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## I. INTRODUCTION

Plaintiff Graham Schreiber has sued the Internet Corporation for Assigned Names and Numbers (“ICANN”) <sup>1</sup> – a California not-for-profit public benefit corporation – and various other defendants for what appears to be an alleged violation of the Anticybersquatting Consumer Protection Act (“ACPA”) relating to the registration of a third-level Internet domain name, “Landcruise.uk.com.” With respect to ICANN, however, Plaintiff has sued the wrong party, in the wrong jurisdiction, under the wrong statute, for alleged injuries ICANN had nothing to do with. Plaintiff’s Complaint against ICANN must therefore be dismissed on several, independent grounds.

*First*, Plaintiff improperly seeks to have this Court exercise personal jurisdiction over ICANN, an entity incorporated and headquartered in California, despite the fact that ICANN has no office in Virginia, does not employ any individuals to work in Virginia, does not solicit any business in Virginia, does not sell any goods or services in Virginia, does not hold any licenses in Virginia, does not have any phone listings or mailing addresses in Virginia, does not directly pay any taxes in Virginia, does not own any real estate in Virginia, does not hold any bank accounts in Virginia and did not commit any acts or omissions in Virginia causing injury to Plaintiff. Plaintiff, who bears the burden of establishing jurisdiction over ICANN, has failed to allege the “minimum contacts” necessary for this Court to assert personal jurisdiction over ICANN. What is more, the evidence submitted by ICANN with this Motion establishes that no

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<sup>1</sup> Defendant ICANN appears in the present action for the limited purpose of filing its motion to dismiss for lack of personal jurisdiction, lack of venue, and failure to state a claim upon which relief may be granted. *Dynamis, Inc. v. Dynamis.com*, 780 F. Supp. 2d 465, 471 (E.D. Va. 2011) (“Federal Rules of Civil Procedure allow a party denying jurisdiction and service to bring a Rule 12(b)(6) challenge without waiving the jurisdictional objection.”); Fed. R. Civ. P. 12(b) (“No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.”) By filing its motion to dismiss, defendant ICANN does not consent to personal jurisdiction in Virginia and reserves all of its jurisdictional objections. *Dynamis*, 780 F. Supp. 2d at 469 (Holding that “[w]ell established law permits a defendant to appear for the limited purpose of challenging personal jurisdiction provided the jurisdictional objection is timely raised.”)

such jurisdiction exists. Plaintiff's Complaint should therefore be dismissed under Federal Rule of Civil Procedure 12(b)(2) for a lack of personal jurisdiction.

*Second*, the claims and facts alleged in Plaintiff's Complaint have nothing to do with this District. The alleged improper use of Plaintiff's domain name occurred outside this District, the alleged harm was suffered outside this District and ICANN has no significant contacts with this District. The Complaint against ICANN should therefore be dismissed for lack of venue under Federal Rule of Civil Procedure 12(b)(3).

*Finally*, Plaintiff fails to allege facts sufficient to establish a claim against ICANN under ACPA, or any other statute. Moreover, the facts alleged by Plaintiff indicate that ICANN had no part in the alleged violation. Accordingly, Plaintiff's entire Complaint against ICANN should be dismissed, under Federal Rule of Civil Procedure 12(b)(6), for a failure to state a claim.

## **II. FACTUAL BACKGROUND**

### **A. Background on ICANN.**

ICANN is a California not-for-profit public benefit corporation with its principal place of business in Los Angeles, California. (Declaration of Akram Atallah in Support of ICANN's Motion to Dismiss ("Atallah Decl."), ¶ 2.) ICANN does not engage in commercial business, but rather administers the Internet's domain name system ("DNS") on behalf of the Internet community, pursuant to a series of agreements with the United States Department of Commerce. (*Id.*, ¶¶ 2-3.) The Internet DNS translates unique sets of numbers that computers associate with websites into commonly known domain names, allowing users to easily find specific locations on the Internet. (*Id.*, ¶ 3.) The end result is that this Court's website can be found at



“vaed.uscourts.gov,” rather than “199.107.20.38,” which is how computers on the network know it.<sup>2</sup>

ICANN fulfills its DNS coordination role in a number of ways. For example, in order to maintain a stable and secure environment in the DNS, ICANN enters into contracts, referred to as “Registry Agreements,” with each “Registry Operator,” who are the companies that manage the Internet’s generic top level domains (“gTLDs”), such as .COM, .NET and .ORG. (*Id.*, ¶ 4.) In addition, ICANN accredits and monitors the companies that act as “Registrars,” who are the companies that assist consumers and businesses in obtaining the right to use second-level domain names in the gTLDs, such as such as google.com or NPR.org. (*Id.*, ¶ 5.) As part of this accreditation process, ICANN enters into a standard Registrar Accreditation Agreement (“RAA”) with each Registrar, which has resulted in a highly competitive registrar marketplace, with over 1000 accredited Registrars. (*Id.*)

Pursuant to its mission, ICANN entered into a Registry Agreement with Defendant Verisign, Inc. (“Verisign”), a Virginia resident and the company that operates the .COM gTLD (*Id.*, ¶ 4.) ICANN also entered into a standard RAA with Defendant Network Solutions, LLC (“NSI”), another Virginia resident and a gTLD domain name Registrar. (*Id.*, ¶ 6.) Both of these contracts, however, were negotiated, executed and have been performed by ICANN in California. (*Id.* at ¶¶ 4, 6) In addition, the Verisign and NSI agreements expressly require all litigation relating to the contracts be resolved in the “jurisdiction and exclusive venue” of a court located in Los Angeles, California. (*Id.*, ¶ 4, Ex. A, ¶ 5.1(b); ¶ 6, Ex. B, ¶ 5.6.)

