

# **SEX. COM**

**The brutal battle for the  
Net's most valuable property**

**By Kieren McCarthy**

## **Book blurb**

It was the world's biggest word on the world's largest stage, so perhaps it was inevitable that the first great battle of the digital age would occur over sex.com.

Tens of millions of dollars. Hundreds of lawyers, businessmen, private investigators, porn stars, bankers, journalists. It reached the highest court of the most powerful country in the world. Twice. It defined a whole new area of law, became a byword for wild excess, and a poster child for the Internet revolution. But most of all it saw two extraordinary men risk everything they had, including their lives, to get hold of it.

It is the most valuable piece of online real estate in existence, the Internet's Holy Grail. It is sex.com, and this book will tell for the first time its incredible tale.

It will tell how a geek businessman saw his most valuable possession stolen from right under his nose by a conman who then used it wage war on the adult industry and build himself a \$100 million fortune. How he then used that fortune to ruin the businessman's legal fightback.

It will show how the financial madness of the dotcom boom enabled the businessman to fight fire with fire by funding an epic battle against both the domain thief and the Internet's most powerful company, Network Solutions. He would ultimately win against both, against the odds, but not before spiralling down into drug addiction, and facing almost certain bankruptcy.

Sordid affairs and spectacular break-ups, ruinous lawsuits, the theft of court documents, a nationwide manhunt, a gunfight, illegal offshore accounts, international stock scams, multi-million-dollar court judgements, a trashed mansion in one of the most exclusive neighbourhoods of California, and at the centre of it the two rivals – Gary Kremen and Stephen Cohen – regularly in touch by phone, goading, commiserating, mocking and joking with each other.

No strategy was too devious, no approach too risky. From day one, it was a high-stakes game with a fortune guaranteed to the victor and the promise of ruination to the loser. It pitched a Stanford-educated business brain against the mean cunning of a street hustler – each equally determined not only to win but to make sure that, above all else, the other didn't come out on top...

## Preface

It's difficult now to imagine a time before the Internet. But it was just over a decade ago that people outside the military and academic worlds first heard about this rapidly expanding international network of computers.

Academics loved its ability to share vast amounts of information; governments discovered a remarkable communications device; and the rest of us, well, we used it to go shopping, talk about our lives, and look for sex.

The Internet has given sex or, more accurately, pornography, an enormous new outlet. Web browsers brought top-shelf magazines direct to every computer screen. It wasn't long before they did the same with videos. And then the Net really hit its stride: real-time webcams and instant messaging meant direct interaction with complete strangers. The gap between reality and pornography had been narrowed still further.

Sex on the Net is one of the great dirty secrets of our time. A quarter of all search-engine requests are for pornography, at least a fifth of adults online have accessed a porn site, and there are an estimated 400 million Web pages out there catering for the demand. The adult industry is worth \$57 billion worldwide, and the United States – which remains the world centre for pornography – claims \$12 billion of it.

The bulk of that industry is based in California, in particular Los Angeles, so it is particularly apt that Stephen Michael Cohen was born in the City of Angels and has spent most of his life living in and around it.

It was also in California, in San Francisco, that the website that for many years was the focal point for the new online sex industry – sex.com – was registered. Gary Kremen was the most unlikely porn baron ever born, a geek businessman with a computer degree. But Kremen recognized way back in 1994 that the domain – given to him entirely free of charge – might become valuable one day. Just how valuable he was to find out when Stephen Cohen stole it from him just prior to the dotcom boom and made it the centre of an enormous international empire.

The millions of dollars made by sex.com every month at its peak were reason enough for a fight, but its ownership meant more than just a worldly fortune to both men.

Sex.com had provided Stephen Cohen with the life he'd always dreamed of and helped put to rest his bitter hatred of society. For Gary Kremen, the theft of the domain undermined everything he held dear. But at the same time it presented him with a challenge, and a worthy opponent. Neither man was used to losing, and neither was prepared to back down, even for a second. So the case began to take over their lives, and then started to suck in those of friends, families and employees, and, for a short while, even the US legal system and the Internet itself.

But the Internet domain name sex.com represents far more than just the biggest name in an explosion of worldwide pornography – it became the epicentre of a fight over the main

building block of the Internet and how these electronic addresses fit into our society and our legal systems.

The battle for ownership of sex.com is set against the backdrop of an extraordinary period of modern history – the dotcom boom, a digital gold rush where fortunes were made and lost faster than ever before in human history. A seemingly worthless property situated on an invisible computer network, and handed over free of charge, suddenly became worth millions of dollars. Within months, every investor, every pioneer, every chancer, crook, bookmaker, moneylender, brothel owner, legal advisor and snake-oil salesman had descended on the Internet boomtown.

Most forays turned up nothing but fools' gold, but there was never any doubt sex.com was the real thing. And when the fight broke out for its ownership, the result was a dramatic retelling of the ancient tales of what men will do, and are capable of doing, when confronted head on with their most basic desires: sex and power.

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Despite its name, it was violence that first drew attention to the fact that the battle for sex.com was much more than a petty argument over an Internet address.

In June 2001 reports started to appear that the former owner of sex.com, Stephen Michael Cohen, was in fear of his life after two bounty hunters had come looking for him at his Tijuana home. A gunfight with the Mexican police had ensued.

The bounty hunters were in pursuit of a \$50,000 reward from the new – and, in turns out, original – owner of sex.com, Gary Kremen. Why the reward? Who got shot? What were the Mexican police doing there? Had the adult industry resorted to Mafia-style violence?

Every question produced more questions, and each of those provoked more. Every step along the line, the story became more incredible. Kremen claimed the event never happened. Cohen says he had the evidence that showed it had, and had supplied to the court, but the judge refused to accept it.

Investigating the truth meant stepping into the tornado of truth and fiction circling the two men – a chaotic area where dozens of lawyers, partners, friends and family swirled about.

Bitter disputes are the hardest to unravel. Each actor has a different recollection of the same event and, over time, retelling carves inaccurate details in stone. People behave childishly, viciously, under pressure and later seek to hide it. Accepting errors can become impossible as a matter of personal pride.

But what made this story especially difficult to pin down was the extraordinary gift for obfuscation possessed by Stephen Michael Cohen, a gift that has been behind a great deal of his lifelong success as a conman. His lies are compulsive and brilliant. Even when pinned down, he has an immediate explanation to hand. And then an explanation for why that one also turns out to be false.

Unlike other members of his profession, Cohen has not come clean or sought to relieve his conscience. Finding the truth therefore consists of discarding every other possibility. In many cases, it is only possible to reconstruct a vague sense of what actually happened.

One example of this peculiar reality was to haunt Kremen's case for years. An army of lawyers had carefully dissected every detail, and yet only when the method by which Cohen had stolen the domain became the entire focus of a second court case did one of the smartest lawyers in the United States uncover the truth. Even now, after years of fighting, and four different lawsuits and four different appeals all focused on the theft of sex.com, no one apart from Stephen Cohen really knows exactly how he managed to steal the most valuable domain in the world.

What appears in these pages is what I have managed to piece together from years of extensive research, tens of thousands of pages of court documents, dozens of interviews, and an extended spell in the tornado that surrounds the brutal battle for sex.com.

## 1: A big guy

“I’m just a small guy,” the 38-year-old Gary Kremen told reporters waiting outside the San Jose courthouse. “I’m just a small guy and this is a huge guy who has built an empire based on fraud and deceit.”

He was half right. Stephen Michael Cohen *is* a huge guy. A guy who counts some of America’s smartest criminals among his closest friends; a guy who sits on top of a vast and sprawling web of companies, businesses and offshore bank accounts; a guy who in just two years pushed, kicked and threatened his way to the top of the multi-billion-dollar adult sex industry and has since moved into hotels, casinos and international stock scams; a guy who has talked his way out of almost as many jails as he has into people’s bank accounts. This is a *huge* guy.

But then so is the unassuming geek-turned-businessman – and now pornographer – talking to the media on the corner of East San Carlos Street and South 1st Street.

Gary Kremen had chased down one of the greatest conmen of all time and won. Not only that but he had done it through the prohibitively expensive and complex US legal system, in an entirely new area of law, and against a man who had very deep pockets, an army of lawyers, and a lifetime of screwing people behind him. Kremen’s only weapons had been raw determination, coupled with and fed by moral outrage.

Moments earlier, Judge James Ware of the Northern District Court of California ended years of furious fighting when he ordered the defendants Stephen Michael Cohen, Ocean Fund International, Ynata and SandMan Internacional – who were, in fact, all the same person – to jointly pay Kremen a total of \$65 million.

\$40 million was “by way of restitution and disgorgement for the profits generated through use of the sex.com domain name”, and the remaining \$25 million was punitive damages for having stolen Kremen’s property. A huge fine for a huge guy.

On one Tuesday afternoon in 2001, the entire legal landscape of the Internet had changed. But the impact on Gary Kremen was far greater. Having spent five years living in the shadow of bankruptcy and having battled through a crippling addiction to crystal meth (methamphetamine), he was now the owner of the Internet’s most valuable real estate – the almost mythical sex.com.

Even better, Kremen was due a mind-blowing \$65 million from the very man that had done everything in his power to ruin him. A reporter asked Gary Kremen how he felt. “I feel pretty good about it,” he replied.

But the reality was that this was not the end of the case, and Kremen knew it. It wasn’t even the beginning of the end. It was, as Winston Churchill put it, just the end of the beginning.

Contained in the same judgment that had awarded Kremen his historic win, came the following announcement: “The warrant of arrest issued on March 2, 2001 shall remain outstanding until defendant Stephen M. Cohen surrenders the property of each defendant to this Court.”

Having tackled and beaten every obstacle put in his way, chased and menaced powerful men and companies into a corner, sold everything he had to keep the legal fight going, and finally having triumphed, Kremen wasn’t to get the ultimate satisfaction of seeing his nemesis beaten.

