

**FILED**

AUG 27 2003

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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4 **UNITED STATES DISTRICT COURT**  
5 **NORTHERN DISTRICT OF CALIFORNIA**  
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8 PHILIP R. McNEIL,  
9 Plaintiff,

v.

No. C 02-4534 MHP

10 VERISIGN INC., ICANN ("INTERNET CORP.  
11 FOR ASSIGNED NAMES AND NUMBERS"), and  
12 THE STANLEY WORKS

**MEMORANDUM AND ORDER**  
**Re: Defendants' Motions to**  
**Dismiss**

13 Defendants.  
14 \_\_\_\_\_ /

15 Plaintiff Philip McNeil brought this action against Stanley Works ("Stanley"), Internet  
16 Corporation for Assigned Names and Numbers ("ICANN") and Verisign, Inc., alleging that  
17 ICANN's substantive and procedural rules regarding the transfer of several Internet domain names  
18 from McNeil's name to Stanley's wrongfully deprived McNeil of those domain names, abridged his  
19 First Amendment right to free speech, and thereby warranted declaratory and injunctive relief. Now  
20 before the court are motions to dismiss by defendants ICANN, Stanley Works, and Verisign. Having  
21 considered the arguments of the parties, and for the reasons set forth below, this court rules as  
22 follows.

**BACKGROUND**<sup>1</sup>

23 Plaintiff, a disgruntled former distributor of Stanley's Mac Tools division in Canada, operates  
24 a website criticizing The Stanley Works organization ("Stanley"). The website contains information  
25 regarding pending lawsuits, jury verdicts, and damages against Stanley. In response to Stanley's  
26 refusal to arbitrate issues related to plaintiff's distributorship, plaintiff purchased several U.S.-based  
27 Internet domains to disseminate an anti-Stanley message. He registered these domains with San  
28 Francisco-based Registrars.com, which was subsequently purchased by defendant Verisign.

1 In 2000, Stanley initiated a proceeding under ICANN's Uniform Domain Name Dispute  
2 Resolution Policy ("UDRP"),<sup>2</sup> in an effort to force plaintiff to relinquish two of his domains:  
3 <www.stanleyworks.net> and <www.thestanleyworks.net>. After Stanley prevailed in the  
4 proceedings, the UDRP arbitrator ordered the names transferred from McNeil's name to Stanley's.  
5 Registrars.com complied with this order immediately.<sup>3</sup>

6 Plaintiff appealed to this court, naming Stanley as the sole defendant. This court dismissed  
7 the appeal on grounds of *forum non conveniens*, noting that McNeil at the time was a Canadian  
8 citizen engaged in related litigation with Stanley in Canada. McNeil v. Stanley Works, No. C 00-  
9 1509 (July 24, 2000) (Patel, J.). The dismissal was affirmed by the Ninth Circuit. McNeil v. Stanley  
10 Works, 33 Fed. Appx. 322 (9th Cir. 2002). While the case was on appeal to the Ninth Circuit,  
11 Stanley allowed its registrations of the relevant domain names to lapse, one of which plaintiff re-  
12 registered in his own name. Stanley has threatened to file another proceeding to reacquire that  
13 domain name, but has not yet done so. Stanley did, however, renew a separate domain proceeding  
14 against plaintiff in 2002, through which it obtained four more of plaintiff's anti-Stanley domains:  
15 <www.stanley-proto.com>, <www.stanley-husky.com>, <www.stanley-hardware.com>, and  
16 <www.stanley-tools.com>.

17 Plaintiff's appeal of this decision in the instant action and the appeal of the previous UDRP  
18 proceeding in 2000 are governed by ICANN Rules and Policy. Every accredited registrar must  
19 incorporate ICANN's rules into its contracts with registrants. Rule 3(b)(xiii) states that appeals of  
20 UDRP arbitrations may be made to any court of competent jurisdiction, but in order to stay the  
21 transfer of lost domain names, the party adversely affected must appeal in a court of "mutual  
22 jurisdiction." Plaintiff's contract with Verisign specified the Northern District of California as that  
23 jurisdiction. Verisign, in a letter of September 2002, advised plaintiff that he should file suit in San  
24 Francisco if he wished to prevent the transfer of his domain names to Stanley.

