

1 Mary-Christine Sungaila (#156795)
mcsungaila@swlaw.com
2 Deborah S. Mallgrave (#198603)
dmallgrave@swlaw.com
3 Matthew E. Bennett (#268373)
mbennett@swlaw.com
4 SNELL & WILMER LLP
600 Anton Boulevard, Suite 1400
5 Costa Mesa, CA 92626-7689
Telephone: 714-427-7000
6 Facsimile: 714-427-7799

7 Allison M. Lefrak (*pro hac vice* pending)
alefrak@humanrightsusa.org
8 World Organization for Human Rights USA
2029 P Street, N.W., Suite 202
9 Washington, DC 20036
Telephone: 202-296-5702
10 Facsimile: 202-296-5704

11 Attorneys for Plaintiff
ANTHONY N. CHAI

12
13 **UNITED STATES DISTRICT COURT FOR THE**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **CV 11-06988** GHK (CWx)

16 **ANTHONY N. CHAI,**

17 **Plaintiff,**

18 **vs.**

19 **NETFIRMS.COM, INC., a**
20 **Delaware Corporation, and**
21 **DOES 1-9, inclusive,**

22 **Defendants.**

23 **"CASE NO."**

24 **COMPLAINT FOR:**

- 25 1. **NEGLIGENCE;**
- 26 2. **UNFAIR BUSINESS**
- 27 3. **PRACTICES; and**
- 28 **VIOLATION OF**
- CONSTITUTIONAL**
- PRIVACY RIGHTS**

DEMAND FOR JURY TRIAL

29 **SUMMARY**

30 This case lies at the intersection of privacy guarantees, freedom of
31 expression, international human rights law, and the internet.

32 Anthony N. Chai, a naturalized United States citizen from Thailand, brings
33 this action against Netfirms.com, Inc., a provider of web hosting and domain name
34 search and registration services headquartered in Canada with an office in the

FILED
11 AUG 24 PM 2:45
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT CALIF.
LOS ANGELES
BY: _____

1 United States. Mr. Chai posted anonymous comments critical of Thailand *lèse*
2 *majesté* laws on www.manusaya.com,¹ a forum for users to anonymously post a
3 range of articles and comments about politics in Thailand, which was hosted by
4 defendant Netfirms.com.

5 As the host of Manusaya, Netfirms.com had access to Internet Protocol (IP)²
6 information and email addresses for all of the users who posted articles or
7 comments on the website.

8 Thailand's *lèse majesté* laws, contained in Article 112 of Thailand's Criminal
9 Code, provide in pertinent part: "Whoever defames, insults or threatens the King,
10 Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of
11 three to fifteen years." *Lèse majesté* laws are enforced by the National Intelligence
12 Agency, the Ministry of Information and Communication Technology, and the
13 Bureau of High Tech Crimes within the Department of Special Investigations
14 ("DSI"). In December 2003, the Information and Communications Technology
15 Ministry set up a Cyber Inspector Team to monitor and ban websites featuring
16 pornography and other content the government determined to be inappropriate,
17 including content subject to *lèse majesté* laws.

18 *Lèse majesté* laws have been enforced with alarming frequency over the past
19 several years. Thai-based media routinely self-censor coverage of the royal family,
20 but the Internet has opened a new forum. Thai authorities have responded by trying
21 to block thousands of websites considered subversive, arguing that protection of the
22 monarchy's reputation is of the utmost importance. Often those charged with *lèse*
23

24 ¹ Manusaya is a Thai word that means "human." The tagline for the site, translated into
25 English, was "For Democracy, For Human Rights, in the Land of the Free." A note at the
26 top of the site's home page said (in Thai), "Please note: This website is dedicated to those
27 who fight for full democracy, human rights, in the land of the free. Here, we have no
28 class system, racism, or caste. We are world human beings, world citizens. We are equal.
We value equal rights and equal liberty. We oppose all forms of violence and all kinds of
terrorism being waged around the world."

² An IP address is a numerical label assigned to each device (e.g., computer, printer)
participating in a computer network. An IP address serves two principal functions: host
or network interface identification and location addressing.

1 *majesté* offenses are denied bail and remain in prison for several months awaiting
2 trial. Particularly harsh punishments have been delivered by the court in several
3 instances, including a sentence of 18 years' imprisonment.

4 In the recent United Nations Human Rights Committee General Comment
5 No. 34, the Human Rights Committee specifically expressed concern over *lèse*
6 *majesté* laws as a violation of freedom of expression.³ *Lèse majesté* provisions
7 directly contradict fundamental principles of international law, including the right
8 to freedom of expression, the right to privacy, and the right to due process. By June
9 2005, Information, Communication, and Technology (ICT) companies in the
10 United States and elsewhere around the world were well aware of the dangers posed
11 to dissidents in many parts of the world and the consequent obligations those
12 dangers put upon web hosting companies to use due diligence when responding to
13 law enforcement requests for private information that could identify critics and
14 human rights defenders.⁴

15 On June 6, 2005, at the request of Thai officials, Netfirms.com suspended
16 Manusaya's account and the website was, in effect, shut down. Sometime before
17 May 2006, also at the request of Thai officials, Netfirms.com provided Mr. Chai's

18
19 ³ *General Comment No.34: Article 19: Freedoms of opinion and expression*, U.N.
20 Human Rights Comm., 102d Sess., at 11, U.N. Doc. CCPR/C/GC/34 (July 21, 2011),
available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

