationship to
9 the porn industry. Furthermore, ICM, which administers the domain, told Reuters
10 that [it received] 900,000 'expressions of interest' from companies who want to pre-
11 register their trademarks to block porn purveyors from using the brands in a XXX
12 domain name Failure to block a domain at this stage of the process can be costly
13 in the long run for a brand. That's because challenging a domain that's been
14 awarded to someone can take months to resolve – months that the brand's image
15 may be tarnished by an association with adult content – and, of course, thousands of
16 dollars in legal fees...." Quoted in *PCWorld* (August 16, 2011), "XXX Pricing Set
17 by GoDaddy: Businesses Bellyache About Domain Extortion" at
18 [http://www.pcworld.com/businesscenter/article/238167/xxx_pricing_set_by_go_dad-](http://www.pcworld.com/businesscenter/article/238167/xxx_pricing_set_by_go_daddy_businesses_bellyache_about_domain_extortion.html)
19 [dy_businesses_bellyache_about_domain_extortion.html](http://www.pcworld.com/businesscenter/article/238167/xxx_pricing_set_by_go_daddy_businesses_bellyache_about_domain_extortion.html).

20 **B. Monopolistic Pricing For Affirmative Registrations**

21 75. ICM has reserved to itself, and sold at above-market, supra-
22 competitive prices, the rights to register in the .XXX TLD for affirmative use
23 particularly desirable so-called "premium names." These sales at above-market
24 prices have harmed competition and unreasonably restrained trade. An ICM press
25 release dated October 6, 2011 noted as follows: "ICM has now sold nine premium
26 .XXX domain names for \$100,000 or more, which is unparalleled in any other
27 domain launch and reports that there are many other similar deals in progress.
28 'Domain names in most other TLDs typically sell for 1-10% of the value of their

1 .com equivalent. The .XXX names are already selling for 30-40% and we are just
2 getting started,' said [ICM Chairman Stuart] Lawley." ICM also announced a
3 \$1.65 million sale for a collection of .XXX domain names, and a \$500,000 sale for
4 a single .XXX domain name. It reported the latter to be "the highest price ever
5 paid for a domain name in any extension pre-launch. This is also the 5th highest
6 sale price of any domain name sold in 2011 and one of the top 30 most expensive
7 domain names sold in the last 3 years"

8 76. ICM is also selling its other affirmative registration services at above-
9 market, supra-competitive prices generating monopolistic profits. ICM is currently
10 charging registrars \$60 annually for the registrations used for affirmative purposes,
11 the same amount it charges for annual defensive registrations. That is ten or more
12 times the annual registration rates for other TLDs used for affirmative registrations
13 of adult content, with insufficient cost justifications for the differences. These
14 excessive charges also harm competition and unreasonably restrain trade.

15 **C. Other Unreasonable Restrictions On The Sale of Registry Services**

16 77. ICM has conditioned the sale of .XXX registry services on
17 registrants' agreement to unreasonable and anti-competitive terms and conditions.
18 For example, ICM has required that all .XXX registrants and those who purchase
19 permanent blocking waive and release certain claims against ICM. ICM has also
20 required that those purchasing certain premium .XXX services agree in exchange
21 to refrain from disparaging ICM or the .XXX TLD. These terms and conditions
22 constitute an unreasonable restraint on trade and harm competition.

23 **D. Harm to Consumers**

24 78. All these anti-competitive practices harm consumers. Businesses
25 which pay higher than competitive prices for .XXX registry services, or who
26 receive lower quality .XXX registry services than would exist in a competitive
27 market, react in a manner that harms consumers. They will either charge
28 consumers higher prices for using websites or other services, offer less desirable

1 websites or other services and experiences, or altogether forego offering websites
2 or other services that they would offer if .XXX registry services were competitive.