Honourable defeat is not in Cohen’s dictionary – the very idea of it is distasteful, something for weak and foolish people. Stephen Michael Cohen, you see, is a conman – a very, very good conman. Having separated people from their cars, their cash, their computers, even their homes, he knew that the solution to every problem was to keep fighting, never stop, never admit defeat, and never, ever, play by their rules. If you fight harder, for longer, you will eventually win.

So while Kremen stood on the courtroom steps in San Jose answering questions about his remarkable legal victory, Cohen was hard at work 400 miles away and just across the Mexican border emptying every last cent from his US bank accounts and liquidating his assets so Kremen couldn’t get his hands on them.

The next stage in the brutal battle for sex.com had begun.

## 2: Caged

“I never stole it. He stole it!” Cohen cries, pointing at Gary Kremen. “Let’s get this real clear, I have had sex.com since 1979. It was you guys that went into court and explained that there was some cockamamie list and therefore he was the owner. The name sex.com has always been mine.”

It was just plain bad luck, no doubt, that the United States District Court for Northern California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court had all decided things were the other way around – that it was Cohen who had stolen sex.com from Kremen.

There was another clue: it was Cohen and not Kremen who was sitting in an orange jumpsuit that had stencilled on the front, in black:

Santa Clara Co.  
Department of Correction  
Main Jail

It was December 2005, 56 months since Cohen had been ordered to pay Kremen \$65 million in damages, and he was stuck in the one place that he had been carefully avoiding ever since: a US jail. Sitting facing Gary Kremen.

Sixty-five million dollars was a lot of money, Cohen had decided five years earlier, and there was no way he was going to pay it to the man that had not only beaten him in court but who had also taken away his beloved sex.com. Kremen had the domain, but he would keep the cash. He had still won.

So Cohen fled the United States and moved outside both the court’s and Gary Kremen’s reach. It was the start of a chase then went on for five long years, across the United States, Mexico, Europe and Asia until, finally, fate intervened and Stephen Cohen found himself being handed over the US marshalls at the Mexican border.

A fortnight later he was shipped to San Jose jail, and a month after that, there he was, facing the man that he had met only once before in person but with whom he had been battling for 10 years: Gary Kremen. Kremen and his lawyers wanted to know where the money was. Cohen thought he would tackle the issue rather differently. “I take great offence that you’re under the belief that sex.com was ever stolen,” he told them. “I’m the true owner of sex.com. I lost this case by default.”

They might as well have asked Cohen to cut off his arms and legs, because to a man like Steve Cohen, it is the money – every single cent of it – that justifies the lifetime of lies, the cold deception of friends and family, and the painful process of living outside society. “In all the years you’ve been chasing me,” Cohen told Kremen. “You have never got a single asset in my name. And you never will.”

### 3: Theft

“So one day, the name disappeared,” explains Gary Kremen. “One day it said one thing, one day it said another. I saw some guy’s name next to it, but if you looked through it my information was still there. I just thought, you know, it’s some bureaucratic screw-up and that eventually they’d figure it out.”

It was September 1995 and the new name that had appeared on the electronic ownership records for sex.com was Stephen Cohen and, unknown to Kremen, he had just stolen the domain name after several days of concerted effort. Kremen’s email address had also changed from gkremen@netcom.com to steve@liberty.com.

What gave Kremen peace of mind was that his home address was still there. He decided it was probably an accidental overwrite of information on the database – this was, after all, the early days of the Internet and its systems were still very far from 100 percent reliable. Kremen reasoned that when the mistake was noticed, the company in charge would simply revert back to an earlier saved version and his name would be restored.

But it was not to be. Kremen kept checking sex.com’s details, and for a fortnight it stayed the same: a mix of Kremen and Cohen’s information. And then, one day, his address also disappeared, replaced with one he didn’t recognize. Shortly after, Stephen Cohen’s name also changed, this time to a company name, Sporting Houses Management. And that was it. Gary Kremen had just become one of the first men in the world to be conned over the Internet. He had lost the Net’s most valuable property, silently, on a computer screen, right before his very eyes.

So he did what anyone would do and called the number listed as the contact for sex.com to find out what the hell was going on. And he spoke for the first time to the man he would spend the next 10 years chasing. According to Kremen, Cohen told him straight off that he had trademark rights in the name sex.com, but Kremen didn’t believe him and immediately called the company that ran and sold all dotcoms at the time, Network Solutions, asking to be given the domain back. Cohen recollects an altogether different version of events. “It only lasted maybe ten seconds, the whole call,” Cohen says. “He made some off-the-wall comment: ‘I’m sex.com, you’re not sex.com.’ I told him to go fuck himself and hung up.”

Whatever happened, Kremen did call NSI, “and they said they’d investigate and I said fine, get back to me. And then they never got back.” But Kremen was persistent and kept calling and arguing, refusing to be put off until he finally reached the head of investigations, Sherry Proehl. Proehl told him that if what he said was true, he shouldn’t worry, and the domain name would be returned.

So far, so good. Except Kremen had no idea who he was dealing with. He had blithely entered the foggy world of Stephen Michael Cohen, where nothing is certain except for the fact that Steve Michael Cohen will come out of it better off. Just two days after discussing the situation with Sherry Proehl, Kremen received a call out of the blue from a

Bob Johnson, who identified himself as Proehl's supervisor. Johnson advised Kremen that NSI would not be returning the domain because Stephen Cohen did indeed have a trademark in the name and so possessed greater rights to it.

"This was just when the issue of people registering other people's trademarks hit," Kremen explains years later. It was November 1995, and domain names were just beginning to enter people's consciousness because Network Solutions had started charging \$50 a year for them. Thousands of people suddenly all had the same thought: if people were willing to pay money for a space on this computer network, there must be a market for other goods. And so company lawyers started making a lot of noise about how currently anyone could register company names and trademarks as domain names without authorisation. Network Solutions was desperate to avoid a fight with corporate America, and the issue had inevitably found its way into the press. The trademark issue was therefore timely and struck a chord with Kremen. "It was a believable story. I believed it. I didn't realize how dumb that was until later on."

It wasn't really so dumb of Kremen to believe the story, but even so it *was* baloney. There was no Bob Johnson at NSI – it had been none other than Stephen Cohen on the telephone. Cohen had already spent a decade posing as everyone from government officials to FBI agents to lawyers. He was so good at it that, according to one story, he had even impersonated a judge in Colorado, heard real cases in court, and let people off before he was finally discovered by an embarrassed judiciary. Kremen simply had no idea he was dealing with a master criminal who was prepared to say or do anything, legal or not, in order to keep the property he'd stolen.

And the phone call from "Bob Johnson" was all it took for Cohen to secure ownership of sex.com. It stopped Kremen from chasing NSI for several valuable months, during which time Cohen managed to jump the last hurdle – Proehl's *real* boss. David Graves was looking at the change in sex.com's ownership and had told Cohen he wanted proof that it was legitimate. Cohen told him he had a signed document that handed over ownership to him, so Graves asked him to send a copy. Nearly three months after he had stolen the domain, and under increasing pressure to prove his claim, Cohen finally faxed NSI what was to become the most controversial and bitterly fought-over document in the battle for sex.com.

How was the most valuable domain name on the Internet stolen? With a one-page forged letter.

It was from the president of Online Classifieds Inc., the company name under which Gary Kremen had registered sex.com, and it was addressed to Stephen Cohen. The president, a Sharon Dimmick, wrote that she was handing over ownership of the sex.com domain to Cohen in recognition of his existing trademark for no consideration i.e. for free. She pointed out that Gary Kremen had been fired, and the company had decided not to do anything with sex.com, and so was turning it over to Cohen. The most crucial part of the letter, however, stated that it – the letter itself – should be used as proof of Online Classifieds' intent and should be presented to Network Solutions as evidence of the agreed transfer.

The whole thing was a fake produced on Cohen's home computer, and printed out and faxed to NSI from his workplace. It was sent on 5 December 1995, but dated 15 October of that year – two days before Cohen actually stole sex.com.

It was a cunning ploy, appearing to give Network Solutions all the justification it needed to change ownership, while also explaining why Gary Kremen had complained – because he was an aggrieved ex-employee. However, while the letter was a clever piece of high-wire balancing, it suffered from one major defect that would ultimately lead to Cohen's downfall: it was appallingly written.

Cohen possesses an unnatural gift of persuasion, but he left school early with a poor education, no qualifications and dreadful literacy. He can't spell, and he has never learned the art of writing. As a result, he simply types verbatim what he would say to someone, never fully recognizing the difference between what people say and how they express the same thing in print.

The letter heading itself possessed a glaring mistake. It read: "Online Classifieds, Inc. (For your online ad's)". The extra apostrophe in "ads" is a basic grammatical error, and one that would be understandable in the body of a letter, but almost inconceivable in a company's official letter heading, reproduced thousands of times on company stationery. It also contained no phone number or email address or website. And, as Kremen's lawyers were to discover, the letter heading was printed in an unusual font that Cohen had been using in his letters, both forged and real, for years.

The rest of the letter is just as sloppy, and the syntax frequently childish. It began: "Per our numerous conversations, we understand that you have been using sex.com on your French Connections BBS since 1979 and now you want to use sex.com as a domain name on the internet. Our corporation is the owner of sex.com as it relates to the internet."

Would the president of a company really write an important letter so poorly? Cohen also hadn't done his homework – the ".com" extension only came into existence in 1984. Considering that this phoney letter was being faxed as proof to the very company that ran all dotcoms, such a glaring error was bound to raise eyebrows.

It continued just as badly: "At one time, we employed Gary Kremen who was hired for the express purpose of setting up our system. We allowed Mr. Kremen to be our administrative and technical contact with the internet, because of his vast experience with computers and their connections to the internet.