25 Plaintiff filed the instant action for declaratory and injunctive relief in order to clarify his  
26 rights under ICANN's provisions, the legality of the provisions, and his rights, if any, to the domain  
27 names at issue.

28

1 LEGAL STANDARD

2 I. Motion to Dismiss for Lack of Subject Matter Jurisdiction

3 A party may challenge the court’s jurisdiction over the subject matter of the complaint under  
4 Federal Rule of Civil Procedure 12(b)(1). A complaint will be dismissed if, looking at the complaint  
5 as a whole, it appears to lack jurisdiction either “facially” or “factually.” See Thornhill Publ’g Co. v.  
6 General Tel. & Elec. Corp., 594 F.2d 730, 733 (9th Cir. 1979). The burden to show jurisdiction lies  
7 with plaintiff. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994) (“It is to  
8 be presumed that a cause lies outside this [court’s] limited jurisdiction, and the burden of  
9 establishing the contrary rests upon the party asserting jurisdiction”) (citations omitted).

10 II. Motion to Dismiss for Failure to State a Claim

11 A motion to dismiss for failure to state a claim should be denied under Federal Rule of Civil  
12 Procedure 12(b)(6) “unless it appears beyond doubt that plaintiff can prove no set of facts in support  
13 of her claim which would entitle her to relief.” Lewis v. Telephone Employees Credit Union, 87  
14 F.3d 1537, 1545 (9th Cir. 1996) (citation omitted). “All allegations of material fact are taken as true  
15 and construed in the light most favorable to the nonmoving party.” Cahill v. Liberty Mut. Ins. Co.,  
16 80 F.3d 336, 337–38 (9th Cir. 1996) (citation omitted). A *pro se* complaint, “however inartfully  
17 pleaded,” is held to “less stringent standards than formal pleadings drafted by lawyers,” and can only  
18 be dismissed for failure to state a claim if it appears “beyond doubt that the plaintiff can prove no set  
19 of facts in support of his claim which would entitle him to relief.” Klinge v. Eikenberry, 849 F.2d  
20 409, 413 (9th Cir. 1988)(quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)).<sup>4</sup>

21 DISCUSSION

22 I. Verisign’s Motion to Dismiss

23 Plaintiff requests an injunction prohibiting Verisign from transferring any of the disputed  
24 domain names until a final adjudication has been reached.<sup>5</sup> In order to obtain an injunction, plaintiff  
25 must state a legal claim which would warrant such relief. See Audette v. Int’l Longshoremen’s and  
26 Warehousemen’s Union, 195 F.3d 1107, 1111 n.3 (9th Cir. 1999); Shamsian v. Atlantic Richfield  
27 Co., 107 Cal. App. 4th 967, 984–85 (2d Dist. 2003) (noting that declarative and injunctive relief do  
28 not provide causes of action in themselves).

1 Plaintiff's only connection with Verisign is a contract for the registration of certain domain  
2 names. His allegation that Verisign transferred the domain names before it was permitted to do so  
3 under ICANN rules amounts to an allegation of breach of that contract. To state a claim for breach  
4 of contract, plaintiff must demonstrate (1) a contract, (2) plaintiff's performance or excuse for  
5 nonperformance, (3) defendant's breach, and (4) damage to plaintiff. Reichert v. General. Ins. Co.,  
6 68 Cal. 2d 822, 830 (1968); accord Amelco Elec. v. City of Thousand Oaks, 27 Cal. 4th 228, 230  
7 (2002).

8 Plaintiff alleges that Verisign transferred the disputed domain names while his timely appeal  
9 of the UDRP proceeding to this court was still pending, in violation of the terms of their contract as  
10 created by ICANN. Compl. ¶ 32. The relevant section of the UDRP, incorporated into plaintiff's  
11 contract with Verisign, states the following:

12 If an Administrative Panel decides that your domain name registration  
13 should be canceled or transferred, we will wait ten (10) business days (as  
14 observed in the location of our principal office) after we are informed by the  
15 applicable Provider of the Administrative Panel's decision before  
16 implementing that decision . . . If we receive such documentation within the  
17 ten (10) business day period, we will not implement the Administrative  
18 Panel's decision, and we will take no further action, until we receive (i)  
19 evidence satisfactory to us of a resolution between the parties; (ii) evidence  
20 satisfactory to us that your lawsuit has been dismissed or withdrawn; or (iii)  
21 a copy of an order from such court dismissing your lawsuit or ordering that  
22 you do not have the right to continue to use your domain name.