4 **VIII. INTERSTATE COMMERCE**

5 79. Plaintiffs are informed and believe that the actions of ICM and
6 ICANN averred above have a substantial effect on both interstate and international
7 commerce because (among other reasons): (a) thousands of permanent blocking
8 services or annual registrations intended for defensive purposes have been
9 purchased in the .XXX TLD by market participants located throughout the fifty
10 United States and in countries throughout the world; (b) the need for such services
11 or registrations has a direct, substantial, and reasonably foreseeable effect on
12 commerce, trade, and competition throughout the fifty United States and in
13 countries throughout the world; and (c) thousands of affirmative registrations have
14 been purchased in the .XXX TLD, by market participants located throughout the
15 fifty United States and in countries throughout the world.

17 **IX. PLAINTIFFS' STANDING AND INJURY**

18 80. Both YouPorn and Digital Playground have extensive domain names
19 and/or websites intended for and associated with adult content. It is necessary to
20 defensively register or permanently block their respective domain names and
21 trademarks in the .XXX TLD in order to protect their business interests and
22 property. They have been unable to do so due to the anti-competitive conduct
23 averred in this Complaint. For example, YouPorn and Digital Playground have
24 been barred by .XXX policies from buying permanent blocking rights, which
25 purchases in any event would purportedly require them to waive legal rights,
26 including their federal antitrust claims asserted in this Complaint. Plaintiffs are
27 informed and believe that, because they have been unable to register in .XXX due
28 to the conduct averred above, they are at imminent risk of incurring loss in the

1 value of and business income from their domain names and web businesses
2 because: (a) the probable registration of similar names by others in .XXX which
3 will cause diversion of business away from Plaintiffs, harm to Plaintiffs' name
4 rights, and loss of Plaintiffs' business income; and (b) to the extent consumers
5 associate the .XXX TLD with adult content, Plaintiffs will lose business and
6 income they could otherwise earn from affirmative registrations in .XXX.

7
8 **FIRST CLAIM FOR RELIEF**

9 **Contract, Combination Or Conspiracy in Restraint of Trade Under Section 1**
10 **Of The Sherman Antitrust Act, 15 U.S.C. § 1**

11 **(.XXX Permanent Blocking And Defensive Registration Market)**

12 81. Plaintiffs incorporate each of the averments set forth above.

13 82. For purposes of this cause of action, and as averred in greater detail in
14 paragraphs 55-58 above, the relevant market is defined as the market for
15 permanent blocking and other defensive registrations in the .XXX TLD.

16 83. For purposes of this cause of action, the relevant geographic market is
17 the United States and the world.

18 84. Plaintiffs are informed and believe that ICM and ICANN conspired
19 and agreed to at least the following anti-competitive practices:

20 (a) Approving the .XXX TLD without competition from any other adult-
21 content TLD, as more particularly averred in paragraph 50 above.

22 (b) Approving ICM as the registry of the .XXX TLD, and approving the
23 ICANN/ICM contract, without permitting any competition for .XXX TLD registry
24 services, as more particularly averred in paragraph 50 above.

25 (c) Entering into terms of the ICM/ICANN contract for .XXX registry
26 services without providing that ICM would be subject to price caps or other
27 limitations restraining ICM from engaging in unreasonable pricing and other
28 practices, as more particularly averred in paragraph 51 above.

1 (d) Permitting ICM to engage in anticompetitive practices in providing
2 permanent blocking and defensive registrations in the .XXX TLD, including (as
3 more particularly averred in, for example, paragraphs 64-74 and 77 above),
4 charging prices for such services that are significantly higher than would exist in a
5 competitive market; limiting such services in a manner that would not exist in a
6 competitive market; and imposing restrictions on such services that would not exist
7 in a competitive market.

8 85. Plaintiffs are informed and believe that by so conspiring and agreeing,
9 ICM and ICANN have engaged in anti-competitive processes, acquired and
10 perpetuated a monopoly, unreasonably restrained trade, and harmed competition in
11 the above-defined geographic and product market, to the detriment of businesses
12 and consumers and in violation of Section 1 of the Sherman Antitrust Act, 15
13 U.S.C. section 1, including because as result of their conduct (and as more
14 particularly averred in paragraphs 47-53, 64-74 and 77 above):

15 (a) The approval of the .XXX TLD has imposed enormous "deadweight"
16 permanent blocking and defensive registration costs unjustified by any consumer
17 or other benefits of the .XXX TLD.