21 ⁴ See, e.g., "Cyberspace Rights Threatened in Vietnam, Rights Group Says," San Jose
22 Mercury News, Nov. 27, 2003 ("Internet surveillance in Vietnam has led to unwarranted
23 prison sentences for dissidents who used online forums to criticize the communist state
24 and espouse pro-democracy views, Amnesty International said in a report released
25 Wednesday."); Willy Wo-Lap Lam, "China Frees Net Dissidents," CNN.com, Nov. 30,
26 2003. ("However, at least a dozen-odd dissidents who have posted anti-government
27 articles on the Web remain incarcerated."); Stuart Millar, "Internet providers say no to
28 Blunkett," The Guardian, October 22, 2002. ("The internet industry has refused to sign up
to plans to give law enforcement and intelligence agencies access to the records of British
web and email users, throwing David Blunkett's post-September 11 data surveillance
regime into fresh disarray."); "Successor to KGB is Spying Over the Internet, Free-Speech
Groups in Russia Decry Action," Associated Press, Feb. 22, 2000 ("The whole Federal
Security Service will be crying tomorrow over your love letters,' warns one of the banners
that angry web designers in Russia have posted on the Internet. Russian advocates of
human rights and free speech say the security service has already forced many of the
country's 350 Internet service providers to install surveillance equipment.")

1 IP address and the two email addresses associated with that IP address, without Mr.
2 Chai's knowledge or consent. Netfirms.com provided this information to Thai
3 officials without first contacting the United States Department of State or
4 requesting that the officials obtain the proper court order, subpoena, or warrant as
5 required by the Treaty with Thailand on Mutual Assistance in Criminal Matters.⁵
6 Additionally, Netfirms.com, a company with its principal place of business in
7 Canada, provided this information to Thai officials without complying with the
8 Personal Information Protection and Electronic Documents Act (PIPEDA).⁶

9 As a direct result of Netfirms.com's actions, Mr. Chai was detained and
10 interrogated twice by Thai government officials – once at the DSI in Thailand and
11 once here in the United States – for allegedly insulting the Thai monarchy in
12 violation of Article 112. As a consequence, Mr. Chai lived in constant fear that if
13 he gave the government officials any reason whatsoever to renew their interest in
14 him, he would become one of the political prisoners whose number grew at an
15 alarming rate as strife between pro- and anti-monarchy factions in Thailand
16 intensified.⁷

17 On August 25, 2009, Plaintiff was informed by email by a Thai government
18 official that he faces arrest and prosecution for violation of Article 112 of
19 Thailand's Criminal Code if he ever returns to his native country of Thailand where
20 many of his family members still reside and where he owns a home. Prior to this
21 time, Mr. Chai traveled to Thailand approximately three times annually. On
22 August 8, 2011, Plaintiff received notification by mail that there is still an active
23 arrest warrant against him issued by the Thai Criminal Court for "Defamation of the
24

25 ⁵ See Treaty with Thailand on Mutual Assistance in Criminal Matters, U.S.-Thailand,
art. 3-4, S. Treaty Doc. 100-18 (1986).

26 ⁶ Personal Information Protection and Electronic Documents Act (S.C. 2000, c.5) applies
27 to private enterprises in Canada, and prescribes strict rules for the collection and
dissemination of personal information.

28 ⁷ Todd Pittman and Sinfah Tunsarawuth, "Thailand Arrests American for Alleged King
Insult," Associated Press, Mar. 27, 2011.

1 King and Queen under Article 112 of *Lèse majesté* law.”

2 Defendant Netfirms.com’s conduct violates California state laws, as well as
3 Constitutional and international law. Plaintiff seeks to hold Netfirms.com
4 accountable for its unlawful actions.

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over Plaintiff’s claims under 28 U.S.C.
7 § 1332 (diversity jurisdiction). The amount in controversy exceeds \$75,000.00,
8 exclusive of interests and costs.

9 2. This action also arises under the First Amendment of the Constitution
10 of the United States. The jurisdiction of this Court therefore also is founded on 28
11 U.S.C. § 1331.

12 3. This Court has supplemental jurisdiction over the related state law
13 claims asserted herein pursuant to 28 U.S.C. § 1367. Supplemental jurisdiction
14 over those claims is appropriate because they arise from the same common nucleus
15 of operative facts from which the federal claim arises.

16 4. Venue is proper in the Central District of California pursuant to 28
17 U.S.C. § 1391(a), as a substantial part of the events or omissions giving rise to the
18 claim occurred within Long Beach, California.

19 5. This Court has personal jurisdiction over defendants in that they are
20 doing business in the State of California and they are committing the acts alleged in
21 this State.

22 **PARTIES**

23 6. Plaintiff Anthony N. Chai is a citizen of the State of California. At all
24 times relevant to this complaint, Plaintiff was and is engaged in the business of
25 owning and operating a computer repair and sales store in Long Beach, California
26 called Computer Station. Plaintiff sues for his injuries, including pain and
27 suffering, resulting from the unlawful actions of the Defendants. Specifically,
28 Plaintiff was interrogated twice, once in Thailand and once in the United States, for

1 alleged violations of Thailand's *lèse majesté* laws. Because there is an active arrest
2 warrant pending, he cannot safely return to his native country of Thailand.

3 7. Upon information and belief, defendant Netfirms.com is a Delaware
4 corporation with its principal place of business located in Markham, Ontario in
5 Canada. At all times mentioned in this complaint, Defendant Netfirms.com was
6 and is engaged in the business of website hosting and domain name registry, and
7 was and is engaged in the marketing of these products. Upon information and
8 belief, Defendant Netfirms.com conducts business in this judicial district. By the
9 nature of its activities, Netfirms.com has access to and maintains information about
10 individuals using its electronic services, both customers and those utilizing their
11 customers' online services.