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<sup>2</sup> ICANN operates a few passive websites on the Internet that provide information regarding its Internet coordination activities, as well as publicly available information about domain name registrants, including the websites at <http://www.icann.org>, <http://www.iana.org>, and <http://www.internic.net>. (Atallah Decl., ¶ 7.) The websites contain a wealth of information about ICANN, about the people who work for ICANN and about the projects that ICANN has undertaken in connection with the Internet. (*Id.*) ICANN, however, does not offer anything for sale on its websites; in fact, ICANN does not sell anything. (*Id.*)

Critical to this Motion, ICANN has no office in Virginia, does not employ any individuals to work in Virginia, does not solicit any business in Virginia, does not sell any goods or services in Virginia (or anywhere else, for that matter), does not hold any licenses in Virginia, does not have any phone listings or mailing addresses in Virginia, does not directly pay any taxes in Virginia, does not own any real estate in Virginia, does not hold any bank accounts in Virginia and did not commit any acts or omissions in Virginia causing injury to Plaintiff. (*Id.*, ¶¶ 8-17.) Although ICANN does lease facilities near Reston, Virginia to house some of its web servers and equipment related to ICANN's role in deploying the Domain Name System Security Extensions ("DNSSEC"), a technology developed to protect against security vulnerabilities and hacking in the DNS, ICANN has no meaningful, continuous or systematic contacts with the State. (*Id.* ¶¶ 8-20.) Moreover, ICANN does not charge any fees, or receive any funds, for its work in deploying DNSSEC, and ICANN's role of securing the DNS through DNSSEC is unrelated to, and separate from, ICANN's contracts and dealings with Registry Operators and gTLD domain name registrars. (*Id.* at ¶ 20)

**B. Plaintiff's Complaint.**

According to his Complaint, Plaintiff Graham Schreiber is a citizen and resident of Canada and Defendant Lorraine Dunabin appears to be a citizen and resident of the United Kingdom. (Complaint ("Compl."), p. 3.) The remaining defendants are corporate entities located throughout the United States and the United Kingdom.

Plaintiff allegedly registered the second-level domain name "Landcruise.com" with Defendant NSI in 1998 and Plaintiff began to use the name in 2006. (Compl. at p. 3.) In what Plaintiff describes as an "'abusive' ~ 'infringing' ~ 'Look-a-Like' registration," Defendant Dunabin registered the third-level domain name "Landcruise.uk.com" with Defendant eNom (a domain name registrar located in Washington State) and the alleged "agent" of Defendant

CentralNic, a domain name registrar located in the United Kingdom. (*Id.*, pp. 4-5.) As a result of Defendant Dunabin's registration, Plaintiff was allegedly forced to purchase additional third-level domain names, such as "Landcruise.eu.com," "Landcruise.cn.com," "Landcruise.de.com," "Landcruise.jpn.com," and "Landcruise.za.com," to avoid "additional Contributory Infringement, from people / businesses, encroaching on [the Plaintiff's] business." (*Id.*, p. 6.)

In the only allegations specifically relating to ICANN, Plaintiff first notes that ICANN does not have a business address or telephone number "in Courts jurisdiction" [sic], (*id.*, pp. 1, 3), he then claims that ICANN "should have terminated the use of this (these) domain name, years ago," (*id.*, p. 9), and he complains that:

**ICANN have been contacted on numerous occasions; and for all intents and purposes, never reply.**

**Generic, form letters, don't qualifies as replies, as I've sent direct inquiries, to individual employees, at ICANN, none of whom speak up and explain the relationship to CentralNic, or why they consistently turn a 'blind eye' on the problems generated.**

(*Id.*, p. 18.)

Although Plaintiff asserts no actual causes of action in his Complaint, the Court's docket defines the case as alleging a cause of action for violation of the "Anticybersquatting consumer protection act," codified at 15 U.S.C. § 1125(d).