18 (b) Prices in the market for permanent blocking and defensive
19 registrations in the .XXX registry are far above those that would exist in a
20 competitive market.

21 (c) Services in the market for permanent blocking and defensive
22 registrations in the .XXX registry are subject to anti-competitive limitations and
23 restrictions that would not exist in a competitive market.

24 86. Plaintiffs are informed and believed that ICANN and ICM knew and
25 intended that the result of their anti-competitive and illegal actions would be to
26 acquire and perpetuate a monopoly, unreasonably restrain trade, and harm
27 competition, businesses, and consumers, as more particularly averred (for
28 example) in paragraphs 64-75 and 77-78 above.

1 87. Because of the anti-competitive and illegal actions by ICANN and
2 ICM in unreasonable restraint of trade and which harm competition, Plaintiffs are
3 entitled to preliminary and permanent injunctive relief. Such relief should include
4 an order, for example:

5 (a) Enjoining the .XXX TLD altogether;

6 (b) That the .XXX registry contract be openly rebid to introduce
7 competition for .XXX registry services; and/or

8 (c) Imposing reasonable price constraints and service requirements on
9 permanent blocking services and other defensive registrations in the .XXX TLD.

10 88. Under this cause of action, Plaintiffs also are entitled to recovery of
11 their attorneys' fees and costs pursuant to 15 U.S.C. section 15(a).

12
13 **SECOND CLAIM FOR RELIEF**

14 **Monopolization Under Section 2 Of The Sherman Antitrust Act, 15 U.S.C. § 2**
15 **(.XXX Permanent Blocking And Defensive Registration Market)**

16 89. Plaintiffs incorporate each of the averments set forth above.

17 90. For purposes of this cause of action, and as averred in greater detail in
18 paragraphs 55-58 above, the relevant market is defined as the market for
19 permanent blocking and other defensive registrations in the .XXX TLD.

20 91. For purposes of this cause of action, the relevant geographic market is
21 the United States and the world.

22 92. Plaintiffs are informed and believe that ICM and ICANN have acted
23 willfully to have ICM acquire and perpetuate a complete monopoly in that
24 geographic and product market, holding one hundred percent of the market share.

25 93. Plaintiffs are informed and believe that ICM and ICANN engaged in
26 at least the following anti-competitive practices in order to acquire and perpetuate
27 that complete monopoly:

1 (a) Approving the .XXX TLD without competition from any other adult-
2 content TLD, as more particularly averred in paragraph 50 above.

3 (b) Approving ICM as the registry of the .XXX TLD, and approving the
4 ICANN/ICM contract, without permitting any competition for .XXX TLD registry
5 services, as more particularly averred in paragraph 50 above.

6 (c) Entering into terms of the ICM/ICANN contract for .XXX registry
7 services without providing that ICM would be subject to price caps or other
8 limitations restraining ICM from engaging in unreasonable pricing and other
9 practices, as more particularly averred in paragraph 51 above.

10 (d) Permitting ICM to engage in anticompetitive practices in providing
11 permanent blocking and defensive registrations in the .XXX TLD, including (as
12 more particularly averred in, for example, paragraphs 64-74 and 77 above),
13 charging prices for such services that are significantly higher than would exist in a
14 competitive market; limiting such services in a manner that would not exist in a
15 competitive market; and imposing restrictions on such services that would not exist
16 in a competitive market.

17 94. Plaintiffs are also informed and believe that ICM willfully acquired
18 that monopoly through additional predatory acts and practices, including but not
19 limited to those misleading acts and litigation tactics more particularly averred in
20 paragraphs 32-45 above, which pressured and coerced ICANN into permitting
21 ICM to acquire and perpetuate the monopoly.