23 Rule 3(b)(xiii). [The complaint shall] [s]tate that Complainant will submit,  
24 with respect to any challenges to a decision in the administrative proceeding  
25 canceling or transferring the domain name, to the jurisdiction of the courts in  
26 at least one specified Mutual Jurisdiction.<sup>6</sup>

27 UDRP ¶ 4(k), Hornak Dec., Exh. 1 ("UDRP"). Taking plaintiff's allegations to be true, Verisign  
28 transferred the domain names to Stanley before the appeal had been resolved, in violation of the  
above rule.<sup>7</sup> Nowhere, however, does plaintiff allege that any damage occurred from that breach,  
which only deprived him of the domain names during the appeal period to this court. Plaintiff's  
causes of action listed in the complaint exclusively concern current ownership of the domain names  
and ICANN's role in determining that ownership, not any damages that may have occurred between  
the UDRP ruling and the dismissal of the case against Stanley by the Ninth Circuit.<sup>8</sup> Compl.  
¶¶ 90-99. Furthermore, the four websites at issue in the instant action currently display plaintiff's  
material. Plaintiff's prospective, speculative allegations of potential harm to these domain names

1 fail to satisfy the damage element of breach of contract. See Reichert, 68 Cal. 2d at 830 (requiring  
2 specific damages to be alleged for a breach of contract claim). While Verisign points to several  
3 limitations of liability clauses in the contract, this court need make no determination as to their  
4 validity or effect. Plaintiff has failed to state a claim for breach of contract and therefore has failed  
5 to state any claim against Verisign.<sup>9</sup>

6 II. ICANN's Motion to Dismiss

7 Plaintiff's claims against ICANN center on ICANN's mandatory contractual provision set  
8 forth in Rule 4(k), which allegedly restricts appeals of UDRP proceedings to fora of "Mutual  
9 Jurisdiction."<sup>10</sup> ICANN requires all accredited registrars to enter into a contract with potential  
10 domain name owners, incorporating the above UDRP rule into their agreement. See also Bord v.  
11 Banco de Chile, 205 F. Supp. 2d 521, 523 (E.D. Va. 2002). Plaintiff alleges that the forum selection  
12 clause designates Northern California as the district in which he must make a timely appeal. This  
13 court already ruled this forum to be inconvenient in the previous action against Stanley, noting that  
14 plaintiff was a Canadian citizen engaged in a parallel case in Canada. McNeil v. The Stanley Works,  
15 No. C-00-1509 MHP (July 24, 2000) (Patel, J.). Plaintiff argues that ICANN's rules have thus  
16 foreclosed his right to litigate on the merits, denying his alleged First Amendment right to free  
17 speech on the Internet, and his contractually guaranteed right to possess the domain names at issue.  
18 Id. ¶¶ 70–72, 83, 85, 94(g), 97.

19 A. Free Speech and Due Process Claims

20 Plaintiff alleges that ICANN mandates rules and policies for registrars and domain name  
21 holders which effectively bar him from exercising his First Amendment right to free speech and  
22 violate his due process rights by denying him access to the federal courts. Compl. ¶¶ 65–78.

23 There are two critical problems with McNeil attempting to assert a First Amendment right.  
24 The First Amendment protects against government action that abridges the rights protected by the  
25 Amendment. Thus, in order to state a claim for violation of the First Amendment, plaintiff must  
26 plead that defendants' conduct constituted action by the federal government and that defendant  
27 caused plaintiff to be deprived of his right to free speech. Single Moms, Inc. v. Montana Power Co.,  
28 331 F.3d 743, 747 (9th Cir. 2003) ("only when the *government* is responsible for plaintiff's

1 complaints are individual constitutional rights implicated”) (emphasis in original); see also Redgrave  
2 v. Boston Symphony Orchestra, 855 F.2d 888, 922 (1st Cir. 1988) (“the first amendment’s free  
3 speech guarantee textually applies to action by the federal government alone”).