12 8. Plaintiff is unaware of the true names and capacities of Defendants 1-9
13 inclusive, and therefore sues such DOE defendants by fictitious names. Plaintiff
14 will amend his complaint to allege the true names and capacities as and when they
15 have been ascertained. Upon information and belief, each such fictitiously named
16 defendant is in some way responsible for the events or occurrences referred herein.

17 9. Upon information and belief, each of the defendants was the agent,
18 servant and/or employee of each of the remaining defendants and was acting within
19 the purpose and scope of said agency, service and/or employment and with the
20 permission/consent of its co-defendants.

21 STATEMENT OF THE FACTS

22 10. The Kingdom of Thailand (hereinafter "Thailand") maintains *lèse*
23 *majesté* prohibitions within its Criminal Code.⁸

24 11. Specifically, Thailand's *lèse majesté* provisions in the Thai Criminal
25 Code make it a criminal offense punishable by up to fifteen years' imprisonment to
26

27 ⁸ U.S. DEPT OF STATE, THAILAND COUNTRY REPORTS ON HUMAN RIGHTS
28 PRACTICES -2010, available at
<http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154403.htm>.

1 defame, insult, or threaten certain members of the royal family.

2 12. From approximately 2004 through 2005, Manusaya operated on the
3 Internet as a forum where users could post a wide range of articles and comments
4 regarding Thai politics.

5 13. Manusaya was owned and operated by Abdulrosa Basil Jengoh, a
6 Swedish citizen, who maintains no connection to Plaintiff.

7 14. Patrons of Plaintiff's computer store, Computer Station, were
8 permitted to use the store's computers to access the Internet, including the
9 Manusaya website, and anonymously post articles and comments to the site. The
10 website's users, including Plaintiff, would send emails to Manusaya to submit
11 articles or comments to be posted on the site. Plaintiff, his employees, and patrons
12 used two email addresses in the following form: xxxxxxxx@yahoo.com, which
13 belonged to Mr. Jack Chan, a Computer Station employee, or
14 xxxxxx@hotmail.com, which belonged to Plaintiff, to submit articles and
15 comments for posting on Manusaya.

16 15. When articles and comments were posted on Manusaya, they were
17 anonymous. Neither the identity of the author, the email address that was used to
18 submit the article or comment, nor the IP address of the computer were publicly
19 visible on Manusaya.

20 16. Generally, the comments that Plaintiff posted on Manusaya focused on
21 his perception of *lèse majesté* laws as being unjust.

22 17. Manusaya was hosted by Defendant from March 24, 2004 to June 6,
23 2005. Defendant shut down Manusaya's account in June 2005 at the request of
24 officials from Thailand.

25 18. In a statement published on a Thai Government website on March 17,
26 2006, Police Colonel Yanaphon Youngyuen's (hereinafter "Pol. Col. Youngyuen"),
27 the Director of the Bureau of High Tech Crimes, Department of Special
28 Investigation, at that time summarized the Thai Government's investigation related

1 to Manusaya. He described Manusaya as a website “whose aim was to defame and
2 insult the monarchy ... to coerce people to lose faith and love of the monarchy,
3 including each and every princess.”

4 19. Pol. Col. Youngyuen stated further in the announcement, “In order to
5 resist such news as propagated by www.manusaya.com, the three major
6 governmental agencies, namely the National Intelligence Agency, Ministry of
7 Information and Communication Technology, and Department of Special
8 Investigations, have worked together since March 27, 2004 and received
9 cooperation from all the Thai internet service providers and webmasters in Thailand
10 to block such sites deemed *lèse majesté* to their subscribers.”

11 20. Pol. Col. Youngyuen stated further in this statement that as a result of
12 the investigations, four websites were shut down and others agreed to delete
13 offending content. He identified Netfirms.com as the web hosting company of
14 Manusaya, and stated that he received “vital data from Netfirms.com for our
15 expanded investigation.”

16 21. Defendant confirmed in writing, by letter to counsel for Plaintiff on
17 December 1, 2009, that Defendant Netfirms.com received a complaint regarding
18 Manusaya from the Thai officials, as a result of which Defendant Netfirms.com
19 decided to suspend Manusaya’s account on June 6, 2005.

20 22. At some point between initiating cooperation with the Thai
21 investigators in May 9, 2006, Defendant also provided Thai officials with
22 Plaintiff’s IP address and the two associated email addresses.

23 *May 2006 Arrest and Interrogation*

24 23. In May 2006, Plaintiff traveled to Thailand. Plaintiff was initially
25 detained at the Thailand Immigration Desk at the Bangkok airport. The
26 immigration officer stepped away from the desk and went to a nearby office to
27 make a telephone call. He returned approximately ten minutes later, and Plaintiff
28 was permitted to proceed into the country.

1 24. Plaintiff remained for approximately two weeks in Thailand. During
2 that time he stayed in the condominium he owns in Bangkok. He visited with his
3 deceased brother's wife and his three nieces and nephews. He also visited with
4 friends and traveled by train to the resort town of Hua Hin for three days.

5 25. On May 9, 2006, on his way back home to California, while Plaintiff
6 was waiting in the security line at the Bangkok airport, he was approached by
7 approximately 5-7 agents from the DSI who escorted him out of the security line
8 and to an office at the airport.