22 95. Plaintiffs are informed and believe that by willfully acquiring and
23 perpetuating the monopoly, ICM and ICANN have unreasonably restrained trade,
24 and harmed competition in the above-defined geographic and product market, to
25 the detriment of businesses and consumers and in violation of Section 2 of the
26 Sherman Antitrust Act, 15 U.S.C. section 2, including because as result of their
27 conduct (and as more particularly averred in paragraphs 47-52, 61-72 and 75-76
28 above):

1 (a) The approval of the .XXX TLD has imposed enormous “deadweight”
2 permanent blocking and defensive registration costs unjustified by any consumer
3 or other benefits of the .XXX TLD.

4 (b) Prices in the market for permanent blocking and defensive
5 registrations in the .XXX registry are far above those that would exist in a
6 competitive market.

7 (c) Services in the market for permanent blocking and defensive
8 registrations in the .XXX registry are subject to anti-competitive limitations and
9 restrictions that would not exist in a competitive market.

10 96. Plaintiffs are informed and believed that ICANN and ICM knew and
11 intended that the result of their anti-competitive and illegal actions would be to
12 acquire and perpetuate a monopoly, unreasonably restrain trade, and harm
13 competition, businesses, and consumers, as more particularly averred (for
14 example) in paragraphs 68-71 and 75-76 above.

15 97. Because of the anti-competitive and illegal actions by ICANN and
16 ICM, Plaintiffs are entitled to preliminary and permanent injunctive relief. Such
17 relief should include an order, for example:

18 (a) Enjoining the .XXX TLD altogether;

19 (b) That the .XXX registry contract be openly rebid to introduce
20 competition for .XXX registry services; and/or

21 (c) Imposing reasonable price constraints and service requirements on
22 blocking services and other defensive registrations in the .XXX TLD.

23 98. Under this cause of action, Plaintiffs also are entitled to recovery of
24 their attorneys’ fees and costs pursuant to 15 U.S.C. section 15(a).

1 **THIRD CLAIM FOR RELIEF**

2 **Monopolization And Attempted Monopolization Under Section 2 Of The**
3 **Sherman Antitrust Act, 15 U.S.C. § 2**
4 **(Market For Registration In TLDs Intended For Adult Content)**

5 99. Plaintiffs incorporate each of the averments set forth above.

6 100. For purposes of this cause of action, and as averred in greater detail in
7 paragraphs 59-61 above, the relevant product market is defined as the incipient
8 market for the affirmative registration of domain names in the .XXX TLD and in
9 any other potential future TLDs having names connoting (or intended
10 predominately for) adult content.

11 101. For purposes of this cause of action, the relevant geographic market is
12 the United States and the world.

13 102. Plaintiffs are informed and believe that ICM and ICANN have acted
14 willfully to establish (through the affiliation of .XXX with adult content), and then
15 to acquire monopoly power within, a separate geographic and product market for
16 affirmative registrations in TLDs intended for adult content.

17 103. Plaintiffs are informed and believe that ICM and ICANN have a
18 dangerous probability of acquiring monopoly power in that incipient geographic
19 and product market.

20 104. Plaintiffs are informed and believe that ICM and ICANN have
21 engaged in at least the following anti-competitive practices in order to attempt to
22 acquire monopoly power in that incipient separate geographic and product market:

23 (a) Approving the .XXX TLD without competition from any other adult-
24 content TLD, as more particularly averred in paragraph 50 above.

25 (b) Approving ICM as the registry of the .XXX TLD, and approving the
26 ICANN/ICM contract, without permitting any competition for .XXX TLD registry
27 services, as more particularly averred in paragraph 50 above.

1 (c) Entering into terms of the ICM/ICANN contract for .XXX registry
2 services without providing that ICM would be subject to price caps or other
3 limitations restraining ICM from engaging in unreasonable pricing and other
4 practices, as more particularly averred in paragraph 51 above.