### **III. PLAINTIFF'S COMPLAINT AGAINST ICANN SHOULD BE DISMISSED UNDER RULE 12(B)(2) FOR A LACK OF PERSONAL JURISDICTION**

ICANN does not have the necessary "minimum contacts" with Virginia for this Court, or any other court in Virginia, to assert personal jurisdiction over ICANN. To reach this conclusion, the Court must first decide "whether the particular facts and circumstances of the case fall within the reach of Virginia's long-arm statute." *DeSantis v. Hafner Creations, Inc.*, 949 F. Supp. 419, 422 (E.D. Va. 1996). If the long-arm statute is not satisfied, the Court must dismiss the action for a lack of personal jurisdiction. *Id.* at 423. If the long-arm statute is satisfied, then the Court must decide whether "the long-arm statute's reach in the case exceeds its

constitutional grasp” – namely, whether the exercise of personal jurisdiction in the matter is consistent with “traditional notions of fair play and substantial justice” under the Due Process Clause. *Id.*; see also *Pearson v. White Ski Co., Inc.*, 228 F. Supp. 2d 705, 708 (E.D. Va. 2002); accord *Consulting Eng’rs Corp. v. Geometric, Ltd.*, 561 F.3d 273, 277 & n.4 (4th Cir. 2009).

The Due Process Clause requires that “no defendant shall be haled into court unless he has certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Rannoch, Inc. v. Rannoch Corp.*, 52 F. Supp. 2d 681, 685 (E.D. Va. 1999) (citing *Int’l. Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (citations omitted); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). Plaintiff must prove the existence of jurisdiction by “mak[ing] a prima facie showing ... on the basis of the complaint and supporting affidavits.” *Am. Online, Inc. v. Huang*, 106 F. Supp. 2d 848, 853 (E.D. Va. 2000). And Plaintiff bears “the burden ... ultimately to prove the existence of a ground for jurisdiction by a preponderance of the evidence.” *Combs v. Bakker*, 886 F.2d 673, 677 (4th Cir. 1989); accord *Huang*, 106 F. Supp. 2d at 853. Because Plaintiff has failed to carry this burden – and because ICANN has submitted affirmative evidence that Plaintiff cannot – the Complaint must be dismissed.

**A. Virginia’s Long-Arm Statute Does Not Provide A Basis For Exercising Personal Jurisdiction Over ICANN.**

First and foremost, Plaintiff’s Complaint fails to invoke any provision of Virginia’s long-arm statute. More importantly, the statute *cannot* be satisfied because ICANN has not undertaken any of the activities enumerated in the statute that would subject ICANN to jurisdiction in the State. At best, the activities alleged in Plaintiff’s Complaint may – but actually do not – implicate only four provisions of Virginia’s long-arm statute. These four potentially-relevant provisions of the long-arm statute may subject a nonresident defendant to

Virginia jurisdiction if a plaintiff's cause of action "arises from" the defendant's: (1) transacting of business in Virginia; (2) contracting to supply services or things in Virginia; (3) causing a tortious injury by an act or omission occurring in Virginia; or (4) causing a tortious injury in Virginia by an act or omission occurring outside Virginia if he/she regularly does business in Virginia. *See* Va. Code Ann. §§ 8.01-328.1(A)(1), (A)(2), (A)(3), (A)(4).<sup>3</sup> All four of these provisions, however, can be dispatched quickly as failing to provide for personal jurisdiction over ICANN in Virginia.

**1. ICANN has not transacted significant business in Virginia and, in any event, Plaintiff's cause of action does not arise from ICANN's sole contact with Virginia.**

Subsection (A)(1) of Virginia's long-arm statute may subject a non resident defendant to jurisdiction in Virginia if the plaintiff's cause of action arises from the defendant's "[t]ransacting any business" in the State. *See* Va. Code Ann. § 8.01-328.1(A)(1). As set forth above, ICANN has no office in Virginia, ICANN does not employ any individuals to perform work in Virginia, ICANN is not licensed to do business in Virginia, ICANN does not solicit business in Virginia, ICANN does not sell any goods or services in Virginia, ICANN does not have any phone number or mailing address in Virginia, ICANN does not directly pay any taxes in Virginia, ICANN does not have a registered agent for service of process in Virginia, ICANN does not own any real property in Virginia, and ICANN does not hold any bank accounts in Virginia. (Atallah Decl., ¶¶ 8-19.) While ICANN is party to a Registry Agreement with Verisign and an RAA with NSI, two Virginia residents, these contracts do not support personal jurisdiction over ICANN for two reasons.

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<sup>3</sup> The Virginia long-arm statute contains several other inapplicable provisions. *See* Va. Code Ann. § 8.01-328.1(A)(5) (Personal jurisdiction based on a breach of warranty); *Id* § 8.01-328.1(A)(6) (Interest in real property); *Id* § 8.01-328.1(A)(7) (Contracting to insure real property); *Id* § 8.01-328.1(A)(8) (Agreement to pay spousal support); *Id* § 8.01-328.1(A)(9) (Having maintained a matrimonial domicile in Virginia); *Id* § 8.01-328.1(A)(10) (Liabilities for taxes, fines, penalties).

First, these contractual relationships do not fall within the definition of “transacting business” in Virginia. In determining whether a non-resident defendant’s contract with a forum resident satisfies the “transacting business” requirement, courts consider: “(i) where any contracting occurred, and where the negotiations took place, (ii) who initiated the contact, (iii) the extent of the communications, both telephonic and written, between the parties, and (iv) where the obligations of the parties under the contract were to be performed.” *Affinity Memory & Micro, Inc. v. K & Q Enterprises, Inc.*, 20 F. Supp. 2d 948, 952 (E.D. Va. 1998).