9 26. Plaintiff was told by the agents that they had a warrant for his arrest
10 for committing an act of *lèse majesté*. Plaintiff asked to see the alleged warrant, but
11 the agents refused to show it to him.

12 27. In the office at the airport, the agents searched Plaintiff's belongings.
13 They confiscated his personal laptop computer from him. They conducted a pat
14 down search of his body and searched the pockets of his clothing. They removed
15 his wallet and searched through the contents.

16 28. After waiting in the office for approximately one hour, Plaintiff was
17 escorted outside of the airport to an unmarked police car, in which he was
18 transported to the DSI, approximately 45 minutes from the airport. When they
19 arrived at the DSI, Plaintiff was escorted upstairs to Pol. Col. Youngyuen's office.
20 There were approximately ten other people in the office, including a videographer
21 and photographer.

22 29. Upon arriving in Pol. Col. Youngyuen's office, Plaintiff was searched
23 again. He underwent another pat down search of his body. He was finger-printed
24 and photographed.

25 30. Plaintiff was interrogated from approximately 7:10 p.m. on May 9,
26 2006 until 3:30 a.m. on May 10, 2006 and from 8:00 a.m. on May 10, 2006 until
27 approximately 4:50 p.m. when he was finally released from the DSI. Pol. Col.
28 Youngyuen was in charge of the interrogation. The videographer appeared to be

1 recording much of the interrogation.

2 31. At the onset of the interrogation, Plaintiff requested that he be
3 provided with an attorney. Eventually, someone who presented herself as his
4 appointed attorney arrived and told Plaintiff that he needed to cooperate fully and
5 answer all the questions he was asked. She sat silently through the interrogation
6 and did not provide any legal advice to Plaintiff.

7 32. Plaintiff also requested that he be permitted to contact the U.S.
8 Embassy, but the DSI officers denied his request saying that it was too late in the
9 night for him to reach anyone at the embassy.

10 33. During the interrogation, Plaintiff was subjected to severe
11 psychological and physical stress. The DSI officers deprived him of food, water,
12 and sleep until 3:30 a.m. on May 10, 2006. At that time, he was taken to a motel
13 where he was told he could rest, but DSI guards remained in the room with him at
14 all times. He was permitted to eat breakfast at approximately 7:30 a.m. at the
15 motel, and then he was taken back to the DSI for further interrogation.

16 34. The DSI officers threatened violence against Plaintiff's family. One of
17 the DSI officers mentioned certain members of Plaintiff's family by name and
18 stated to Plaintiff, "I know where your relatives live in Bangkok and California. If
19 you want them to live in peace, you must cooperate." The officer specifically
20 mentioned the names of Plaintiff's three daughters and his son and indicated that he
21 knew where they lived.

22 35. Plaintiff was extremely frightened during the course of the
23 interrogation. He decided that he had no choice but to cooperate fully and answer
24 every question that was asked of him in order to avoid being harmed.

25 36. During the interrogation, Pol. Col. Youngyuen accused Plaintiff of
26 committing an act of *lèse majesté* by posting articles and comments on Manusaya.
27 Pol. Col. Youngyuen did not provide Plaintiff with a copy of the posts or any
28 details about the contents.

1 37. DSI officers retrieved Plaintiff's confiscated laptop during the
2 interrogation. They forced Plaintiff to provide his access passwords, and copied
3 electronic files containing personal information including his bank account and
4 personal property information. The officers forced him to provide them with all of
5 his email addresses and passwords.

6 38. The DSI officers made photocopies of all of the documents in
7 Plaintiff's possession, including his U.S. passport. Plaintiff had a small notebook in
8 his possession where he kept personal notations, *e.g.*, reminders, phone numbers,
9 bank account numbers, *etc.* The officers photocopied every page of the passport
10 and the notebook.

11 39. During the interrogation, at approximately 12:00 a.m. on May 2, 2006,
12 Pol. Col. Youngyuen provided the Plaintiff with a document that had Defendant's
13 name and logo at the top. Plaintiff was permitted to look at the document for
14 approximately one minute. The document appeared to Plaintiff to be a print-out
15 from a computer. The document contained a list of email addresses and their
16 associated IP addresses.

17 40. One of the email addresses in the document was Plaintiff's. Next to
18 his email address, xxxxxx@hotmail.com,⁹ there was his IP address. Plaintiff also
19 saw the email address of his employee, Jack Chan. The email address was
20 xxxxxxxx@yahoo.com. That email address had the same IP address as Plaintiff's.

21 41. An IP address can easily be used to locate the physical presence of the
22 computer associated with the IP address. Only one computer is associated with a
23 particular IP address.

24 42. At the end of the interrogation, DSI Officers forced Plaintiff to write a
25 statement admitting that he violated Thailand's *lèse majesté* laws and he would
26 never do it again. The statement also included words of praise and apology to the
27

28 ⁹ While the document shown Plaintiff contained actual email addresses, the email
addresses are shown here in redacted form for privacy purposes.

1 Thai king.

2 43. Plaintiff was forced to write two versions of this statement – one in
3 Thai and one in English. He was not provided with copies of the handwritten
4 statements.

5 44. Plaintiff was finally released from the DSI at approximately 5:00 p.m.
6 on May 10, 2006. He took a cab from the DSI to his condominium in Bangkok.
7 He was extremely upset and shaken when he returned to his condominium and
8 immediately contacted his family members in California, including his ailing
9 mother, to tell them what had happened to him. During these phone calls to the
10 U.S., Plaintiff heard periodic clicking sounds and beeping noises which led him to
11 believe that his phone calls were being monitored.