5 (d) Encouraging and/or exploiting impediments to other competitors in
6 any market for TLDs intended for adult content, including by entering into a
7 contract provision which may preclude ICANN from approving such TLDs and
8 exploiting and by encouraging or exploiting the other factors averred in paragraphs
9 60-61 above which prevent competition in any such market.

10 (e) Permitting ICM to engage in anticompetitive practices in providing
11 affirmative registration services in the .XXX TLD, including (as more particularly
12 averred in, for example, paragraphs 75-76 above), charging prices for such services
13 that are significantly higher than would exist in a competitive market, and
14 imposing restrictions on such services that would not exist in a competitive market.

15 105. Plaintiffs are also informed and believe that ICM has further
16 attempted to willfully acquire such monopoly power in the above-described
17 incipient product and geographic market through additional predatory acts and
18 practices, including but not limited to those misleading acts and litigation tactics
19 more particularly averred in paragraphs 32-45 above, which pressured and coerced
20 ICANN into participating in the efforts to acquire monopoly power.

21 106. Plaintiffs are informed and believe that by attempting to willfully
22 acquire monopoly power in the above-described incipient product and geographic
23 market, ICM and ICANN may already have, and if they successfully acquire
24 monopoly power ICM and ICANN will have, unreasonably restrained trade, and
25 harmed competition, to the detriment of businesses and consumers and in violation
26 of Section 2 of the Sherman Antitrust Act, 15 U.S.C. section 2, including because
27 as result of their conduct:

1 (a) Prices for affirmative registrations in that market are or will become
2 higher than those that would exist in a competitive market, as more particularly
3 averred in part in paragraphs 75-76 above.

4 (b) Services for affirmative registrations in that market are or will become
5 subject to anti-competitive limitations and restrictions that would not exist in a
6 competitive market, as more particularly averred in part in paragraph 77 above.

7 (c) Such conduct has harmed or will harm consumers as more particularly
8 averred in part in paragraph 78 above.

9 107. Plaintiffs are informed and believed that ICANN and ICM knew and
10 intend that the result of their anti-competitive and illegal actions would or will be
11 to acquire and perpetuate monopoly power, unreasonably restrain trade, and harm
12 competition, businesses, and consumers, as more particularly averred above.

13 108. Because of the anti-competitive and illegal actions by ICANN and
14 ICM, Plaintiffs are entitled to preliminary and permanent injunctive relief. Such
15 relief should include an order, for example:

16 (a) Enjoining the .XXX TLD altogether;

17 (b) That the .XXX registry contract be rebid to introduce competition;
18 and/or

19 (c) Imposing reasonable price constraints and service requirements on
20 affirmative registrations in the .XXX TLD.

21 109. Under this cause of action, Plaintiffs also are entitled to recovery of
22 their attorneys' fees and costs pursuant to 15 U.S.C. section 15(a).

1 **FOURTH CLAIM FOR RELIEF**

2 **Unlawful Trust In Restraint Of Trade Under The Cartwright Act, Cal. Bus. &**
3 **Prof. Code §§ 16720, 16722, 16726**

4 **(.XXX Permanent Blocking And Defensive Registration Market)**

5 110. Plaintiffs incorporate each of the averments set forth above.

6 111. For purposes of this cause of action, and as averred in greater detail in
7 paragraphs 55-58 above, the relevant market is defined as the market for
8 permanent blocking and other defensive registrations in the .XXX TLD.

9 112. For purposes of this cause of action, the relevant geographic market is
10 the United States and the world.

11 113. Plaintiffs are informed and believe that the conspiracies, agreements,
12 and monopolization activities described in paragraphs 83-86 and 92-95 above
13 constitute an illegal trust and unreasonable restraint of trade in that geographic and
14 product market, in violation of the Cartwright Act, sections 16720, 16722, and
15 16726 of the California Business and Professions Code.