"Subsequently, we were forced to dismiss Mr. Kremen. At no time was Mr. Kremen ever a stockholder, officer nor a director of our corporation and as such, Mr. Kremen has no rights, titles or interests in our domain name. Further, the internet shows that sex.com is listed in our corporation and not in Mr. Kremen's personal name. In fact, Mr. Kremen is the president of a different and unrelated corporation called Electric Classifieds, which is located at 340 Brandon Street in San Francisco, California. Further, Mr. Kremen's corporation owns match.com which is listed with the internet registration.

“We never got around to changing our administrative contact with the internet registration and now our Board of Directors has decided to abandon the domain name sex.com.”

While the concept behind the letter was brilliant, its execution was poorly handled. What company would claim that it “never got around” to doing something? Why would the president of Online Classifieds talk about match.com? In a phone conversation, the slang would be fine and the tangents about Gary Kremen, complete with precise facts, would give the listener greater confidence in the speaker. But when put down on paper, such persuasive techniques jar. Cohen had completely over-egged it by going on about Kremen when the letter was only supposed to handing over ownership of rights in sex.com.

The final paragraph in which Cohen sought to have the letter itself act as a passport to the domain change was too blunt and blew the whole scam:

“Because we do not have a direct connection to the internet, we request that you notify the internet registration on our behalf, to delete our domain name sex.com. Further, we have no objections to your use of the domain name sex.com and this letter shall serve as our authorization to the internet registration to transfer sex.com to your organization.”

The likelihood that a company called Online Classifieds, which was handing over ownership of an Internet domain, did not have an Internet connection was so remote it would be bound to set off alarm bells. Cohen’s motive was also immediately obvious: this was sex.com, the most transparently desirable Internet domain in existence. NSI only had Cohen’s word that the transfer was legitimate, and the proof of this was a highly unusual and unorthodox letter sent to Cohen, and faxed by Cohen.

And that should have been the end of the matter. The remarkable tale of sex.com reduced to a few weeks of irritation before Kremen was handed back the domain and things continued as they were previously. The domain transfer had already been flagged up as suspicious. The original owner had complained, and the apparent proof of its legitimate transfer was a transparent forgery. Handing the domain back really was no more than typing a few details into their system and hitting Save.

But it never happened. There was no investigation – not one that NSI has ever admitted to, anyway. Kremen was ignored, and Cohen was allowed to continue running sex.com, which even back in 1995 was making him hundreds of thousands of dollars every month. Why?

That was the question that would haunt Gary Kremen for the next eight years.

## 4: Gary Kremen

Gary Alan Kremen is a remarkable man. Born 20 September 1963 in Skokie, Illinois – just outside Chicago – to two teachers, it was obvious early on that he had a prodigious intellect. A sharp, driven and inquisitive child, he used to sit for hours in his back garden looking through a homemade telescope at the stars.

At eight, he was reading physics books intended for children twice his age. At 12, he built his first PC. While at high school, he was nearly expelled for hacking into the school's computer system. He once decided on a whim to go to the highest point in each of California's 59 counties – and he knows that there are really only 58 counties because Klamath County was dissolved in 1874. He is, put simply, the quintessential geek – highly intelligent, obsessed with the intricacies and forever looking to push back the frontiers of what is allowed.

Inevitably he was also a socially awkward boy, with just a handful of friends. Cross-country running – where the stamina and drive of the individual is paramount – was his sport of choice. But like the most famous geek in the world, Bill Gates, Gary possesses an unusual drive and determination that overrides his natural shyness. Gary Kremen decided early on in his life he was going to make it big in business, and he was going to do it at the sharp edge. And, like Gates, that meant the new and exciting world of computers.

He took degrees in both computer science and electrical engineering at Chicago's Northwestern University, graduating in 1985, and went straight into his first job, aged 23, as a member of the technical staff at the headquarters of Aerospace Corporation in El Segundo, California. The corporation did a lot of government-funded research, so it was in the unique position of being one of only 200 or so bodies that were connected together by one of the predecessors of the Internet, the ARPAnet. The World Wide Web wouldn't exist for another seven years, but Kremen got to learn about the new computer networks that were breaking out while he passed his time in an extremely dull job.

Not long after, he decided to broaden his options, and started taking night classes in accounting. And then he quit to go to business school, taking a full-price place at the spiritual home of technological entrepreneurship, Stanford. He was cocky and arrogant, turning down a full scholarship from the University of Chicago because he had already decided, in his own words, "to make my millions in Silicon Valley".

It was a life-changing decision. His peers at Stanford between 1987 and 1989 became the driving forces behind a series of new computer companies that are now household names – Microsoft and Sun Microsystems being but two. Far from leaping straight into a glittering job however, Kremen left Stanford in the middle of a recession from which Silicon Valley didn't recover for another four years. He took a job as a financial controller at one of the few businesses to survive during this tough patch – biotechnology. It was well paid, although nothing special by Silicon Valley standards, but Kremen remembers it fondly because the CEO allowed him to sit in on board meetings,

and it was there that Kremen suddenly realized he wanted to be an entrepreneur, spotting new business opportunities, forming a company around them, selling up and then moving on to the next thing. The Internet at the time was still no more than a few hundred computer companies, universities and government off-shoots communicating with one another, but thanks to a flatmate who worked at Sun as an engineer, Kremen had full access. And it was while looking about the network one day that he suddenly came up with a business plan – one of the very first hatched over the Internet.

We now take it pretty much for granted that a computer is connected or can be connected to the Internet. But back in the late 1980s and early 1990s, the opposite was true: there were hundreds of thousands of computers, but only a small percentage of them were connected to anything beyond a printer. One of the advantages of being on the early Internet was that information and files were shared freely among users, and since most of the people on the network were computer scientists, it was awash with software programs they had written in their spare time to do various jobs made freely available to everyone. Kremen reckoned that if he put together a suite of these software programs, people not on the network might be willing to pay for it. So he downloaded and tested a wide range of programs, put together about ten different packages catering for different needs, and advertised them for \$99. Full Source Software thus became possibly the first open source software companies in the world.

Kremen's hunch proved right, and soon he was selling \$1,000 to \$2,000 worth of software a day. He then expanded his small-scale enterprise by buying the rights to a series of security programs that he again sold as a complete package. His timing was immaculate: in November 1988 a previously unsuspected threat – a computer virus – appeared from nowhere and promptly infected 10 percent of all computers attached to the Internet. Internet protocols had been designed to survive a nuclear blast, but it was never considered that the threat might come from within the network itself. The antivirus market was born and Kremen, through a hunch, was one of the first onboard. Neither venture made Kremen a lot of money but they had an enormous impact on the young entrepreneur and gave him the confidence to trust his instincts about where these new computer networks were going.

And there was one thing Gary Kremen was sure about: it wouldn't be long before everyone was connected to these networks. It would mean the end of his software business model, but just imagine the possibilities if hundreds of thousands of people were all able to interact with one another using their computers. You could buy and sell stuff over it, just like you did in the real world. In fact you could buy something from a complete stranger on the other side of the country as if they were sitting at a terminal right next to you. It seemed amazing, even ridiculous, but it was clearly possible because that's what they were already doing – communicating directly, and with virtually no delay, to people thousands of miles away.

And so Kremen started thinking about how to create a business that would make money over the networks themselves, and the solution he came up with says much about the fledgling Internet itself: classified ads. The simple fact was that no one knew what use was going to be made of the Internet – whether it would be purely academic and just for serious work, or if it would become more personal and everyday. Kremen was sure that

the Internet was going to reach far beyond work tasks and become a part of people's lives, and that hunch was backed up by the increasingly frivolous way computer scientists were using electronic mail on the network at the time.

Email was for serious information exchange, the employees were told. The computer networks were not a toy, they were expensive, hi-tech links. This staid approach was quickly blown away, though, thanks to familiarity – perhaps the best example being the introduction of the “smiley” in September 1982 to denote a joke or something funny. Of course being computer scientists, there was some serious discussion about how precisely you could signify a joke. “Maybe we should adopt a convention of putting a star (\*) in the subject field of any notice which is to be taken as a joke,” argued one, who had clearly failed to get a joke emailed [[to him]] earlier. Another disagreed: “I believe that the joke character should be % rather than \*.”

The conversation went on:

“How about using \* for good jokes and % for bad jokes?”

“No, no, no! Surely everyone will agree that ‘&’ is the funniest character on the keyboard. It looks funny (like a jolly fat man in convulsions of laughter).”

“I think that the joke character should be the sequence {#} because it looks like two lips with teeth showing between them.”

Finally it was a man named Scott E. Fahlman who hit on the right idea: “I propose the following character sequence for joke markers: :-) Read it sideways.” The smiley was born.

It was clear people were taking to the Internet in an informal way, but even so no one knew what they should expect to find there, or even what it would provide that other media such as newspapers, radio or television didn't. Classified ads in this context was a masterstroke. If people didn't know what was there, Kremen would simply provide them with a notice board and let them decide on their own – while taking a small fee for everything that appeared.

And so with the proceeds from his software business, he hired a lawyer, formed Electric Classifieds Inc., and embarked on a tour of Silicon Valley venture capitalists, attempting to sell them his vision of adverts carried over the Internet. He eventually raised \$1.3 million, but a condition of the money was that he lost his position as CEO to a more experienced businessman, becoming chairman instead. It wasn't long, though, before Kremen and the CEO, retired newspaper editor Alan D. Mutter, clashed. Mutter didn't think Kremen was qualified enough to act as the company's marketing director as well as chairman, and Kremen disagreed. Loudly.