12 45. As a result of the interrogation and detention, the Plaintiff missed his
13 initial flight to the United States. He re-booked a new flight at his own expense the
14 following day and returned to his home in Long Beach, California.

15 46. In the days after Plaintiff returned home to California, he was
16 contacted by email by Pol. Col. Youngyuen who asked Plaintiff to send him copies
17 of any pro-democracy or anti-monarchy materials that he had in his possession.

18 47. Because he wanted to appear as if he was continuing to cooperate with
19 the investigation, Plaintiff scanned some pro-democracy booklets and documents
20 that he had in his possession and emailed them to Pol. Col. Youngyuen. Plaintiff
21 asked by email when the investigation would be closed, but Pol. Col. Youngyuen
22 did not provide him with a response.

23 ***Demand for Additional Interrogation in July 2006***

24 48. In July 2006, Pol. Col. Youngyuen traveled to the United States to
25 attend a training course for foreign police and military officers offered by the
26 United States Information Agency in Washington, D.C. On his return back to
27 Thailand, Pol. Col. Youngyuen had a brief stop between flights in Los Angeles
28 International Airport (“LAX”). He contacted Plaintiff when he was still in

1 Washington, D.C. and asked Plaintiff to meet him at LAX.

2 49. Because Plaintiff continued to want to appear cooperative with the
3 investigation, he agreed to meet Pol. Col. Youngyuen at LAX.

4 50. During the telephone conversation, Pol. Col. Youngyuen told Plaintiff
5 that he would like Plaintiff to bring iPods or some other similar items of value
6 home for his children.

7 51. Plaintiff and Pol. Col. Youngyuen met for approximately thirty
8 minutes at a McDonald's restaurant at LAX.

9 52. Plaintiff did not bring iPods to the meeting. He brought local Thai
10 newspapers that he thought Pol. Col. Youngyuen could read on the flight back to
11 Thailand. Pol. Col. Youngyuen made it clear to Plaintiff that he was very
12 disappointed that he did not bring any gifts of value.

13 53. During the meeting, Plaintiff asked Pol. Col. Youngyuen if the
14 investigation was still ongoing, and Pol. Col. Youngyuen confirmed that it was.

15 54. Plaintiff asked Pol. Col. Youngyuen when his laptop computer would
16 be returned to him. Pol. Col. Youngyuen responded that it would not be returned to
17 Plaintiff while the investigation was still pending.

18 55. Subsequently, Pol. Col. Youngyuen contacted the Plaintiff via letters
19 on August 8, 2006 and September 11, 2006, requesting that he return to Thailand
20 immediately for further questioning in regards to the *lèse majesté* allegations.

21 56. In the letter dated August 8, 2006, Pol. Col. Youngyuen wrote, "the
22 time has come for you to officially surrender yourself to the investigators of this
23 case ... you are required to surrender to our bureau on August 24, 2006 at 10:00
24 AM..."

25 57. Plaintiff responded to the letter by email and said that he was unable to
26 report to the bureau on that date because he had another obligation. He was
27 extremely frightened and believed that he would be arrested and imprisoned if he
28 returned to Thailand.

1 58. Plaintiff received a second letter from Pol. Col. Youngyuen on
2 September 11, 2006 which provided that because Plaintiff failed to report to the
3 bureau on August 24, 2006, a warrant for his arrest would be issued.

4 *November 2-3, 2006 Interrogations*

5 59. After these letters, Pol. Col. Youngyuen continued to persist in
6 attempting to further interrogate Plaintiff by contacting him via email and
7 requesting that he return to Thailand for more questioning. However, Plaintiff
8 refused to return to Thailand for fear of being arrested and imprisoned.

9 60. Plaintiff finally agreed to meet with Thai law enforcement officials in
10 Southern California. Plaintiff believed that if he cooperated with the officials, they
11 would finally conclude the investigation and that he would not be charged with
12 violating *lèse majesté* laws. He hoped that it would be safer for him to be
13 interrogated in the U.S. than for him to return to Thailand where he could be
14 arrested and imprisoned.

15 61. The interrogations occurred from 10:30 a.m. – 12:45 p.m. on
16 November 2, 2006 and from 10:30 a.m. – 2:30 p.m. on November 3, 2006 at a hotel
17 room in the Magic Castle Hotel in Hollywood, California.

18 62. At this interrogation, Plaintiff brought three witnesses, out of fear for
19 his safety and to attest to his credibility.

20 63. On behalf of the Thai government, Pol. Col. Youngyuen was present,
21 as well as Public Prosecutor Viched Musikaransee, and Palace Representative Joe
22 Kashemsant.

23 64. At the onset of the interrogation, Mr. Kashemsant gave Plaintiff
24 several tokens of the monarchy as “gifts”: an official royal yellow shirt with a royal
25 insignia on the pocket, a Video CD and a DVD regarding the royal family, a book
26 celebrating the 60th anniversary of the Thai King’s accession to the throne, and two
27 CDs of royal music.

28 65. During the interrogation, the Thai authorities reviewed the documents

1 that Plaintiff had scanned and emailed to them shortly after he had returned home to
2 California in July 2006.

3 66. At the end of the interrogation on November 2, 2006, Pol. Col.
4 Youngyuen assured Plaintiff that he could travel to Thailand without fear of being
5 arrested and prosecuted. Plaintiff requested this assurance in writing, but his
6 request was denied. The interrogation concluded at approximately 12:45 p.m.

7 67. Plaintiff was asked to return the subsequent day for further
8 interrogation. He continued to believe that if he participated in this interrogation,
9 the investigation would ultimately be concluded and he would not be charged with
10 any crime. Accordingly, he returned to the same hotel room on the morning of
11 November 3, 2006.