4 Secondly, the Supreme Court has repeatedly held that the protections of the rights guaranteed  
5 by the Bill of Rights including the First Amendment extend only to citizens of the United States and  
6 resident aliens. See United States v. Verdugo-Urquidez, 494 U.S. 259, 270-71 (1990)(upholding its  
7 earlier ruling in Kwong Hai Chew v. Colding, 344 U.S. 590, 596-598 & n.5 (1953)( if alien is a  
8 lawful permanent resident of the United States and remains physically present in the United States he  
9 is a person within the protections of the First and Fifth Amendments). American-Arab Anti-  
10 Discrimination Committee, 70 F.3d 1045, 106-64 (9<sup>th</sup> Cir.1995) *vacated on other grounds*, 525 U.S.  
11 471 (1999).

12 The actions of the defendants in this case do not constitute governmental action. They are  
13 not an arm of the government and their conduct does not invoke First Amendment protections.  
14 Furthermore, plaintiff is not a citizen nor a permanent resident of the United States, or at least he has  
15 not so alleged. He resides in Canada from which he launches his broadsides. Although those  
16 broadsides travel into the United States via internet, he does so free of First Amendment protections.  
17 Therefore, he has no standing to assert First Amendment claims and those claims must be rejected.

18 McNeil also challenges the results of the arbitration in this particular case as a violation of his  
19 right to fair use of Stanley’s trademarks, ICANN is not a proper defendant. ICANN did not  
20 participate in the arbitration in which McNeil lost the domain names at issue. The arbitration  
21 proceeding was conducted between Stanley and McNeil pursuant to the contract between McNeil  
22 and Verisign. ICANN’s role in establishing the procedures and standards set forth in the UDRP does  
23 not implicate it in every single dispute over a domain name. See Seven Words LLC v. Network  
24 Solutions, 260 F.3d 1089, 1093 (9th Cir. 2001) (noting district court ruling that ICANN is not a  
25 proper defendant in a dispute over a domain name). McNeil is not without a forum to resolve  
26 grievances about the outcome of arbitration—he may bring a petition to vacate the arbitration  
27 decision alleging that the arbitrator wrongfully awarded the domain names to Stanley.

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1           McNeil does not limit his attack against ICANN to the judgment in the arbitration  
2 proceeding, however, but offers a broad indictment of the entire system of resolving domain name  
3 disputes through the UDRP. McNeil alleges:

4           the current system has no properly authorized or uniformly defined body of law to govern  
5 international venue, jurisdiction or merits determinations, not to mention controversies  
6 involving fundamental civil and free speech rights. The procedures, in effect, impose  
unconstitutional prior restraints and restrictions on the free speech rights of domain name  
registrants such as McNeil.

7 Compl. ¶ 67. Although McNeil casts his claim as a First Amendment issue, his complaint about the  
8 *procedures* mandated by ICANN seem directed at a violation of his due process rights, in that he  
9 allegedly has no forum in which to vindicate his First Amendment rights through an appeal of the  
10 arbitration. See Compl. ¶¶ 70–72. This argument fails for two reasons. As explained above,  
11 McNeil has no First Amendment rights. Also his argument misses the mark because it simply does  
12 not reflect the terms of the UDRP. Even assuming that ICANN can be held legally responsible for  
13 setting terms in the contract between McNeil and Verisign, the forum selection clause McNeil  
14 challenges merely determines where and when an appeal of the UDRP proceedings must be filed  
15 initially if the adversely affected party wishes to stay the transfer of the domain names. UDRP  
16 ¶ 4(k); Rules for Uniform Dispute Resolution Policy (“UDRP Rules”), Rule 3(b)(xiii). Nothing  
17 prevents McNeil from filing suit anywhere in the world to regain the domain names he lost in the  
18 arbitration, nor from pursuing an appeal in an appropriate venue once this court dismissed the action  
19 on *forum non conveniens* grounds. UDRP ¶ 4(k) (“the mandatory administrative proceeding  
20 requirements . . . shall not prevent either you or the complainant from submitting the dispute to a  
21 court of competent jurisdiction for independent resolution”). “[D]ue process requires, at a minimum,  
22 that absent a countervailing state interest of overriding significance, persons forced to settle their  
23 claims of right and duty through the judicial process must be given a meaningful opportunity to be  
24 heard.” Boddie v. Connecticut, 401 U.S. 371, 376 (1971). McNeil fails to indicate how the UDRP  
25 in any way restricts his ability to appeal the arbitrator’s decision to the courts, and therefore fails to  
26 state a claim against ICANN for violating his due process rights via its role in promulgating the  
27 UDRP.

