

JURISDICTION SUBGROUP ICANN LITIGATION SUMMARY

Name of Case:	Name.Space, Inc. v. ICANN.
Parties: ¹	Name.Space, Inc. (NSI) (Plaintiff); ICANN (Defendant).
Citizenship of Parties:	NSI – a US company organized under State of Delaware law (principal office New York City); ICANN - US/California non-profit.
Court/Venue:	US federal district court in Los Angeles (appeal at US Ninth Circuit Court of Appeal which includes Cal.)
Choice of Law/Governing Law:	Federal claims under US federal law; some state claims were alleged in this US federal court under federal “diversity” jurisdiction and governed by Cal. law.
Date Case Began:	Oct. 10, 2012 (case filed in US district court).
Date Case Ended:	July 31, 2015 (lower court dismissal upheld on appeal).
Causes of Action:	Federal anti-trust (conspiracy), monopoly, and trademark claims; Cal. state claims: violation of Cal. business laws (e.g., tortious interference with contract), unfair competition, common law trademark.
Issues Presented:	Did ICANN violate US competition and trademark laws, and related California statutes and common law, by refusing to delegate NSI gTLDs into the DNS root zone in the 2012 round of new gTLDs? NSI applied to place 118 gTLDs in root in 2000 and believed it would have those pending requests granted in 2012 round. Allegation that \$185,000 fee per application was consciously aimed at attacking NSI’s business model. Allegation that ICANN permitted application for TLDs that NSI was already operating.
Preliminary Relief?:	NSI sought a preliminary injunction
Outcome:	District court dismissed case – decided insufficient factual pleadings to support federal anti-trust and monopoly claims – just conclusory statements. Trademark claims were found to be premature, no controversy existed yet. State law claims also conclusory statements lacking factual detail to support a claim. (Appeals court summarized this in this manner – NSI failed to allege that ICANN either delegated or intended to delegate any TLD that NSI uses.) The Ninth Circuit appeals court affirmed the dismissal (ICANN lists lower court and appeals court decisions in one link.)
Was Jurisdiction Contested? ²	No
Effect on our Work: ³	Unclear if any. However the district court did say this in its dismissal (among other things): “Because whatever monopoly power ICANN possesses was given to it by the United States Department of

¹ Indicate whether each party is Plaintiff (P) or Defendant (D), or other status. Please also list non-party participants, such as Amicus Curiae (AC).

² For example, challenge to venue, challenge to change of venue, challenge to governing law, challenge to application of “choice of law” provision. Please describe the outcome as well as the challenge.

³ Indicate whether the case had or will have an effect on ICANN’s accountability mechanisms or the operation of ICANN’s policies.

	Commerce and not the result of the “willful acquisition” of monopoly power, the Court concludes that no amendment could cure the deficiencies in Plaintiff’s monopolization claim brought pursuant to Section 2 of the Sherman Act.” As we know, this circumstance relating to the Dept. of Commerce has changed.
Key Documents:	N/A