16 114. Because of the anti-competitive and illegal actions by ICANN and
17 ICM, Plaintiffs are entitled to preliminary and permanent injunctive relief. Such
18 relief should include an order, for example:

19 (a) Enjoining the .XXX TLD altogether;

20 (b) That the .XXX registry contract be openly rebid to introduce
21 competition for .XXX registry services; and/or

22 (c) Imposing reasonable price constraints and service requirements on
23 blocking services and other defensive registrations in the .XXX TLD

24 115. Under this cause of action, Plaintiffs also are entitled to recovery of
25 their attorneys' fees and costs pursuant to California Business and Professions
26 Code section 16750(a).

1 **FIFTH CLAIM FOR RELIEF**

2 **Unlawful Trust In Restraint Of Trade Under Cartwright Act**
3 **(Market For Registration In TLDs Intended For Adult Content)**

4 116. Plaintiffs incorporate each of the averments set forth above.

5 117. For purposes of this cause of action, and as averred in greater detail in
6 paragraphs 59-61 above, the relevant product market is defined as the incipient
7 market for the affirmative registration of domain names in the .XXX TLD and in
8 any other potential future TLDs having names connoting (or intended
9 predominately for) adult content.

10 118. For purposes of this cause of action, the relevant geographic market is
11 the United States and the world.

12 119. Plaintiffs are informed and believe that the conspiracies, agreements,
13 and monopolization activities described in paragraphs 102-107 above constitute an
14 illegal trust and unreasonable restraint of trade in that incipient geographic and
15 product market, in violation of the Cartwright Act, sections 16720, 16722, and
16 16726 of the California Business and Professions Code.

17 120. Because of the anti-competitive and illegal actions by ICANN and
18 ICM, Plaintiffs are entitled to preliminary and permanent injunctive relief. Such
19 relief should include an order, for example:

20 (a) Enjoining the .XXX TLD altogether;

21 (b) That the .XXX registry contract be rebid to introduce competition;
22 and/or

23 (c) Imposing reasonable price constraints and service requirements on
24 affirmative registrations in the .XXX TLD.

25 121. Under this cause of action, Plaintiffs also are entitled to recovery of
26 their attorneys' fees and costs pursuant to California Business and Professions
27 Code section 16750(a).

1 **SIXTH CLAIM FOR RELIEF**

2 **UNFAIR COMPETITION UNDER CALIFORNIA STATUTORY LAW**
3 **(CALIFORNIA BUS. AND PROF. CODE §§ 17200 AND 17203)**

4 122. Plaintiffs incorporate each of the averments set forth above.

5 123. Defendants' conduct in violation of the Sherman Act and Cartwright
6 Act as averred above constitutes "illegal" conduct and thus unfair competition
7 within the meaning of California Business and Professions Code section 17203.

8 124. Defendants' conduct as averred above constitutes "unfair" conduct
9 and thus unfair competition within the meaning of California Business and
10 Professions Code section 17203.

11 125. ICM's conduct in misleading ICANN as averred in paragraphs 32-45
12 above constitutes "fraudulent" conduct and thus unfair competition within the
13 meaning of California Business and Professions Code section 17203.

14 126. As the result of Defendants' acts of unfair competition, Plaintiffs are
15 entitled to injunctive relief as more particularly averred in paragraphs 87 and 108
16 above.


17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for relief as follows:

- 19 1. For preliminary and permanent injunctive relief as more particularly
20 averred above;
21 2. For their costs and attorneys' fees; and
22 3. For such other and further relief as the Court deems just and proper.

23 Dated: November 15, 2011

24 THOMAS P. LAMBERT
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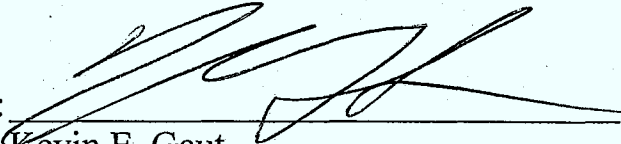
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DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all issues so triable by right.

Dated: November 15, 2011

THOMAS P. LAMBERT
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