The personality clash was all the more difficult thanks to the enormous speed with which the Internet was changing. Tim Berners-Lee had just invented the World Wide Web. A company called Netscape then released something that many of us now think of as *being* the Internet – the Web browser (although Berners-Lee, among others, was very annoyed

to discover that this piece of software allowed pictures to be viewed alongside text). In barely a few months, millions of dollars were being thrown into projects on the new computer networks. No one knew where it was going – or those that were foolish enough to claim they did were soon proved hopelessly wrong.

This frenzy of action made it impossible to draw up robust business plans, so people simply went with their gut feeling. Kremen's boss Alan Mutter did the same and, since he was an ex-newspaperman, felt that newspapers should be the focus of Electric Classifieds' business. That approach was backed up by the press themselves, with several newspapers marking out Electric Classifieds as the future of business on the Internet. And Kremen got his first taste of publicity – entered at number 36 in a poll of the top 100 people working on the World Wide Web. In July 1995, he was the focus of a two-page feature in the businessman's bible, *Forbes*. *Fortune* magazine devoted a page to Electric Classifieds; the hip new *Wired* magazine did the same.

But while Kremen's head was swelling, things grew more and more difficult within the company. Mutter was pushing the company in a direction that Kremen was certain was wrong, and tension grew. It finally came to a head when the company decided to ditch Kremen's pet project: a dating service he had set up at another of his domain names, match.com.

Kremen had built the dating side of the business from scratch, first over email, then through the very earliest browser, called Mosaic, and finally over the World Wide Web. He had acquired the domain name match.com at the same time he registered sex.com, and decided it was perfect for the service. But Mutter didn't like it. "He was very religious and he was embarrassed by Match.com," Kremen explains with irritation. "He wanted to go after the other classifieds. And I said 'dude, we've got to be like eBay and the newspapers have to be our enemies'. And we had big fights over that, and the board voted to sell Match.com."

Not that Kremen took the rejection graciously. "I screamed and screamed and screamed. I hit someone I think, I was so angry. I said: 'I think this is the one, let's forget the other classifieds, we've got traction here, we've got real income, it's growing like this every day. Let's back the successful horse.' But the old-timers were embarrassed by dating." Kremen was difficult, sometimes impossible to deal with, but his hunch had been right yet again. The board of Electric Classifieds sold Match.com for \$8 million to a company called Cedant, but just a year-and-a-half later Cedant sold it on for \$50 million. It is now the market leader in an enormous international online dating industry and makes hundreds of millions of dollars every year. Kremen retains a lifetime account, logging in as "The Founder".

The sale of Match.com marked the end of Kremen's association with the company he had started. He resigned and sold a small portion of his stock in a private sale, making just \$50,000 from what was supposed to be a leading new-wave company, and immediately started another company, NetAngels, which produced what is now known as spyware – software that tracks what websites Internet users visit. He also acted as a broker for two of the biggest domain name sales of all time: computer.com for \$500,000 and altavista.com for \$3.35 million.

It was in domain names that Kremen's future lay. He was one of the very first people to recognize their commercial value, and had registered more names than most, including jobs.com, autos.com, housing.com, notices.com. The problem was that all these domains were now the property of Electric Classifieds Inc., the company he had just walked away from. Except, that is, for one.

"I kept sex.com in my name, because I remember saying to Peng [Ong, the co-founder of Electric Classifieds], 'we'll keep that in your and my name,' and he goes, 'Oh, no, in Singapore, they'll execute me!' And I went, fine, I'll take it."

Kremen registered sex.com under the name Online Classifieds Inc. because he thought at the time you had to register as a company or organisation, rather than an individual. It was an off-the-cuff decision that unwittingly opened the way for Stephen Cohen to steal the domain name.

Aside from sending a few test emails to make sure the domain worked, Kremen had never even put up a website on sex.com. But it was to sex.com that he turned once Electric Classifieds fell apart and he had moved on from NetAngels. The rumble of the approaching dotcom boom was already being felt, and in 1996, Kremen did a quick stock-take of the past two years. It was then that he suddenly realized his most valuable possession all along had been sex.com and that he still wasn't exactly sure why he didn't still own it.

## 5: Sex trade

By the time Kremen had come to this conclusion, Stephen Cohen was having the time of his life. Control of sex.com didn't just mean money – tons and tons of it – it was the golden key that unlocked his dreams.

Cohen is obsessed with sex, his other driving force being power. So having its number-one property on the biggest and newest marketplace in the world was mind-blowing. He instantly became a player in the adult industry, a seductive and extravagant business whose rewards are ready money, good times and easy sex. The gloss soon fades for most, but Cohen was in his element.

Perhaps surprisingly, considering his imagination and foresight, Cohen did nothing innovative with sex.com – he simply plastered it with ads for other porn websites. But then he didn't have to do anything more – this was sex.com, it was the days before search engines like Google, and millions of people arrived at the site every day by simply typing “sex.com” into their Web browsers and hitting return. He could afford to let everyone else do the running.

Besides which, Stephen Cohen possesses an odd sort of laziness. When there is a scam to be pulled off, or a deal to be made, he will go to extraordinary lengths to cover every possible angle. But once the buzz is over and the scam pulled, in everyday life Cohen is hopelessly sloppy.

So he covered sex.com with paying ads when he could have established the biggest pornography website on the Internet and stolen the market. The very earliest version of sex.com that went up on the Internet, back in 1996, featured a garish mixture of fonts in different sizes, styles and colours on a dark blue patterned background. It was basic and poorly designed even by the standards of the time.

The entry page threatened (in an intriguing fashion of course) that if you weren't 18 years old and tried to enter the site you would be in trouble. There was plenty of pseudo-legal language (“... you NOW understand that YOU hereby certify, state and acknowledge to all, that you are familiar with the laws pertaining to the viewing of sexually explicit material in your community ...”). There were also lots of spelling mistakes, and – this being Stephen Cohen's site – a number of complete falsehoods.

A nice touch was that the “Exit” button (for minors and prudes) went to a sex chat room that paid Cohen for any visitors from his website. If you clicked on “Enter”, you hit another page – this time with a pink background of cartoonish breasts – and were asked a second time if you were sure you wanted to “view explicit, sexually oriented materials”. The Exit button this time went to a different website, which also paid Cohen per visitor. This second page was entirely superfluous, but had the effect of doubling the number of “hits” on the website before people had even got inside – something Cohen would use to claim more visitors than he really had, and so charge advertisers more.

Once inside sex.com, you were hit by a barrage of slim rectangular ads for other porn sites featuring explicit photos and crude language. They ran, one after the other, all the

way down the page and cost \$45,000 each a month. A column on the left let you sign up for “free memberships” by typing in your email address and then, as you went down, there was a series of text links for things like “Teen hardcore fucking!”, “Gay Sex Boys”, “Gang Bang Cam” and so on, which took you to more paying websites. These ads cost \$10,000 a month.

There was a “Sex in the news” link that led to a short summary of news stories with the general theme of sex, bought-in for a few thousands dollars a month. There were also two pictures of the day, a cartoon of the day, and a story of the day, all of which were updated less than once a month and after the first few months ditched altogether. Even this small amount of work was too much trouble for Cohen.

Lastly, right at the very bottom, were small text links to the “Sex.Com Members Area”, “Join Sex.Com”, “Advertising Info”, “HOW TO！”, and “Copyright Info”. The members’ area was a pretty poor deal by all accounts: Cohen had very little material on sex.com, but you were still charged the going rate of \$25 per month on your credit card. And, if later court documents are to be believed, often more than once.

The “How To” area was the only area where Cohen left his mark, in the form of a series of five short guides by the master himself. One, “Anal Intercourse and Analingus. By Stephen Cohen”, was no more than a plain orange webpage with black text. Hemingway it was not: “For many people, anal sex is the ultimate taboo. Buttfucking makes it sound crude and dirty, sodomy sounds technical. But some people love anal sex. Others hate it. Others haven’t tried it yet and are curious ...” Cohen then goes into some detail. The guides for oral sex (male and female) and hand jobs were written by “Tammy, Linda and Nicole”, but had an oddly Stephen Cohen ring to them. And a guide to US law and sex was little more than a copy of state sodomy laws copied from another website.

The entire site was designed to get maximum money for minimum effort. And it barely changed over the five years that Cohen ran sex.com, going through two redesigns but retaining exactly the same approach – dozens of paid-for ads to other sites. What was extraordinary about this complacency was that the adult industry itself was rocketing ahead with the very latest Internet technologies – webcams, live link-ups, instant messaging, streaming video – in order to attract customers. Cohen simply used sex.com’s billboard status to promote other peoples’ efforts for a healthy profit.

Cohen now likes to paint himself as a great businessman when he was in charge of sex.com, but the fact was that he made his mark on the adult business not by producing better goods or services but by scaring the bejesus out of his competitors. And he did it through trademark law, using the same line that he had used against Kremen.

When you apply for a trademark, it goes through an initial approval process, and then the claim is published in specialist journals to see if anyone has an objection. If there is no opposition, the trademark application then goes through a second, more thorough, checking system. And if it emerges from that unchallenged, it is then approved.

Since this process can take years, however, and since trademarks exist to protect companies from others stealing their ideas, the system has evolved so that the mere application for a trademark holds legal weight.

Filled with this knowledge, Cohen applied his criminal mind. He claimed to have trademark rights to “sex.com”, and to have had it since 1979 – a claim that he still repeats to this day despite not having a shred of evidence. On the trademark application, he stated that an earlier bulletin board computer system he had run included a section called “sex.com” which stood for “Sex Communications”. Cohen then provided testimony and printouts to prove his point. Unfortunately the documents were forgeries and the testimony worthless.