28

1 Plaintiff's purely conclusory allegations that "ICANN and its appointed arbitrators engage in  
2 repeated violations of free speech rights of litigants, including McNeil," Compl. ¶ 58, or that  
3 "ICANN Rules and Policy constitute a prior restraint on free speech and/or violate and abridge  
4 fundamental freedoms for any domain name registrant," are wholly unsupported by any factual  
5 allegations upon which a finding against ICANN might be based. A certain amount of leniency is  
6 given to *pro se* plaintiff's complaints; however, the failure to allege *any* fact upon which this court  
7 could find a violation of plaintiff's rights by ICANN must be considered a failure to state a claim.  
8 Lewis, 87 F.3d at 1545.<sup>11</sup>

9 B. Requests for Declaratory and Injunctive Relief

10 Declaratory and injunctive relief do not provide causes of action in themselves. See Audette  
11 v. Int'l Longshoremen's and Warehousemen's Union, 195 F.3d 1107, 1111 n.3 (9th Cir. 1999);  
12 Shamsian v. Atlantic Richfield Co., 107 Cal. App 4th 967, 984 (2d Dist. 2003). Having failed to  
13 state any claim against ICANN, plaintiff therefore has no cause of action upon which to request  
14 declaratory or injunctive relief. Plaintiff maintains that a declaratory judgment is necessary to  
15 determine "whether ICANN rules and regulations, and ICANN-based decisional law, provide a  
16 constitutionally, procedurally or substantively acceptable basis for adjudicating the rights of litigants  
17 in domain name proceedings." Compl. ¶ 94. However, to support this allegation, he states no claim  
18 upon which this court could find it necessary to clarify his legal relation to ICANN, or resolve any  
19 legal controversy between the parties. See McGraw-Edison Co. v. Preformed Line Products Co.,  
20 362 F.2d 339, 342 (9th Cir. 1966). His vague allegations that ICANN is "unfortunately confused  
21 about the interplay between the Anti-Cybersquatting Protection Act, federal trademark laws  
22 (including "fair use" standards), and the First Amendment, Compl. ¶ 84, does not rise to the level of  
23 a legal injury. See McGraw-Edison, 362 F.2d at 342. This court therefore finds that plaintiff has no  
24 cause of action for declaratory or injunctive relief.

25 III. Stanley's Motions to Dismiss and for Rule 11 Sanctions

26 On July 25, 2000, this court dismissed plaintiff's case against Stanley on the ground of *forum*  
27 *non conveniens*. McNeil v. The Stanley Works, No. C-00-1509 MHP (July 24, 2000) (Patel, J.).  
28 Particularly important in the reasoning behind this decision was the consideration that plaintiff was a



1 Canadian citizen involved in parallel litigation in Canada, which would require Canadian witnesses.  
2 Stanley now moves for dismissal on the grounds of issue preclusion and further moves for Rule 11  
3 sanctions.

4 Collateral estoppel, or issue preclusion, bars the relitigation of issues actually adjudicated in  
5 preceding litigation between the same parties. Pool Water Products v. Olin Corp., 258 F.3d 93, 102  
6 (9th Cir. 2001). The applicability of collateral estoppel is determined by whether the issues involved  
7 are substantially the same in present and prior litigation, whether determinative facts or legal  
8 principles have changed significantly since prior judgment, or whether other circumstances require  
9 exception to the general rule of preclusion. In re Universal Life Church, 128 F.3d 1294, 1299–1300  
10 (9th Cir. 1997). Jurisdictional issues can be barred by collateral estoppel. See N. Georgia Elec.  
11 Membership Corp. v. City of Calhoun, 989 F.2d 432–33 (11th Cir. 1993); Baris v. Sulpico Lines,  
12 Inc., 74 F.3d 567, 571 (5th Cir. 1996) aff'd en banc 101 F.3d 367 (5th Cir. 1996). And while *forum*  
13 *non conveniens* is not a jurisdictional concept per se, analysis of *forum non conveniens* follows that  
14 of venue and jurisdiction in that dismissal on such ground bars relitigation of that particular issue.  
15 Id.; see also 18 Wright Miller and Cooper, Federal Practice and Procedure, § 4434 at 334.