Here, these factors are not satisfied. ICANN negotiated and executed these agreements in California. (Atallah Decl., ¶¶ 4, 6.) ICANN has performed its duties and obligations under these contracts in California. (*Id.*) ICANN has no control over where Verisign and NSI choose to do business or base their operations. (*Id.*) Finally, the Verisign and NSI agreements expressly require all litigation relating to the agreements be resolved in the “jurisdiction and exclusive venue” of a court located in Los Angeles, California. (*Id.*; Ex. A, ¶ 5.1(b); Ex. B, ¶ 5.6.) Contracts such as these – as the Eastern District of Virginia has found – do not satisfy the “transacting business” requirement under Virginia’s long-arm statute. In *Affinity Memory*, 20 F. Supp. 2d at 952-53, for example, the court found that the defendant did not transact business in Virginia through a contract with a Virginia resident because the contract was negotiated by the defendant in Minnesota and the defendant performed the obligations under the contract in Minnesota. Likewise, in *Processing Research, Inc. v. Larson*, 686 F. Supp. 119, 121-22 (E.D. Va. 1988), the court ruled that a non-resident defendant did not transact business in Virginia by contracting with a Virginia resident because the defendant negotiated the terms of the contract from his home state and then shipped product into Virginia from his home state. And in *Unidyne Corp. v. Aerolineas Argentinas*, 590 F. Supp. 391, 396 (E.D. Va. 1984), the court found

that “[m]ere telephone conversations, telex messages and letters negotiating a transaction [with a Virginia resident] are insufficient to form a basis for in personam jurisdiction.” Similar to these cases, ICANN did not “transact business” in Virginia by contracting from California with entities who independently chose to operate in Virginia.

Second, Plaintiff’s claim relating to an abusive domain name registration by Defendant Dunabin does not “arise from” ICANN’s agreements with Verisign and NSI, as required by the long-arm statute. *City of Virginia Beach, Va. v. Roanoke River Basin Ass’n*, 776 F.2d 484, 487 (4th Cir. 1985) (Virginia’s long-arm statute “confers no jurisdiction for the assertion of claims that do not arise from the defendant’s acts in the state”). “Virginia’s General Assembly used the phrase ‘arising from’ to require that there be a causal link between the acts relied on for personal jurisdiction and the cause of action asserted...something akin to legal or proximate causation.” *Chedid v. Boardwalk Regency Corp.*, 756 F. Supp. 941, 943 (E.D. Va. 1991); *City of Virginia Beach*, 776 F.2d at 487-88 (“In order for a cause of action to arise from business transacted in Virginia, the activities that support the jurisdictional claim must coincide with those that form the basis of the plaintiff’s substantive claim.”)

There is no such causal link, here. ICANN’s agreements with Verisign and NSI serve ICANN’s technical mission of coordinating the DNS and promoting the stable operation of the DNS. (Attallah Decl., ¶¶ 3, 4, 6.) The agreements do not give ICANN any authority to resolve disputes over domain name registrations. (*Id.*, ¶ 4, Ex. A; ¶ 6, Ex. B.) Plaintiff is not a party or third-party beneficiary to these contracts. (*Id.*) Moreover, the agreements say nothing about the registration of domain names at the third level (*id.*), which is precisely what Plaintiff is complaining about. (Compl., Cover Letter (alleging that the Defendants have infringed “my ‘.com’ at the 3rd level.”); p. 13 (alleging that there “are issues with the 3rd level”); p. 15

(claiming that “the UK.com and others mentioned, should have been revoked, long ago.”); p. 16 (alleging that “the artificial manifestation of cc TLD’s in functioning as an ccNSO, while 100% unsanctioned, should have had ICANN and VeriSign thinking that they themselves were / are being Cybersquatted or diluted [sic].”).) Accordingly, Plaintiff’s claims against ICANN simply do not arise from ICANN’s unrelated agreements with Verisign and NSI and cannot serve as a basis for haling ICANN into a Virginia court.

To be clear, ICANN’s only real contact with Virginia is its lease of a facility near Reston, Virginia to house some of its web servers and the DNSSEC equipment. (Atallah Decl., ¶ 20.) But this contact, by itself, is insufficient to bring ICANN within the ambit of Virginia’s long-arm statute for “transacting business” within the State because this contact is not “significant” enough to confer jurisdiction over ICANN. *Willis v. Clark*, No. 3:05CV325, 2005 U.S. Dist. LEXIS 25877 at \*6 (E.D. Va. Oct. 31, 2005) (ruling that under section (A)(4), the transacting of business “must be significant” in order to confer jurisdiction); *Affinity Memory*, 20 F. Supp. 2d at 952-53 (stating that the act of “transacting business” must be “significant in order to confer jurisdiction”); *Desantis*, 949 F. Supp. at 424 (holding that personal jurisdiction was not satisfied where the defendant conducted a single transaction over the course of one year in Virginia).<sup>4</sup>