12 68. During the second day of interrogation, which began at approximately
13 10:30 a.m., Plaintiff was asked about his other business ventures apart from
14 Computer Station. Plaintiff stated that he also had real estate and U.S. stock
15 investments.

16 69. Plaintiff was asked by the Thai government officials who else had
17 access to his email accounts. Plaintiff stated that xxxxxx@hotmail.com and
18 xxxxxxxx@yahoo.com were business email accounts that Mr. Jack Chan had
19 access to and would use when Plaintiff was out of town or unable to personally
20 respond to emails.

21 70. Pol. Col. Youngyuen told Plaintiff that without his continued
22 cooperation in the investigation, they would be unable to close the case.

23 71. At the conclusion of the interrogation, Plaintiff was asked to sign
24 typed statements that were prepared by Pol. Col. Youngyuen during the
25 interrogations. The two statements summarized the subject of the two
26 interrogations at the hotel. Plaintiff did not receive a copy of these statements.

27 72. Pol. Col. Youngyuen told Plaintiff that he would complete his
28 investigation and forward his report to the prosecutor's office. Mr. Musikaransee

1 and the prosecution team would then review the report and make a determination as
2 to whether Plaintiff should be prosecuted.

3 73. Pol. Col. Youngyuen stated again that Plaintiff was free to enter and
4 leave Thailand at any time without fear of being arrested or prosecuted.

5 74. The interrogation ended at approximately 2:30 p.m. on November 3,
6 2006.

7 *Escalating Unrest in Thailand and Prosecutions for Lèse Majesté*

8 75. In September 2006, a military coup in Thailand overthrew the elected
9 government and repealed that nation's constitution. This set off a series of internal
10 political struggles between the monarchy and its supporters and those who
11 supported a fully elected constitutional government.

12 76. Protesters occupied a main government building from late August until
13 early December 2008, blockaded parliament in October 2008, and occupied and
14 forced the closure of Bangkok's airports for several days in the end of 2008.

15 77. In 2009, protests disrupted a major Asian summit and caused riots in
16 Bangkok. These protests continued to smolder until Spring 2010, when
17 demonstrators occupied main areas in Bangkok, effectively shutting down the
18 commercial and governmental centers of the city.

19 78. As a result of the standoffs, major buildings were burned, and
20 according to reports, ninety-two people were killed, and over 1,800 were injured.

21 79. As the political pressure on the Thai monarchy increased, so had the
22 enforcement of *lèse majesté* laws and the penalties for violations.¹⁰

23 80. Often those charged with *lèse majesté* offenses are denied bail and
24 remain in prison for several months awaiting trial. In a number of cases, these trials
25
26
27

28 ¹⁰ Todd Pittman and Sinfah Tunsarawuth, "Thailand Arrests American for Alleged King Insult," Associated Press, Mar. 27, 2011.

1 have been closed to the public.¹¹

2 81. Particularly harsh punishments have been delivered by the court in
3 several instances, such as the cases of Darunee Charnchoensilpakul, who was
4 sentenced to 18 years' imprisonment, and Tanthawut Taweewarodomkul, who
5 received a 13-year prison term.¹²

6 82. This political unrest in Thailand made it impossible for Plaintiff to
7 conduct an investigation that would reveal exactly who was involved with the
8 disclosure of his identity and/or anonymous writings to the Thai government, or the
9 circumstances under which they had done so. The turmoil and violence in Thailand
10 made an inquiry very difficult logistically. In addition, given that the Thai
11 government had already identified Plaintiff as a suspect for exactly such offenses,
12 and those officials, who had been able to move freely within the United States,
13 obviously knew how to reach and monitor Plaintiff and his family members,
14 Plaintiff lived in fear of reprisal. Any direct inquiries to the government itself or to
15 the same actors who may have disclosed his identity in the first place could have
16 had extremely dangerous consequences for Plaintiff and his family. Rather than
17 risk becoming one of the political prisoners whose number grew at an alarming rate
18 as strife between pro- and anti-monarchy factions in Thailand intensified, Plaintiff
19 could only research the individuals and corporations who might have been involved
20 in discreet ways so as not to raise the suspicions of the Thai government.

21 ***Lèse Majesté Charge and Inability to Return to Thailand***

22 83. On August 25, 2009, Palace Representative Joe Kashemsant alerted
23 Plaintiff by email that he had been charged with *lèse majesté* in a Thai national
24 court, and that he would be arrested if he returned to Thailand.

26 ¹¹ Human Rights Watch Letter to Prime Minister Yingluck Regarding Your
27 Government's Human Rights Agenda available at
28 <http://www.hrw.org/news/2011/08/15/human-rights-watch-letter-prime-minister-yingluck-regarding-your-governments-human-r> [accessed 16 August 2011].

¹² *Id.*

1 84. Since August 25, 2009, Plaintiff has been unable to return to Thailand
2 because he would be arrested and prosecuted for the *lèse majesté* charge. In
3 addition to the stress and fear he feels as a result of these charges, Plaintiff is unable
4 to visit with his relatives and friends in Thailand and unable to enjoy his property
5 there. Because of the very real threat of arrest, he felt it necessary to short sell
6 stocks he held in Thailand at a significant loss.

7 85. Since learning of the pending criminal charges on August 25, 2009,
8 Plaintiff has sought to uncover the means by which the Thai government identified
9 him and connected him with the alleged acts. In doing so, Plaintiff, through his
10 counsel, has made inquiries with government agencies, officials, individuals, and
11 companies that might have held personal information connecting him or his store's
12 computer with writings on Manusaya.