16 The issue of *forum non conveniens* has not changed in any respect between plaintiff's first  
17 complaint and the action now before this court. Nowhere in the instant complaint does plaintiff  
18 allege any new claim against Stanley, nor does he introduce any new evidence that might support a  
19 finding by this court that differs in any way from the initial dismissal based on *forum non*  
20 *conveniens*. In fact, plaintiff concedes that the litigation in Canada—an important factor in this  
21 court's original finding of *forum non conveniens*—has not yet been concluded. Compl. ¶ 80. This  
22 court's finding of *forum non conveniens* was affirmed by the Ninth Circuit in 2000, Stanley Mot.  
23 Dismiss Exh. 4, and plaintiff's attempt to recall the Ninth Circuit's mandate likewise failed.  
24 Id. Exh. 5. Furthermore, plaintiff's claims against defendants Verisign and ICANN are wholly  
25 without merit and add nothing to his action against Stanley. Clearly the issue of *forum non*  
26 *conveniens* has been fully litigated and cannot be repeated in the instant action.

27 Rule 11 requires that claims be “warranted by existing law or by a nonfrivolous argument for  
28 the extension, modification, or reversal of existing law or the establishment of new law.” Frivolous

1 claims are those which are both baseless and conducted without a reasonable or adequate inquiry.  
2 Townsend v. Holman Consulting Corp., 929 F.2d 1328, 1362 (9th Cir. 1990). Plaintiff is fully aware  
3 that the issue of *forum non conveniens* was previously litigated, but has nonetheless brought the  
4 identical action back to this court. Stanley has repeatedly given plaintiff notice as to the possibility  
5 of sanctions in this situation, but plaintiff has maintained Stanley as a defendant.  
6 Stanley Mot. Dismiss and Sanctions; Stanley Reply Mem. Mot. Dismiss and Sanctions. A  
7 reasonable inquiry into the preclusive effects of a finding of *forum non conveniens*, or even a perusal  
8 of Stanley's moving papers, would easily have discovered the frivolousness of plaintiff's complaint.  
9 See Buster v Greisen, 104 F.3d 1186, 1190 (9th Cir. 1997) (finding *res judicata* and collateral  
10 estoppel to be sufficient grounds for imposing Rule 11 sanctions). Plaintiff has wasted Stanley's and  
11 this court's resources by his intransigence. Barring good cause excusing such conduct, this court  
12 will impose appropriate sanctions upon plaintiff and his de facto attorney, James Starnes.

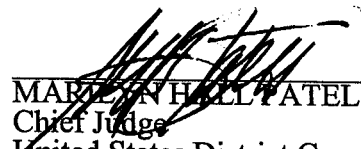
13  
14 CONCLUSION

15 For the reasons set forth above, this court hereby GRANTS Verisign's, ICANN's, and  
16 Stanley Works' motions to dismiss. This court further orders plaintiff McNeil to show cause  
17 ("OSC") within thirty (30) days why he and his attorney, James Starnes, should not be subject to  
18 sanctions under Rule 11. Defendants shall file their responses to the OSC within thirty (30) days of  
19 the filing of plaintiff's response to the OSC.

20  
21 IT IS SO ORDERED.

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23 Date:

August 26, 2003

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MARTIN HALL  
Chief Judge  
United States District Court  
Northern District of California