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<sup>4</sup> Nor can ICANN be deemed to have “transacted business” in Virginia, or be subject to personal jurisdiction in Virginia, by maintaining a passive Internet website that does little more than make information available to citizens of Virginia (Atallah Decl., ¶ 7), as the Eastern District of Virginia and Fourth Circuit have previously found. In *Atl. Asset Mgmt. Group, Inc. v. Csira*, 328 F. Supp. 2d 614, 618-19 (E.D. Va. 2004), for example, the Eastern District of Virginia ruled that jurisdiction in Virginia was lacking where the defendant’s website did little more than to “disseminate[] information about the company and the services it provides.” In *Graduate Mgmt. Admission Council v. Raju*, 241 F. Supp. 2d 589, 594 (E.D. Va. 2003), the Eastern District found that jurisdiction in Virginia was improper where the defendant generally advertised his infringing products online and shipped his products to two customers in Virginia. And in *Rannoch, Inc. v. The Rannoch Corp.*, 52 F. Supp. 2d 681, 684-86 (E.D. Va. 1999), the Eastern District of Virginia ruled that the placement of “[a] web site on the Internet with knowledge of the possibility that the site might be accessed in Virginia” is not an act directed toward Virginia for purposes of jurisdiction. See also *Economic Solutions, Inc. v. Internet Corp. for Assigned Names and Numbers*, No. 4:00CV1785-DJS, 2001 U.S. Dist. LEXIS 25449, at \*7 (E.D. Mo. Feb. 22, 2001) (ruling that ICANN’s website “does not constitute purposeful contact with Missouri or any particular location.”). Likewise, in *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 715 (4th Cir. 2002), the Fourth Circuit ruled that a state may not obtain jurisdiction “over out-of-state persons who regularly and systematically transmit



Moreover, Plaintiff's substantive claim in no way "arises from" ICANN's facility lease. Quite the opposite, ICANN's role of securing the DNS through DNSSEC is unrelated to, and separate from, the registration of Internet domain names as well as ICANN's agreements with Registry Operators and domain name registrars. (Atallah Decl., ¶ 20.); *City of Virginia Beach*, 776 F.2d at 487-88 (finding that "[t]he difficulty with the city's assertion of jurisdiction under the long-arm statute is its inability to show a cause of action arising from the [defendant's] acts in Virginia."). Accordingly, ICANN's lease of space near Reston does not serve as a basis for asserting personal jurisdiction under Virginia's long-arm statute.

**2. ICANN does not contract to supply services or things in Virginia.**

Under the second possibly-applicable provision, Subsection (A)(2) of Virginia's long-arm statute may subject a nonresident defendant to jurisdiction in Virginia if the plaintiff's cause of action arises from the defendant's "[c]ontracting to supply services or things" in Virginia. *See* Va. Code Ann. § 8.01-328.1(A)(2). But as set forth above, ICANN does not contract to supply any services or goods in Virginia. (Atallah Decl., ¶¶ 8-17.) Indeed, ICANN does not sell anything anywhere. (*Id.*, ¶¶ 2, 7.) As such, this provision of Virginia's long-arm statute does not confer personal jurisdiction over ICANN.

**3. ICANN has not committed an "act or omission" in Virginia.**

Under Subsection (A)(3) of Virginia's long-arm statute, a court in Virginia may assert jurisdiction over a non resident defendant if that party "caus[ed] tortious injury by an act or omission in this Commonwealth." Va. Code Ann. § 8.01-328.1(A)(3). "This provision requires that an out-of-state defendant *be physically present in Virginia* when committing the act or

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(continued...)

electronic signals into the State via the Internet based solely on those transmissions" because "such transmissions do not add up to the quality of contacts necessary for a State to have jurisdiction over the person for all purposes." The conclusion can be no different here.

omission giving rise to the tort at issue.” *DeSantis*, 949 F. Supp. 419, 425-26 (emphasis added); *Alton v. Wang*, 941 F. Supp. 66, 67 (W.D. Va. 1996) (finding that the defendant, who sent e-mail messages and letters from Canada and China to the plaintiff in Virginia, did not commit any acts while physically present in Virginia for purposes of jurisdiction under Section (A)(3)). Plaintiff alleges that ICANN failed to halt Defendant Dunabin’s use of the “Landcruise.uk.com” third-level domain and failed to meaningfully respond to Plaintiff’s inquires on this subject. (Compl., pp. 9, 18.) But Plaintiff has not alleged that ICANN was physically present in Virginia when it allegedly failed to act. Nor could Plaintiff make such allegations given the fact that ICANN has no office and does not employ any individuals to perform work in Virginia. (Atallah Decl., ¶¶ 8-17.) Plaintiff concedes as much by alleging that ICANN does not have a physical address or telephone number “in Courts jurisdiction” [sic]. (Compl, p. 1.) As such, Subsection (A)(3) does not provide for jurisdiction over ICANN in this matter.