But that was beside the point. If he had a trademark application to point to, he could work his magic. In May 1996 – eight months after he had stolen sex.com – Cohen applied to the United States Patent and Trademark Office (USPTO) for the trademark “sex.com” and received application number 75106638. The application was immediately spat back at him by a patent investigator for containing none of the information required. So Cohen hired a specialist law firm to rewrite the application and resubmitted his claim. It was rejected a second time for being too similar to an existing trademark for “Sex Net”. So Cohen simply forged an agreement between him and the owner of that trademark and faxed it to the USPTO.

Cohen knew it didn’t matter whether the application was legitimate or not – all that mattered was that it was going through the process. What he did then took his unique audacity and confidence to pull off. Despite having no basis in fact or reality, he devised a plan that worked against some of the toughest businessmen in the adult world – people that no one can accuse of being naive or easily intimidated. He simply contacted anyone that owned a dotcom domain that contained the word “sex” and informed them, in no uncertain terms, that they were infringing his trademark, and, as a result, unless they wanted to face his lawyers for infringement proceedings, they would have to pay him “licensing fees”. Sometimes, he simply demanded ownership of the domain.

In the late 1990s, no one was sure of the value of domain names, apart from the fact they only cost \$100 to buy. Faced with a businessman earning millions of dollars threatening to bring hell down on you unless you complied, the majority of people that Cohen cornered capitulated and handed the domains over. After all, it would cost five times the cost of the thing just to get a lawyer to reply.

An early target was FT Inc., which owned sexsex.com and sexysex.com. Cohen asked the company for licensing fees. When he heard nothing back, he sued. On 10 February 1997, FT Inc. received a complaint for trademark infringement and unfair competition, alongside a request for a jury trial.

“Since at least 1979, plaintiff has continuously used the SEX.COM mark in interstate commerce in connection with providing access to adult entertainment material on computer bulletin board systems (BBS), the Internet and the World Wide Web,” the complaint read.

It was more BS than BBS, but it caught people's attention. The complaint then accused FT Inc. of "wilful, wanton, malicious, intentional" conduct while asking for damages, threatening directors, staff and customers, and demanding all profits made by the company while it had been "infringing" the sex.com mark – which, according to Cohen, was 1979. It was a particularly heavy-handed approach, and was designed to be, scaring the hell out of small companies that thought there might be something in this Internet business but who didn't have the experience, courage or pockets to deal with a heavy legal action.

Once successful, Cohen repeated this approach over and over again, amassing a huge portfolio of domains effectively for free. Inevitably he came up against other big guns in the adult industry who weren't as easily intimidated and who had the funds to wage a legal battle. Cohen was, as ever, was one step ahead, and had already prepared for the confrontation.

## 6: The Oregon way

Everyone knows or has met someone who is able to get seemingly impossible things done, from finding some luxury item in the middle of nowhere, to persuading someone to do something out of the ordinary, often against their better judgment. A shortcut, a tip, the man with the inside track. Stephen Cohen is that person.

An easy manner, a splash of charm, the ability to read people instantly and a very, very quick mind is what you need if you are to make a living conning people out of their possessions. But they are all as nothing without the right knowledge and careful planning. Stephen Cohen possesses an extraordinary ability to acquire snippets of information and then weave them together to create an entirely different, and entirely convincing, picture about what is happening or has just happened.

It makes him an extraordinary storyteller, and he will literally tell you tale after tale for hours. He will tell you about meeting Bill Gates. “I know him. I went to Comdex one year – I arrived on the Tuesday and I couldn’t get a badge because it was late, around 5.30 p.m. There were some old farts on security, about 65, so I just walked in. And I saw a group of people watching big screen TV but with the sound turned off. So I walk up to this guy, introduced myself and started talking ...”

He will tell you about his Rolls Royce: “It was a 1979 Silver Cloud. But I remember the insurance company asked me for the horse power of the car because it wasn’t listed anywhere, so I wrote to Rolls Royce’s headquarters in England saying ‘What is the horsepower of my car, I need to know for my insurance company’ and they wrote me a letter back. It contained one word: ‘sufficient’.”

He will tell you about charming the most beautiful woman in the world in a lift in Nicaragua. He will leave pregnant pauses in an intriguing story about how a Caribbean plane due to take off returned to a terminal to let on several mysterious American-speaking men dressed exactly alike. Whatever the subject, whatever the country, whatever the moment, Stephen Cohen has a story to tell about it. And every story has in it a kernel of truth, a fascinating snippet that he has picked up from somewhere that he then weaves a tale around.

But while this most human of gifts makes Steve Cohen a great man to chat to, it is also the basis of his criminal enterprise. He has learnt that if you talk to someone long enough they will relax and be more likely to break confidences. The sheer amount of time he spends talking on the phone is extraordinary. He has new phone lines installed in every place he lives; he has become an expert on the latest technology that runs calls over the Internet; when in jail he made literally dozens of phone calls every day. Stephen Cohen was born with a phone attached to his ear.

This mastery of the phone and ability to draw out secrets achieves remarkable results. Cohen would often taunt Kremen by calling him up and providing small details of Kremen’s legal tactics, often just hours after they had been discreetly prepared. Talk with him about a wide range of subjects, and he will have a comment to make on something that happened only hours earlier. Cohen picks up interesting titbits before they become

public knowledge and uses them to give the impression of knowledge and authority. The catch is that there is almost no depth to that knowledge – something that becomes increasingly obvious the more you speak with him.

An old friend and lawyer of Cohen's, Frank Butler, knows this better than most. "Steve is the sort of person that has read the first page of every book ever written. He would pick your brain for all of the salient points of an issue and then regurgitate them back to you. And he could use them to his advantage. He is a very bright person." One of Kremen's lawyers, James (Jim) Wagstaffe, is less complimentary: "If you lit a match in front of his mouth, the whole room would explode it is so full of gas."

Nonetheless, through a potent combination of careful planning, bald untruths, aggressive legal pressure and endless phone calls, Cohen manages to achieve seemingly impossible results, getting people to hand over money, cars, even houses in return for nothing. And he has done it over and over again for nearly 40 years.

It is an old maxim that you can't con an honest man. As a result, conmen are often viewed as loveable rogues, even though they feed off people's weaknesses, because the person who loses out knew they were up to no good in the first place. Cohen doesn't fit this model of conman. He is certainly devastatingly charming when he needs to be, he can spin a yarn and have you believe it's true, but Stephen Michael Cohen prefers – loves – to fox, bewilder and cajole honest people into making mistakes. People aren't complicit in a Stephen Cohen scam – he takes you for what you're worth and then turns around and grins, defying you to try to get your possessions back. The result is that Cohen's skills at avoiding people – creditors, bailiffs, lawyers, angry husbands, sheriffs – are even more honed than those he uses to con people in the first place.

California has no less than four district courts and is home to one of 12 Appeals Courts of the United States. Cohen knows every one. But even though he, most of his businesses, and most of the adult industry are based in and around Los Angeles, he decided to sue the owners of domains containing the word "sex" in the state of Oregon, over 1,000 miles north. The state of Oregon has just one district court, no Appeals Court, and a culture of law practice that is a million miles away from the tough-talking, ruthless existence of LA lawyers so frequently portrayed in films and on television. In Oregon things also go much, much faster.

"In Oregon, I tried a murder case in three days," exclaims Charles Carreon – another of Kremen's lawyers. "I won a \$300,000 verdict after a four-day trial: the jury was out for 2 hours! It takes them all day in LA just to pick the foreman! Here, they *move* your ass."

Cohen had learnt about the speed of the courts of Oregon and decided to use it to his advantage. While he was hoping that his application for a "sex.com" trademark would be approved, he also knew he had faked the supporting documents so there was a big risk it would be turned down. So he decided to go in fast and go in hard with anyone that stood up to him. If someone refused to hand over their "sex" domain or pay the licensing fees, Cohen came good on his threat and took them to court – no fewer than 11 times in two years.

He hired a tough and aggressive law firm to make sure people took him seriously: DuBoff Dorband Cushing & King. Leonard DuBoff is a highly experienced Oregon notable, and an acknowledged expert in trademark law, albeit one without sight or a right hand, thanks to an explosion in his youth. He led the initial charge.

One of the first people to benefit from this personal attention was porn giant Serge Birbrair and his company Signs Signs Signs. Cohen wanted Birbrair's "sexia.com" domain but Birbrair had refused.

The next thing Birbrair knew, on 10 February 1998, Signs Signs Signs received no less than five legal documents: a trademark infringement complaint; a discovery order requesting that he hand over all relevant information concerning sexia.com; a motion for a temporary restraining order preventing him from using the domain; a memorandum in support of the motion for a temporary restraining order; and an affidavit from Cohen's company again backing up the call for a temporary restraining order.

Just two days later, the issue appeared before an Oregon judge, who set a calendar for the case to be heard. Just seven days after that, the hearing took place, and the very next day Cohen was granted a preliminary injunction. Cohen immediately provided this injunction to the dotcom registry, Network Solutions, and sexia.com was dead.

And that was it – in just 10 days, Birbrair went from having a leading adult website to having nothing. And he hadn't even begun to fight Cohen. The combination of his distant Oregon lawyers and an overwhelming first action was a knockout punch and the combination was so successful that Cohen used it again and again and again, building a huge number of premium domain names through pure, raw aggression. No one had seen anything like it, particularly not over the fledgling Internet.

Before Birbrair's case had even ended, Cohen had taken another company to court: Netsphere and its freesex.com domain. He used the exact same approach: five legal documents outlining the claimed infringement, three of them requesting an injunction. The only difference was the name of the domain in the documents. Just two days after lodging the complaint in court, the case was in front of a judge. It was a Wednesday and the first case conference was arranged for that Friday. The case conference was carried out by telephone and gave Netsphere just 11 days to respond.