ENDNOTES

- 1 1. All facts are taken from plaintiff's Complaint unless otherwise noted.
- 2
- 3 2. ICANN is a private, nonprofit corporation responsible for the accreditation of domain name  
4 registrars. Bord v. Banco de Chile, 205 F. Supp. 2d 521, 523 (E.D. Va. 2002); Seven Words LLC v.  
5 Network Solutions, 260 F.3d 1089, 1092 (9th Cir. 2001). The UDRP was created by ICANN to  
6 arbitrate disputes arising out of domain name registration.
- 7 3. Verisign maintains that it has not transferred the domain names at issue and is holding them  
8 pending the instant action. Verisign Mot. Dismiss. 8:11-12.
- 9 4. This court is disturbed at the evidence indicating that McNeil is receiving significant, unreported  
10 legal counsel from James Starnes of Starnes Law Firm, 2 East Bryan Street, Savannah GA.  
11 Schaberg Dec. Exhs A-E. As defendant Stanley has pointed out, "McNeil's pleadings manifestly are  
12 drafted by someone with legal knowledge and skills." Stanley Mot. Dismiss, 6 n.6. Starnes has all  
13 but conceded this fact, sending letters to Stanley explicitly requesting that defendants "not again  
14 attempt to communicate with [his] client," Schaberg Dec. Exh. B, as has McNeil. Comp. ¶ 88  
15 ("[plaintiff] is totally reliant on U.S. counsel for most of his assistance"). Courts have  
16 overwhelmingly condemned the practice of attorneys ghostwriting briefs for litigants who present  
17 themselves to the court as *pro se*. See e.g., Duran v. Carris, 238 F.3d 1268, 1272 (10th Cir. 2001)  
18 (ghostwriting "constitutes a misrepresentation to [the] court by litigant and attorney"); Ricotta v.  
19 California, 4 F. Supp. 2d 961, 987 (S.D. Cal. 1998) ("attorneys cross the line . . . when they gather  
20 and anonymously present legal arguments, with the actual or constructive knowledge that the work  
21 will be presented in some similar form in a motion before the court."). Danger arises "if courts  
22 mistakenly believe that the ghostwritten pleading was drafted without legal assistance, [because]  
23 they might apply an unwarranted degree of leniency to a pleading that was actually drafted with the  
24 assistance of counsel." Duran, 238 F.3d at 1272. Furthermore, attorneys violate the signature  
25 requirements of Rule 11(a), not only evading responsibility for their actions, but also opening  
26 themselves to sanctions under Rule 11(c). Id. at 1271-72.
- 27 5. Plaintiff specifies that this adjudication need not necessarily be a court specified under ICANN's  
28 provisions. Compl. ¶ 97.
6. Mutual Jurisdiction "means a court jurisdiction at the location of either (a) the principal office of  
the Registrar (provided the domain-name holder has submitted in its Registration Agreement to that  
jurisdiction for court adjudication of disputes concerning or arising from the use of the domain  
name) or (b) the domain-name holder's address as shown for the registration of the domain name in  
Registrar's Whois database at the time the complaint is submitted to the provider." ICANN Rules  
for Uniform Domain Name Dispute Resolution Policy.
7. Neither side disputes that plaintiff made a timely appeal to this court after the UDRP finding in  
2000. Compl. ¶ 32; Verisign Mot. Dismiss, 16:10-11.
8. Although the adjudication by the Ninth Circuit on the issue of *forum non conveniens* did not  
address the merits of McNeil's appeal, ICANN rules only require registrars to refrain from  
transferring domain names pending appeal of UDRP proceedings until the appellant's action "has  
been dismissed or withdrawn." UDRP ¶ 4.
9. Nor can plaintiff state a claim for injunctive relief under this theory, because the issue of domain  
name ownership has been resolved by the Ninth Circuit and is therefore moot. See 15 U.S.C. 1114  
(2)(D)(II).
10. See supra note 6.

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11. Furthermore, as explained in note 4 above, plaintiff has had legal assistance as is clear from some of the pleadings filed in this case.

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PHILIP R MCNEIL,

Plaintiff,

v.

VERISIGN, INC,

Defendant.

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Case Number: CV02-04534 MHP

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 28, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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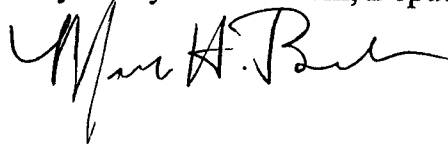
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1050 Connecticut Avenus, N.W.  
Washington, DC 20036

Dated: August 28, 2003

Richard W. Wieking, Clerk  
By: Mary H. Bernstein, Deputy Clerk

A handwritten signature in black ink, appearing to read "Mary H. Bernstein". The signature is written in a cursive style with a large initial "M" and a long horizontal stroke at the end.