13 86. By letter to counsel for Plaintiff on December 1, 2009, Defendant
14 Netfirms.com confirmed that it received a complaint regarding Manusaya from the
15 Thai officials, as a result of which Defendant decided to suspend Manusaya's
16 account on June 6, 2005.

17 **FIRST CLAIM FOR RELIEF: NEGLIGENCE**
18 **Cal. Civ. Code § 1714(a)**

19 87. Plaintiff re-alleges and incorporates by reference each and every
20 allegation contained in Paragraphs 1 through 86 as if set forth fully herein.

21 88. At a time prior to May 9, 2006, Defendant negligently disclosed to
22 Thai law enforcement officials Plaintiff's identifying and confidential information
23 entrusted in its possession.

24 89. Defendant negligently disclosed Plaintiff's identifying and confidential
25 information to Thai law enforcement officials without regard for the requirements
26 set forth in the Treaty with Thailand on Mutual Assistance in Criminal Matters and
27 contrary to data privacy, First Amendment, PIPEDA, and industry standards.

28 90. By the time of Defendant's disclosure of Mr. Chai's identifying and

1 confidential information to Thai officials, ICT companies in the United States were
2 well aware of the dangers posed to dissidents in many parts of the world and the
3 consequent obligations those dangers put upon web hosting companies to use due
4 diligence when responding to law enforcement requests for private information that
5 could identify critics and human rights defenders.

6 91. It was reasonably foreseeable that disclosure of Plaintiff's identifying
7 and confidential information to government officials from Thailand, a country
8 known for overbroad and politically motivated enforcement of its *lèse majesté* laws
9 in violation of the right to freedom of expression, the right to privacy, and the right
10 to due process,¹³ would result in harm to Plaintiff.

11 92. Defendant owed a duty to its account holders, as provided for in its
12 term of service agreement, not to provide their personal information to any law
13 enforcement authorities or legal agents without a proper court order, subpoena or
14 warrant.

15 93. It is reasonably foreseeable that if Defendant owed this duty to its
16 account holders, it also had a duty to protect the confidentiality of personal
17 identifying information with which it was entrusted by users of its account holders.

18 94. Defendant breached its duty to the Plaintiff by negligently engaging in
19 the conduct described herein.

20 95. But for the actions of Defendant, Plaintiff would not have suffered any
21 injury as a result of his anonymous postings on Manusaya advocating for
22 democracy in Thailand and abolition of Thailand's *lèse majesté* laws.

23 96. As a direct and proximate result of the actions of Defendant
24 Netfirms.com, Plaintiff has been deprived of his liberty and freedom within his
25

26 ¹³ These rights are expressed in a number of international instruments including but not
27 limited to the International Covenant on Civil and Political Rights Articles 17 and 19, the
28 International Covenant on Economic, Social, and Cultural Rights Article 1, and the
International Convention on the Elimination of All Forms of Racial Discrimination
Article 5.

1 native country of Thailand; specifically the Plaintiff cannot safely travel to, reside
2 in, or visit with friends and family in Thailand without facing inevitable arrest and
3 prosecution for violation of *lèse majesté* laws.

4 97. Plaintiff has suffered severe psychological distress as a direct and
5 proximate result of Defendant's actions. He was detained at the airport in Bangkok,
6 taken to the DSI, harshly interrogated and threatened, deprived of food and water,
7 and kept overnight. He was subsequently interrogated again over the course of two
8 days in the United States. Finally, he was notified that he would be arrested and
9 charged with *lèse majesté* if he ever returns to his native country of Thailand. All
10 of these events were extremely psychologically damaging to Plaintiff.

11 98. As a direct and proximate result of Defendant's actions, Plaintiff
12 suffered financial losses. As a result of being interrogated at the DSI in Bangkok,
13 he missed his return flight to the United States and was forced to purchase a new
14 ticket at his own expense. During the interrogation by the DSI officials, Plaintiff's
15 laptop computer was confiscated and never returned to him. He was also forced to
16 replace his laptop computer at his own expense. Additionally, he has been unable
17 to enjoy his Bangkok condominium, and he felt that he needed to short sell his Thai
18 stocks when he was notified that he would be arrested and charged with *lèse*
19 *majesté* if he ever returns to Thailand.

20 99. Defendant's negligent conduct constitutes reckless disregard for the
21 rights and safety of Plaintiff. Defendant's conduct comes within the definition of
22 malicious acts punishable by the assessment of punitive damages because
23 Defendant provided Plaintiff's confidential identifying information to Thai officials
24 when Defendant knew, or should have known, that it was highly probable that
25 Defendant's actions would place Plaintiff's safety at risk and cause harm to
26 Plaintiff.

27 100. The Plaintiff is entitled to recover any and all other damages available
28 to him which total amount of damages exceeds \$75,000, in an amount to be proven

1 at trial.

2 **SECOND CLAIM FOR RELIEF: VIOLATION OF THE CALIFORNIA**
3 **BUSINESS AND PROFESSIONS CODE, §17200, *et seq.***

4 101. Plaintiff re-alleges and incorporates by reference each and every
5 allegation contained in Paragraphs 1 through 100 as if set forth fully herein.

6 102. Plaintiff brings this cause of action pursuant to California Business and
7 Professions Code § 17200. Defendant’s conduct as alleged herein has been and
8 continues to be deleterious to Plaintiff.