Netsphere was completely overwhelmed and decided the best thing to do was hide. Cohen's lawyers tried to serve the company with the legal papers but couldn't find them. After three weeks of looking, they informed the court they had only located one of the three defendants. But Cohen didn't stop at that. A week later, Netsphere was tracked down and presented with the court documents. The very next day, the hearing took place without the defendants present.

The judge gave Netsphere another 11 days to respond, but the case was already won. It handed over the domain before the second deadline was up.

There was no stopping Cohen. Just eight days after filing suit against Netsphere, the same process was repeated all over again with another company, NetSide, for the domain

“sexcom.net”. Again the five documents arrived. Again, just two days later, the judge laid down a calendar for the case.

The process was so fast each time that companies barely had time to formulate a response before their domain was put on hold. NetSide at least tried to slow the process down: being a Florida company and so on the other side of the United States, it argued Oregon was an improper venue. But just a week later it decided it couldn’t handle the legal pressure and simply handed over the domain to Cohen.

This approach hadn’t gone unnoticed in the adult industry. People were running scared, but a few were getting increasingly angry. It didn’t help that Cohen did almost nothing with the domains he acquired, often simply putting up a single page that redirected to sex.com. Everything was maximum profit for minimum effort.

The domain-name crusade was suddenly halted in its tracks, however, when one company – the owner of hotsex.com” – decided to take the fight to Cohen before Cohen had the chance to sue him. Three days after Cohen had launched his third court case, against NetSide, he was named as the main defendant in a civil case brought against him by Web-Depot, who faced him with his own tactics: Web-Depot was based in Cambridge, Massachusetts – the opposite end of America.

Davon also hired a trademark specialist to argue his case. Unfortunately for him, the speed of law was more Californian than Oregonian in Massachusetts, so it took another two months for the case to come before a judge.

This wasn’t the only challenge Cohen faced. The undisputed king of online porn, Ron Levi, saw his chance and got involved. Levi had been watching Cohen’s progress in the adult industry, and when Cohen stopped his rampage against other “sex” domains thanks to Web-Depot lawsuit, Levi jumped in. Levi owned “wwwsex.com”. So those that typed in the “www” web address but didn’t hit the full stop, would be taken to <http://www.wwwsex.com>. It sounds stupid, but it was incredibly effective. More importantly than that though, the name tackled a fundamental element of trademark law.

An intriguing aspect of trademark – often abused by companies to explain unethical behaviour – is that a company has to defend any misuse of its mark if it is to keep it. So if Cohen didn’t react to someone using a domain that included the term “sex.com”, he couldn’t then go and attack someone else later for having a dotcom with the word “sex” in it. Levi knew this and so launched a site at wwwsex.com while Cohen was waiting for the Web-Depot case to come to court.

But Cohen – who had been carefully avoiding the notoriously tough Levi – had noticed the sudden appearance of the site, realized what it meant, and so sued. Ron Levi received the same five legal papers, but this time with the domain “wwwsex.com” filling in the blanks. Levi had his Californian attorney immediately apply for permission to represent him in an Oregon court, and the two found themselves in a stand-off. Both decided that the fight was for another day, however, and a month later Cohen withdrew his complaint and Levi took down his site. It was a wary truce, and one that finally broke down when Cohen found out that Levi had started funding Gary Kremen’s legal battle against him.

Cohen then fought for another three months with Web-Depot and Michael Davon in Massachusetts, gradually losing ground. Eight months in and just days before the trial date, Cohen settled and hoped that no one on the West Coast would notice.

Cohen then continued as if nothing had happened, sending out another long list of demands to “sex” domain owners threatening them with legal action unless they capitulated. This time, however, Cohen found a more defiant adult industry that refuse to simply cave in when they received a letter from DuBoff Dorband Cushing & King. On 29 July 1999 his legal team filed no fewer than five trademark infringement lawsuits and kicked the whole process off again.

By 2001, Cohen owned, among many, many other domains: lovemysex.com, wwwsex.net, wesex.com, 4sexy.com, ezhotsex.com, sexq.com, sexonline.com, hardsexonline.com, sexxlist.com, sexxxlist.com, trysex.com and truesex.com.

It is difficult to underestimate how happy Cohen was during this period – possibly for the first time since his childhood. He had spent his whole adult life pulling scams and then rapidly avoiding the fallout. No matter how much Cohen had congratulated himself on his prowess at not being caught, there had always been people after him. And despite all his feelings of superiority, it was quite clear society had thought little of him.

Now, however, sitting on top of sex.com, he found both the buzz he craved and, for the first time, a measure of respectability in the eyes of at least some of the rest of the world. It may have been the sleazy adult industry, and he may have been basing his entire legal crusade on a domain name he had stolen, using a trademark application he knew to be fraudulent, but he was successfully screwing people and didn’t have to watch his back while he did it. The money, power and sense of legitimacy was intoxicating.

Unfortunately for Cohen, the more Gary Kremen saw him using sex.com to build a fortune and found a business, the more determined he became to take it off him. A strange intensity started building between the two, as each put more and more store in having control of the domain.

## 7: Phone calls

If it hadn't been for the allure of sex.com, Gary Kremen and Stephen Cohen would most likely never have met one another nor ever even been in the same room. They lived only a short distance apart but inhabited entirely different worlds. Kremen was a respectable Stanford-educated business brain, used to cutting high-level business deals in the fast-moving technology field; Cohen was a street hustler, on the make and always looking for the easy score.

They were both enormously driven, highly intelligent and determined to make millions but whatever means they could and yet they could not be more opposite. Even as the two men fought their battles through proxies, neither couldn't resist finding out more about who was directing the troops. Cohen and Kremen had spoken twice very briefly: the first time when Kremen called to find out what the hell was going on with sex.com, and a second when Cohen pretended to be from NSI.

But driven by a fascination of the other, the phonecalls were soon to become a regular feature, starting with one call Kremen received early on in the case. "I remember he called and left a message. He said, 'This is Steve Cohen, give us a call.' And I thought, oh he's calling to settle. And then he'd just call and start going into, you know, he's owned this since 1979 and how he could prove it with some trademark documents and he had witnesses and he also had sexonline.com. But you know – you want to hear it – because it's intelligence. Even if your enemy or the other side is trying to confuse you – you want to hear it."

That experience is something that everyone who has known Stephen Cohen recognizes. He loves the sound of his own voice and will call at any time, day or night, and talk for hours. Cohen gave Kremen his phone number, and a few days later, just out of interest, he called Cohen and they talked again. "He can be interesting," Kremen explains. "And in the beginning, he mostly called me."

Soon, however, Kremen started growing tired of hearing the same old story. Even though he would always have an entertaining tale to tell, Cohen always got back to the fact that he had the rights to sex.com. "He talks, and talks, and talks, and talks," Kremen continues. "He'll go on with his own fantasies, and it's kinda convincing. It's like a Gestapo effect – if you hear it enough, you will believe it. There is a Goebbels part to him."

It was Goebbels who said: If you tell a lie, big enough, often enough, people will believe it. It could be Stephen Cohen's motto. But while the phone calls were Stephen Cohen's way to try to shake Kremen's belief in his ownership of sex.com by repeating the same mantra over and over again, they soon became something else entirely.

Sometimes before and sometimes after hearings in the case, Cohen called Kremen to tell him how he was going to have his ass kicked. Sometimes he would call before, and then if Charles Carreon, one of Kremen's lawyers, had had a bad day, he would call Kremen again after, rubbing it in. Cohen also swamped everyone else with calls: he'd call Carreon

and tell him tales of derring-do; he'd call up legal secretaries and court clerks and post-room boys posing as various people and sweet-talk them into providing any information about the case they had. He called another of Kremen's lawyers, Sheri Falco, pretending to be from NSI. He occasionally called Jim Wagstaffe (yet another of Kremen's lawyers), although Wagstaffe played it very formally: "First I would check with his lawyer that it was okay to talk with him. Then I'd always have someone else listening in on the conversation. I would always tell him someone was listening. But then he always said he was recording the conversation. This wasn't confidential."

It was how Cohen had always operated, and then whenever he picked up an interesting snippet of information, he would wend a tale around it and call Kremen to inform him why he was going to lose the case. And it worked. Kremen – who became increasingly worried about where his case was going and how much money he was spending on it – would get mad or he would get depressed. If Cohen outlined why his new legal tactic was going to be a disaster, Kremen would call his attorneys and demand they explain why it wasn't. If Cohen called when Kremen was on a comedown from crystal meth, it hurt, and only increased the sense of depression, which in turn led to Kremen taking more methamphetamine to pull out of it. But, like Kremen said, he wanted to hear it. Cohen had got hold of his mobile number and Kremen would answer it.

It reached the point where Cohen even called Kremen to tell him what he was going to do in order to toy with him, although this mind-game occasionally backfired, such as when he told Kremen about his plans to put a company of his through bankruptcy. Cohen wanted to hear Kremen's reaction as he gave him the news. Although in that case, forewarned was forearmed and Kremen's lawyers managed to beat Cohen at his own game, albeit with some help from an alert magistrate.

The calls slipped into a strange bond between the two men that remained even when the case started turning back the other way and it was Kremen who started calling Cohen to goad and mock. It became even stranger when Kremen managed to take control of Cohen's mansion. Cohen couldn't stand the idea of Kremen calling him from his own home, crowing about it, so he smashed the place to pieces. At least he would know that Kremen would be calling from a wreck.

One night, a few months after he had moved in, Kremen found in a drawer some of Cohen's personal possessions that had been missed, including a number of menus from his favourite restaurants. Some of Kremen's friends were over so he called Cohen on speakerphone and after some chit-chat, started reading out items from the menus asking Cohen what he wanted and if he'd like to come over for dinner. Cohen exploded with rage; Kremen and his friends fell about laughing.