**4. ICANN has not caused a tortious injury in Virginia.**

Finally, Subsection (A)(4) of Virginia’s long-arm statute may subject a nonresident defendant to jurisdiction in Virginia where the defendant caused a tortious injury *in Virginia*, but only if that defendant “regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth.” *See* Va. Code Ann. § 8.01-328.1(A)(4). As an initial matter, even if Plaintiff suffered an injury from ICANN’s alleged omissions, that injury was not suffered in Virginia as Plaintiff is located in Canada and the alleged abusive third-level domain name registration took place in the United Kingdom. (Compl., Cover Letter (“The primary person I am suing, lives in the United Kingdom; and won’t likely be attending a physical courtroom, nor will I, *as I am in Canada.*”) (emphasis added); pp. 1, 3.) Moreover, even if Plaintiff were a Virginia resident, this subsection would not be satisfied because ICANN does not conduct

“regular” or “persistent” business in Virginia. (Atallah Decl., ¶¶ 8-17.) Thus, Subsection (A)(4) of Virginia’s long-arm statute does not provide for jurisdiction over ICANN. *DeSantis*, 949 F. Supp. at 426-27 (rejecting use of Subsection (A)(4) where the defendant’s Virginia contacts were not systematic).

In sum, Plaintiff has not alleged facts sufficient to satisfy Virginia’s long-arm statute. Without going any further, this Court has sufficient justification to dismiss Plaintiff’s entire Complaint against ICANN for want of personal jurisdiction under Virginia’s long-arm statute.

**B. Exercise Of Jurisdiction Over ICANN Would Violate Due Process.**

If the Court finds it necessary to go beyond analysis of Virginia’s long-arm statute, the Due Process Clause of the Fourteenth Amendment provides further justification to dismiss Plaintiff’s claims against ICANN. As set forth below, Plaintiff has not alleged sufficient material facts to establish that Virginia jurisdiction over ICANN comports with due process, and the information provided by ICANN with this Motion demonstrates that jurisdiction over ICANN is inconsistent with “traditional notions of fair play and substantial justice” under the Due Process Clause. *Rannoch, Inc.*, 52 F. Supp. 2d at 685 (citations omitted).

“The Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’” *Burger King v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (citations omitted). While personal jurisdiction may, consistent with Due Process, be asserted over a nonresident defendant “by finding specific jurisdiction based on conduct connected to the suit or by finding general jurisdiction,” ICANN is subject to neither form of jurisdiction in Virginia. *See ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711 (4th Cir. 2002); *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 414-15.

**1. ICANN Is Not Subject To General Jurisdiction In Virginia.**

To establish general jurisdiction over ICANN, Plaintiff must demonstrate that ICANN's "activities in the State [] have been 'continuous and systematic.'" *ALS Scan, Inc.*, 293 F.3d at 712 (noting that the standard for establishing general jurisdiction is "a more demanding standard than is necessary for establishing specific jurisdiction.") General jurisdiction is only appropriate where a corporation's continuous activities were "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195, 1199 (4th Cir. 1993) (citations omitted). Single or isolated activities "in a state [o]n the corporation's behalf are not enough to subject it to general jurisdiction." *Id.* (emphasis added). Plaintiff has not, and cannot, satisfy this high standard.

The Fourth Circuit's decision in *Nichols* is instructive. In *Nichols*, the Fourth Circuit refused to find general jurisdiction over the defendant in Maryland even though it: (1) employed 17-21 promotional representatives and two district managers in the forum state; (2) kept automobiles, samples and promotional materials in Maryland; (3) had a one-time contract with a Maryland firm for some of its drug research; (4) held two regional and national meetings in Maryland; (5) purchased some of its supplies in the forum state; and (6) made annual sales ranging from \$9,000,000 to \$13,000,000 in Maryland. *Nichols*, 991 F.2d at 1198, 1200 ("broad constructions of general jurisdiction should be generally disfavored."); *accord Dtex, LLC v. BBVA Bancomer, S.A.*, 405 F. Supp. 2d 639, 644 (D.S.C. 2005), *aff'd sub nom.* 214 F. App'x 286 (4th Cir. 2007).

Here, ICANN's limited activities in Virginia fall well short of those present in *Nichols* and are not "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Nichols*, 991 F.2d at 1199 (*quoting Int'l. Shoe*, 362 U.S. at 318). Unlike the defendant in *Nichols*, who solicited and sold substantial

goods in Maryland, ICANN is not licensed to do business in Virginia, has no sales in Virginia (or elsewhere), does not have a registered agent for service of process in Virginia, pays no direct taxes in Virginia, and has no phone numbers or mailing addresses in Virginia. (Atallah Decl. at ¶¶ 8-17.) These facts, by themselves, militate against the exercise of general jurisdiction. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416 (a lack of business or a business license in the forum weighs against general jurisdiction).

Also, unlike the defendant in *Nichols*, who had more than 20 employees in Maryland, ICANN has no offices in Virginia and does not employ any individuals to perform work in Virginia. (Atallah Decl. at ¶ 7.) While some of ICANN's employees may occasionally conduct maintenance-related tasks on its web servers in Virginia, these tasks are sporadic, not continuous and do not support general jurisdiction. (Atallah Decl. at ¶ 7); *Nichols*, 991 F.2d at 1199.