9 103. The California Business and Professions Code § 17200, *et seq.*
10 prohibits “unfair competition,” defined as any “unlawful, unfair, or fraudulent
11 business act or practice.” These acts or practices consist of those forbidden by law.

12 104. Defendant violated California Business and Professions Code § 17200
13 by engaging in unlawful business practices through the dissemination of Plaintiff’s
14 confidential and identifying information in violation of California law, federal law,
15 including 15 USC, § 45, *et seq.* (Deceptive Practices Act), Canadian law, including
16 PIPEDA, international law, including Articles 3 and 4 of the Treaty with Thailand
17 on Mutual Assistance in Criminal Matters, and their own company policies,
18 including the Service Agreement and the Privacy Policy.

19 105. The unlawful, unfair, and fraudulent business acts and practices
20 described herein constitute ongoing and continuous unfair business practices within
21 the meaning of California Business and Professions Code § 17200 *et seq.*, and are
22 prohibited by the laws of the state of California, the laws of Canada, and
23 international law.

24 106. Defendant’s practices described herein offend established public
25 policies and involve business practices that are immoral, unethical, oppressive,
26 unscrupulous and/or substantially injurious to customers.

27 107. Such practices include, but are not limited to, the unwarranted
28 intrusion into and provision of Internet users’ private electronic communication

1 information or records when Defendant knew or should have known such
2 information would substantially support the deprivation of freedom of speech, the
3 right to privacy and the right to due process of persons who used websites hosted
4 by Defendant to publish political commentary regarding Thailand.

5 108. Plaintiff seeks injunctive relief, disgorgement of all profits resulting
6 from these unfair business practices, restitution and other appropriate relief as
7 provided in Business and Professions Code § 17203.

8 **THIRD CLAIM FOR RELIEF: VIOLATION OF**
9 **CONSTITUTIONAL PRIVACY RIGHTS**

10 109. Plaintiff re-alleges and incorporates by reference each and every
11 allegation contained in Paragraphs 1 through 108 as if set forth fully herein.

12 110. Plaintiff, under the First Amendment to the United States Constitution,
13 Article I, Section I of the California Constitution and/or the common law, maintains
14 a legally protected privacy interest in the personal information he provided to
15 Manusaya and that was entrusted to Defendant.

16 111. Plaintiff, pursuant to the First Amendment, Article I, Section I of the
17 California Constitution, and the common law had a reasonable expectation that the
18 personal information he supplied to Manusaya, which was entrusted to Defendant,
19 would not be disclosed to any third party without his prior consent or, at the very
20 least, without prior notice to him.

21 112. Defendant's unauthorized disclosure of Plaintiff's personal
22 information to a foreign country with a record of suppressing the right to free
23 speech without warning or notice to Plaintiff and without regard to Defendant's
24 legal obligation to maintain such information in confidence constitutes a serious
25 invasion of Plaintiff's privacy interests as defined by Art. 1, § 1 of the California
26 Constitution.

27 113. Defendant's disclosure of Plaintiff's personally identifiable
28 information, without prior notice, to Thai officials is offensive and objectionable to

1 a reasonable person of ordinary sensibilities.

2 114. Plaintiff has suffered damages, including but not limited to emotional
3 distress and financial losses described above, that were proximately caused by
4 Defendant's violation of Plaintiff's constitutional rights. Plaintiff is also entitled to
5 an award of attorneys' fees pursuant to California Code of Civil Procedure
6 § 1021.5.

7 115. Defendant's violation of Plaintiff's privacy rights was willful.
8 Plaintiff acted with oppression, fraud and/or malice in disclosing Plaintiff's
9 personal information without his consent, and without prior notice, such that
10 Plaintiff is entitled to an award of punitive damages.

11 116. Plaintiff alleges on information and belief that Defendant's practice of
12 disclosing personal information without consent, notice, or legal justification is
13 widespread and that the privacy interest of many individuals has been violated as a
14 result of Defendant's practices. These practices are likely to continue unless and
15 until they are restrained by an injunction requiring, at a minimum, that Defendant
16 notify its account holders prior to releasing personal information of its account
17 holders or the personal information of the users of its account holders' websites.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff respectfully requests the following relief:

20 A. Compensatory damages in an amount exceeding \$75,000, or such
21 other sum as may be proven at trial;

22 B. Restitution;

23 C. Punitive damages;

24 D. Attorney's fees and costs of the suit incurred herein to the extent
25 allowed by law;

26 E. A permanent injunction prohibiting the release of private information
27 without specific and prior notice to Defendant's personal or corporate account
28 holders and to users of the account holders' websites;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F. Such other relief as the Court deems just and appropriate.

Dated: August 24, 2011

SNELL & WILMER L.L.P.

Mary-Christine Sungaila

Deborah S. Mallgrave

Matthew E. Bennett

WORLD ORGANIZATION FOR HUMAN RIGHTS USA

Allison M. Lefrak (*pro hac vice* pending)

By:


Mary-Christine Sungaila

Attorneys for Plaintiff,
ANTHONY N. CHAI

Snell & Wilmer

LLP

LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on each and every claim set forth herein.

Dated: August 24, 2011

SNELL & WILMER L.L.P.


Mary-Christine Sungaila

Deborah S. Mallgrave

Matthew E. Bennett

WORLD ORGANIZATION FOR HUMAN RIGHTS USA

Allison M. Lefrak (*pro hac vice* pending)

By: 
Mary-Christine Sungaila

Attorneys for Plaintiff,
ANTHONY N. CHAI

Snell & Wilmer
L.L.P.
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000