Kremen did the same a about a year later when he learnt from Cohen's credit-card records that his favourite restaurant had been the Samurai sushi restaurant on Lomas Santa Fe Drive, about ten minutes drive from the house. Cohen had eaten there every night for years. So Kremen paid it a visit and then called Cohen in the middle of the meal to tell him what he was having for dinner and where he was having it. "He didn't call back for six months," Kremen says with some amusement but also a little sadness. The next time Kremen was in the restaurant, something occurred to him and he gave the

owner his card and asked him to call him if he ever saw his old customer Steve Cohen in there. The next thing he knew he had a call from Cohen. “I’m way ahead of you,” he told Kremen. The owner had called Cohen to tell him about the visitor.

For ten years, the twists and turns, the ups and downs were all played out between the two in long, sometimes tortuous phone conversations. Even when Kremen won sex.com back, Cohen would call telling him in a hundred different ways how he had screwed up the business and how he would never make it. “Look at his peers in the sex industry – he’s a joke,” Cohen said at the time. “He makes lots of press but he’s a joke. A lot of them are taking advantage of him. It’s not a pretty picture: allowing a site to go from the top site on the Internet to the toilet. The best thing would be to bury it.” Ten minutes later, he was back on the same subject: “It’s barely running on life support. The decent thing to do would be to let it run until it dies.”

When Kremen was after his money and Cohen shifted it just in time to another bank, within hours his number would flash up on Kremen’s phone and Kremen knew then that the plan his investigators had been working on for two months had failed. Equally, when Cohen saw Kremen’s number he knew something had gone wrong for him. The desire for both of them was to leave it, but at the same time they were both desperate to know what had happened.

Kremen recognizes in retrospect that he shouldn’t have answered Cohen’s calls or let him into his head. “His genius is in wearing people down. And he’s very good at that.” And did he wear Kremen down? “He did. But he didn’t win.”

## 8: Anatomy of a theft

It's become widely accepted Net folklore that sex.com was stolen by a forged letter. But the truth is that the letter was produced several months after the domain had already been stolen.

How do we know? Because Network Solutions has never produced the original letter. Why? Because it was never sent to the company. The letter was written in December 2005 by Cohen, backdated to October, and only ever faxed to NSI. It was no more than Cohen's ingenuous after-the-fact attempt to get past company checks.

If it wasn't the letter that provided authorisation, how exactly did Stephen Cohen steal sex.com?

There is only one man who knows for sure, but he prefers to argue, even now, that the letter is legitimate. However, thanks to the legal right of discovery, NSI was obliged to hand Gary Kremen all documents – including emails and records of telephone calls – relating to the transfer of the domain name, and from these it has become possible to piece together what happened more than a decade ago, on 18 October 1995.

How did Stephen Cohen steal sex.com? By hacking Network Solutions' systems. Except being Stephen Cohen he did it the opposite way to normal. Hackers use what they call “social engineering” to break into computer systems. This is no more than calling someone up at the company and persuading them to hand over useful details, such as a username and password by, say, pretending to be an IT administrator and so a figure of authority, or by telling a tale and appealing to someone's sympathies. Once the hacker has an entry point into a system, he can then use his computer skills to work his way into other parts of the system.

Unfortunately, Stephen Cohen's coding skills – while significantly better than most of the population's – were not enough for him to crack the first version of NSI's domain automation software. And so he settled for causing the system to throw up a query over the sex.com domain, and then used his extraordinary skills of manipulation to persuade a human at the other end that the change should go through.

Because of the huge interest in domain names, it rapidly became impossible for Network Solutions to go through all the applications for domain names manually, and so the company designed and built a system for automating the registration of new names. This system was in a constant state of change, going rapidly through different versions as software engineers made it better and faster.

At the time Stephen Cohen stole sex.com, the system comprised a single one-size-fits-all Web form. If you wanted to make a change to your details (i.e. change your physical address, or telephone number) you used one part of the form. If you wanted to delete your domain registration, you used a different part of the form.

There was also a whole manner of shorthand, incomprehensible to anyone unfamiliar with the system, but which Cohen had learned by talking to, and charming, Network

Solutions employees on the phone. He also learnt NSI's unpublished methods and procedures, lending him a sense of easy authority and believability when talking to employees on the phone.

Cohen actually made several attempts to change the ownership of sex.com in the days before 17 October 1995, trying out a number of different combinations until he struck lucky. In the end, he put in two contradictory requests on the same form: a "D" for delete order, meaning the whole domain-name ownership information should be deleted; and an "N" order, for new information, which contained a new email address and telephone number for sex.com. As a result, he received an email from NSI asking for confirmation of the changes.

Network Solutions' automated system in fact responded to both email addresses – Kremen's and the new email address (Cohen's) asking for a confirmation of the changes and asking for any response to be titled "urgent resubmission". Cohen immediately sent back a response – but Kremen did not. He says he never received the email. What's more, since Kremen has registered the domain by mail, he expected any future changes would be relayed to him the same way (the ability to buy a domain name with a credit card through a website was still some way off in 1995).

Nonetheless the reason Kremen never received the email covering Cohen's changes was because, by some bizarre coincidence, Kremen's Netcom account has been taken over months earlier by infamous hacker Kevin Mitnick, who used it to hide his identity while online. Just hours before Mitnick was finally arrested by the FBI in North Carolina in February 1995, he had been logged on as Kremen and was hacking into a number of companies' computer servers. Kremen never received email at his Netcom address from that point on.

But this is all beside the point because Network Solutions should never have accepted only Cohen's response as sufficient to change the details. So why did it? Because Cohen called NSI up and persuaded whoever was on the other end that the change was legitimate because the Netcom email address was not in use and because Kremen had been "fired".

We can't be sure who gave the green light because all the depositions with NSI employees have been sealed by court order, but it is clear Cohen had built up an affinity with someone authorised to put the changes through. He was a regular customer of the company and so, during the course of buying a number of domain names, had developed a certain level of trust with a number of individuals. Cohen went on to exploit these relationships when he sued other "sex" domains and contacted NSI to get them suspended once he had a court order. To NSI's eyes, Stephen Cohen was a respectable and regular customer. So when he asked for one small procedural element to be overlooked, it went through.

Once Gary Kremen's name and email address had been changed, Cohen was in a position to authorise other changes to sex.com. And so, gradually, carefully, he did make changes, until there were no remnants of Kremen's ownership left.

Even now, Network Solutions prefers to pretend the whole thing never happened. The company and its lawyers steadfastly refuse to make any comment on the matter, and requests are met either with contemptuous silence or a period of lengthy consideration followed by a refusal to discuss even the slightest detail. And so it was when Gary Kremen called the company in 1995 to ask what had happened to his sex.com domain.

“They said they’d investigate, I said fine. But they never got back to me, so I called again. They kept on saying, we’re gonna investigate, we’re gonna investigate, we’re gonna investigate.”

And investigate they did. The director of business affairs, David Graves, contacted Stephen Cohen. Cohen assured him everything was above board and he would send proof, and then called Kremen pretending to be from NSI. He left it a fortnight to see if anything happened, and when nothing did, Cohen faxed the forged letter to Network Solutions.

NSI must have known at that point that the transfer was fishy. A subsequent review by the Appeals Court refused to believe that the company could have thought it was legitimate. But with Kremen not chasing it up, they let the matter drop. The last thing the company needed was news getting out that someone had found a way to bypass its checking system because, quite simply, it could ruin the company’s entire plan to make billions of dollars from selling domains.

By the time Kremen realised his mistake and called NSI again, his problem had been buried under a million other issues. The domain-name market had taken off, and in just a year had gone from registering 1,400 domains a month to a blistering 30,000. Not only that, but a whole range of novel legal questions involving domain names had started appearing. NSI was expanding at an enormous rate, it was never out of the newspapers, and even governments were starting to investigate it. It had far bigger problems than one guy trying to dig up an old problem the company thought had been settled.

And so NSI fobbed Kremen off. “It got to the point where I wasn’t getting any answers, so I hired a lawyer,” Kremen recalls. Kremen had met Greg Raifman through his legal work for an early Internet service provider. So he hired him, and Raifman started chasing Cohen and NSI, sending letters asking for copies of any transfer requests regarding the domain. Both Cohen and NSI refused. So Raifman sent more letters and made more phone calls. Cohen’s attorney, Michael Mayock, still refused, but NSI’s David Graves promised he would look into it. Raifman kept the pressure on, and finally, eventually, eight months after Cohen had stolen the domain and more than six months since NSI had received the forged letter purporting to be from Sharon Dimmick of Online Classifieds handing over ownership of the sex.com domain to Cohen – the apparent evidence that the transfer was legitimate – the company sent Kremen a copy.

And it was then, for the first time, and despite everything Kremen thought he knew about Stephen Cohen, that it suddenly sunk in. He wasn’t facing a man who had got lucky and now refused to hand over sex.com because it was valuable; he had strayed into the path of a calculated, determined, ruthless and brilliant con-man. With a mixture of fury and trepidation, he picked up the phone to his attorney.

Raifman immediately called NSI and explained the letter was a forgery. This Sharon Dimmick had nothing to do with Online Classifieds, and nothing to do with sex.com – she was no more than an old flatmate of Gary Kremen's, he insisted. She didn't even spell her name that way, it was Sharyn with a "y". What's more, Stephen Cohen was a convicted felon and a crook and they had the court records to prove it. Raifman demanded that NSI hold an immediate investigation and return the domain to Kremen. But NSI remained silent. He called a week later, furious. And then again the next day, a Friday. And again on the Monday. And again on the Tuesday.

NSI had had the forged letter for six months. It delayed sending it to Kremen but had already made its decision before it finally handed it over. Taking into account NSI's unquestioned authority, the dangerous chain of events that an investigation might set in motion, and the fact that Kremen was just one, small domain owner, it was the smart choice.