Nor are ICANN's contacts with Verisign and NSI in Virginia sufficiently "substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *See Nichols*, 991 F.2d at 1199-1200 (ruling that a non-resident's "contract with a Maryland firm for some of its drug research and its two regional and national meetings for district managers in Maryland are not the type of 'continuous corporate operation' that affects the determination of whether general jurisdiction exists.") As discussed above, ICANN's agreements with Verisign and NSI were negotiated, executed and have been performed by ICANN in California. (Atallah Decl. at ¶ 4, 6). Moreover, the agreements require all litigation involving ICANN and the contracts be resolved in the "jurisdiction and exclusive venue" of a court in Los Angeles, California. (*Id.*) Put simply, ICANN did not "purposefully avail" itself of the privilege of doing business in Virginia simply because Verisign and NSI

chose to do business there. *See Burger King*, 471 U.S. at 474; *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Finally, ICANN's lease of a facility in Virginia to house some of its web servers does not constitute "continuous and systematic" contacts "of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Nichols*, 991 F.2d at 1200 (general jurisdiction is not justified even where the defendant kept "promotional materials, samples, and automobiles in Maryland"). A District Court in California reached this precise conclusion on similar facts. In *California Software Inc. v. Reliability Research, Inc.*, 631 F. Supp. 1356, 1360 (C.D. Cal. 1986), the Central District of California ruled that general jurisdiction over the defendant in California was not present – even though the defendant used a California-based computer network and regularly communicated with California users over that network – because the defendant was not licensed to do business in California and maintained no offices, employees, telephone listings, bank accounts, or property within the State.

Accordingly, the Due Process Clause prohibits the exercise of general jurisdiction over ICANN in Virginia. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at 416.

## **2. ICANN Is Not Subject To Specific Jurisdiction In Virginia.**

To exercise specific jurisdiction over ICANN, Plaintiff must demonstrate to this Court that: (1) ICANN "purposefully avail[ed]" itself of the privilege of conducting activities in Virginia; (2) Plaintiff's claims "arose out of" those activities; and (3) the exercise of personal jurisdiction would be "constitutionally reasonable." *ALS Scan, Inc.*, 293 F.3d at 712. This, Plaintiff has not done, and cannot do.

First, ICANN cannot be deemed to have "purposefully availed" itself of the privilege of conducting business in Virginia because it does not conduct business in Virginia. (Atallah Decl. at ¶¶ 8-17). Second, ICANN's contracts with Verisign and NSI and its lease of space near

Reston cannot support a finding of specific jurisdiction because they are completely unrelated to Plaintiff's claim of an "'abusive' ~ 'infringing' ~ 'Look-a-Like' registration" by Defendant Dunabin, as set forth above. (*See, supra*, § A.1.)

At bottom, ICANN has no meaningful contacts with Virginia that would support the exercise of specific personal jurisdiction in this State. Plaintiff's Complaint against ICANN must therefore be dismissed for want of personal jurisdiction.

**IV. PLAINTIFF'S COMPLAINT AGAINST ICANN SHOULD BE DISMISSED UNDER RULE 12(B)(3) FOR IMPROPER VENUE.**

Like jurisdiction, Plaintiff bears the burden of establishing that his claims are brought in the proper judicial district. *See Bartholomew v. Va. Chiropractors Ass'n, Inc.*, 612 F.2d 812, 816 (4th Cir. 1979), *abrogated on other grounds by Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982); *accord Strickland v. Militana*, No. 7:12CV00005, 2012 WL 2202930 (W.D. Va. May 22, 2012) report and recommendation adopted, 2012 WL 2308176 (W.D. Va. June 15, 2012). Plaintiff's allegations fall well short of meeting this burden.

Plaintiff appears to assert that venue is proper in the Eastern District of Virginia because his website "began full trading from Virginia, with web-hosting & email, managed by Network Solutions," which is located in Virginia. (Compl., p. 3.) But the alleged improper registrations of Plaintiff's domain name occurred outside this District (*id.*, pp. 1, 3), the alleged harm was suffered outside this District, (*id.*, Compl. Cover Letter), and, as set forth above, ICANN has no significant contacts with this District. Moreover, the essence of the Plaintiff's dispute is between himself, a Canadian citizen, (*id.*, Compl. Cover Letter), and Defendant Dunabin, an alleged citizen of the United Kingdom. (*Id.*, p. 1, 3.) Accordingly, Plaintiff's claims have nothing to do with this District and should therefore be dismissed for lack of venue under Rule 12(b)(3).

**V. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED UNDER RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM AGAINST ICANN.**

The most generous reading of Plaintiff’s Complaint is that he asserts a single cause of action under the ACPA. To maintain an action against ICANN under ACPA, Plaintiff must allege that: (1) ICANN had a bad faith intent to profit from using Plaintiff’s trademark, and (2) that ICANN registered, trafficked in or used a domain name that is identical or confusingly similar to, or dilutive of, the Plaintiff’s alleged trademark. *See* 15 U.S.C. § 1125(d); *People for Ethical Treatment of Animals v. Doughney*, 263 F.3d 359, 367 (4th Cir. 2001).<sup>5</sup> Plaintiff’s Complaint, however, *fails to allege any facts* that would support any such claim against ICANN and should therefore be dismissed. *Greenhouse v. MCG Capital Corp.*, 392 F.3d 650, 655 (4th Cir. 2004) (stating that a complaint should be dismissed when the plaintiff can prove no set of facts that would entitle him to relief); *accord Phoenix Renovation Corp. v. Rodriguez*, 403 F. Supp. 2d 510, 518 (E.D. Va. 2005).

Plaintiff has not alleged any facts demonstrating that ICANN has used Plaintiff’s trademark in any way. To the contrary, Plaintiff specifically claims that Defendant Dunabin, *not ICANN*, is the one who registered the allegedly offending third-level domain name through eNom and CentralNic, *not ICANN*. (*Id.*, pp. 4-5.) Furthermore, Plaintiff does not (and cannot) allege that ICANN had “a bad faith intent to profit” from the use of Plaintiff’s purported trademark. Quite the opposite, Plaintiff alleges that Defendant Dunabin, *not ICANN*, is the one who knew of Plaintiff’s business and visited plaintiff’s website before registering the allegedly-offending domain name. (*Id.*, p. 4.) Finally, Plaintiff’s apparent allegation that ICANN failed to oversee the actions of other persons and entities, such as Ms. Dunabin, eNom and CentralNic, and failed to respond to the Plaintiff’s inquiries, simply fall short of the wrong proscribed by

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<sup>5</sup> For purposes of this Motion, ICANN’s accepts Plaintiff’s assertion of trademark rights, but it is unclear from his allegation whether he actually enjoys the trademark rights he asserts.



ACPA – a bad faith intent to profit from using Plaintiff’s trademark. *Doughney*, 263 F.3d at 367.

As such, Plaintiffs’ Complaint fails to state a claim under ACPA against ICANN, and the Complaint should be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure.<sup>6</sup>

## VI. CONCLUSION

Plaintiff’s Complaint is deficient on numerous grounds. Principally, however, Plaintiff has sued the wrong defendant in the wrong court – ICANN has no meaningful contacts with Virginia that would support personal jurisdiction in Virginia and Plaintiff cannot maintain a claim under the ACPA, or any other claim, against ICANN. For these reasons, Plaintiff’s entire Complaint should be dismissed with respect to ICANN.

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<sup>6</sup> To the extent Plaintiff is asserting some other type of trademark claim, that claim must be dismissed because the alleged acts of infringement, and the alleged injury, occurred outside of the United States. *Tire Eng’g & Distribution, LLC v. Shandong Linglong Rubber Co., Ltd.*, 682 F.3d 292, 310-11 (4th Cir. 2012) (“the extraterritorial conduct—exclusively foreign sales of infringing tires—has [no] significant effect on U.S. commerce as required by the dictates of the Lanham Act.”); *Love v. Assoc. Newspapers, Ltd.*, 611 F.3d 601, 613 (9th Cir. 2010) (the Lanham Act’s protection of U.S. trademarks does not apply to acts occurring outside the United States, except in extreme circumstances). Indeed, Plaintiff alleges that Defendant Dunabin operates its domain name from a business located in the United Kingdom, (Compl., pp. 3, 4), and that Plaintiff has been injured because he is “essentially blocked from entry ... returning ... to present my branded business name, in the UK, since discovery.” (*Id.*, p. 4.)

Dated: September 10, 2012

Respectfully submitted,

*/s/ Walter D. Kelley, Jr.*

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**PRO SE DISCLAIMER PER ED. V.A. L.R. 7(K)**

1) The pro se party is entitled to file a response opposing the motion and that any such response must be filed within twenty-one (21) days of the date on which the dispositive or partially dispositive motion is filed; and

(2) The Court could dismiss the action on the basis of the moving party's papers if the pro se party does not file a response; and

(3) The pro se party must identify all facts stated by the moving party with which the pro se party disagrees and must set forth the pro se party's version of the facts by offering affidavits (written statements signed before a notary public and under oath) or by filing sworn statements (bearing a certificate that it is signed under penalty of perjury); and

(4) The pro se party is also entitled to file a legal brief in opposition to the one filed by the moving party.

**CERTIFICATE OF SERVICE**

As Plaintiff Graham Schreiber is proceeding pro se in the above entitled action, he is not registered with the ECF system and cannot be served electronically. I certify that on September 10, 2012, a copy of the foregoing was filed electronically with the Clerk of Court using the ECF system, which will send notifications to any ECF participants, and was served via First Class Mail on the following:

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1 Chalder Farm Cottages, Chalder Lane  
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Network Solutions LLC. *DEFENDANT*  
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Verisign Inc. *DEFENDANT*  
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Reston, VA  
USA  
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eNom Inc. *DEFENDANT*  
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Dated: September 10, 2012

/s/ Walter D. Kelley, Jr.

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