But the lawyer brought in years later to review exactly what happened with NSI, Jim Wagstaffe has a less conspiratorial explanation. "Why didn't NSI hand it over? People like having things a certain way. My father was a lawyer, he's dead now, and he couldn't understand why people didn't still use carbon paper when Xerox came in. When faxes came, he didn't understand why people were sending faxes. He'd say: 'Give them a call!' I gave him a computer, a laptop, three years before he died, but he never even took it out of the box. And he was a very good lawyer, a very intelligent man. People don't take change well. It's difficult." Either way, NSI refused an investigation.

Raifman wrote to Cohen's lawyer and demanded the return of the domain, but it was a waste of time. Nonetheless, the fact that Kremen had the forged letter in his hand worried Cohen enough to set up another new company and to move ownership of sex.com for a fourth time in just eight months – from Nevada-based Sporting Houses to Ocean Fund International, a company based in the notorious offshore tax haven of the British Virgin Islands.

NSI had refused an investigation and the domain name had changed ownership to an offshore holding company. "And that was when I knew we had big problems, big problems," Kremen confesses.

## 9: Dimmick's dilemma

In fact, Graves' decision very nearly killed the whole matter stone dead. Kremen just didn't have the money to take the Internet's biggest and most powerful company to court. Letters were one thing – official complaints, witnesses, law courts, judges, juries and top-notch lawyers quite another.

It wasn't until nearly a year later that Kremen restarted the whole process. His burning sense of injustice lent him the fire for a fight. "I'd had enough. And I knew about the statute of limitations – I wanted my name back. I was ready. I was thinking about doing a sluttier version of Match.com."

Raifman had since moved onto other cases and clients, so Kremen hired another lawyer. This was Sheri Falco, just out of law school and with lots to prove. She worked from an office in the building where Kremen's businesses were based. "I said Sheri, I've got this problem, they're not responding, can you send some letters?" He paid her \$5,000.

"I had just graduated law school and started my own intellectual law practice," Falco recalls. "I was doing Internet law and multimedia law, and graphic designers and things like that." She also recalls when she got involved in the case. "At some point Gary came up to me and he said, 'I've got this case that I want you to look at,' so he kept saying that for a month or two, and then at some point he brought in this piece of paper, which was – you know – the infamous fraudulent letter.

"So I looked at that document, and it was clearly fraudulent, so I started to do a little bit of investigation about the 'sex.com' trademark. And at that very moment – I mean it was fortuitous, really – Stephen Cohen had applied to the United States Patent and Trademark Office for a federally registered trademark for the name 'SEX.COM'. And so I filed an opposition to that trademark."

If it had been a few months earlier or later, the whole case would have been stillborn, but with Falco's name on a document opposing Cohen's "SEX.COM" trademark application, and with Kremen emailing anyone with "sex" in their domain to tell them about his situation, she suddenly started receiving calls from people who had been threatened by Cohen and wanted to get their own back.

"It all kind of escalated rather quickly," Falco remembers. Among the most interesting phone calls was one from Serge Birbrair, who had lost his sexia.com domain to Cohen but done his own research on the man and uncovered a long criminal history going back to the 1970s. Other phone calls wished Kremen luck, some asked what they could do to help end Cohen's campaign of plunder. The news about Kremen's claim started appearing on adult industry websites, giving him some notoriety but there remained a very big problem: he couldn't afford a proper legal action. Whenever he had a few thousand dollars spare, he put it into the case, but rather naively hoped that the threat of legal action would be enough to get sex.com back.

Greg Raifman had managed to get the forged letter out of NSI, and Falco had blocked Cohen's trademark application, but with Cohen making it quite clear he wouldn't hand

over sex.com without a fight, and NSI refusing to hand over the domain, Kremen had run out of options.

It looked hopeless. Until, that is, he received a discreet offer of financial help from two of the adult industry's most colourful characters, both of whom wanted Cohen brought down: Ron Levi and Seth Warshavsky

Levi is a driving force in the adult industry. A calm, controlled and intelligent man, Levi keeps his private life private and is not a man to cross lightly. Levi had already clashed with Cohen over "wwwsex.com" and exchanged lawsuits before both warily backed down. He didn't like the look of Cohen and realized it was only a matter of time before Cohen would try to screw him, so he decided to get his shot in first. In terms of personality, Seth Warshavsky could not be more different to Levi. In many respects an odious man (one school friend describes how Seth tried to persuade him to drink a milkshake that he had urinated in) Warshavsky was a big mouth and a show-off with a gift for self-promotion.

Painted as the "Larry Flint of the Internet", Warshavsky courted the limelight with a series of publicity-seeking ideas on the new medium, including posting nude photos of prudish US radio commentator Dr Laura Schlessinger, broadcasting sex-change and brain surgery online, and webcasting a couple supposedly losing their virginity. But he became most famous for posting on the Internet a homemade sex video of actress Pamela Anderson and her rock star husband Tommy Lee Jones on their honeymoon.

It's uncertain why Warshavsky wanted to get involved in funding Kremen's lawsuit, most likely he just wanted to be a part of the action. But with Kremen desperate for cash, Warshavsky and Levi stamped out an agreement with Falco by which they would fund Kremen's legal action to the tune of \$100,000 each and in return would receive a controlling 51 percent of sex.com.

Neither Levi nor Warshavsky wanted Cohen to be aware of what they were doing. For one thing, they were still buying lucrative advertising space on sex.com for their own websites. And they didn't want Cohen as an enemy. So they set up a limited company together called KVI to fund a set of more experienced lawyers to take the case to trial.

Thus a new set of lawyers – Kathryn Diemer, Joel Dichter and Sean Moynihan – became involved in the case. Dichter was Warshavsky's lawyer, and Moynihan was already making a name for himself advising adult websites about the state of Internet law at any given time. "I still represented Gary," Falco explains. "I was Gary's voice, but they were really Seth's attorneys."

Although Kremen was finally in a position to sue Cohen, it came at a high price. "He never really felt that they were hearing him," Falco recalls. "He had a lot of ideas about how to do strategy, but they didn't particularly find his input valuable or interesting, and they didn't solicit it. He felt kind of shut out by the process. And so my job was to continually try to figure out ways to get him heard and seen, because it was really his case."

Kremen reflects: “You have to understand I didn’t understand anything about the law at that point. I know now, but at the time it was a mystery. To most people I know in business, it’s a big mystery.”

Nonetheless, Falco and Kremen had already researched and written the bulk of what would become the lawsuit against Stephen Michael Cohen. Before taking that final step, however, they made one last effort to get hold of sex.com: Sheri Falco tracked down Sharyn Dimmick – the woman who had purportedly signed the transfer letter as president of Online Classifieds, but who, in reality, had been no more than an ex-housemate of Kremen’s.

Dimmick and Kremen had not parted on the best of terms. Even though Kremen is not, by any estimation, the easiest person to get along with in a confined space, Sharyn Dimmick was obsessive about seemingly random things, and had a very short fuse. As proof of her writing and signature, Kremen admitted into evidence a series of increasingly deranged and threatening notes left by Dimmick while he was living with her, which for some reason he had kept. Kremen eventually moved out when Dimmick threatened to cut off his testicles while waving a knife about. (She ended up hospitalising her next flatmate.)

Dimmick had had nothing to do with sex.com, or Online Classifieds, and Cohen came across her name by calling the phone company and asking who was on the telephone bill for the address registered as Online Classifieds’ office. Unfortunately, he only heard the name and so wrote it with the more common spelling – “Sharon”.

Eventually Sheri Falco tracked Dimmick down. “She was in a trailer outside of San Francisco, about an hour, two or three hours north of the city, with her husband. So Sean [Moynihan] and I took a little road trip to interview her in her.” Sharyn Dimmick denied having anything to do with the letter and signed an affidavit stating she had no connection with the letter, or Online Classifieds, or anything else remotely connected to the case.

On Friday 21 November 1997, Falco put a copy of the affidavit in an envelope with a note asking that NSI return sex.com immediately to her client Gary Kremen. It was sent certified mail to David Graves, Business Affairs Office, Network Solutions, 505 Huntmar Park Drive, Herndon, Virginia 22070.

It was the last possible exit route prior to litigation, but yet again NSI refused to budge. But Graves was concerned enough to contact Cohen for the third time. We know this because shortly after Falco received a phone call from NSI’s infamous “Bob Johnson” asking if she could confirm what information they had sent her. It was Stephen Cohen trying to find out what the opposition knew but Falco spotted the deception and cut the conversation short.

From that point on Cohen started actively stalling and disrupting Kremen’s efforts. Cohen had been in control of sex.com for over two years, during which time he had made at least \$1 million in profit. And the Internet was just beginning to skyrocket as hundreds

of thousands of people worldwide joined the network for the first time. It was late 1997, and every day that Cohen stalled the process he made an extra \$10,000 from sex.com.

Nonetheless, Falco kept pushing. She did the legwork while Warshavsky's lawyers discussed how to approach the legal fight. Eventually, four months after he had received Sharyn Dimmick's affidavit, NSI's David Graves was forced to take a very small step backwards. In a letter dated 17 March 1998, he refused to hand over the domain, or suspend its use, or provide any more information surrounding the transfer, but he did agree that, on receipt of a formal legal complaint lodged against Stephen Cohen, NSI would hand control of sex.com to the court and comply with any discovery requests for further information on the transfer.

Graves' concession fell far short of what Kremen had been demanding. His team had incontrovertible proof that the domain had been wrongly handed over, and yet Cohen would continue to be able to run the domain exactly as he wished until the court made its final decision. Cohen would also be free to use the money he made from the domain to fight the case – and that meant he could hire the very best lawyers to drag it out.

Graves' letter didn't end there though. Aware now that the issue was not going away, he issued a stark warning to Kremen: "Please understand however that if Network Solutions is named as a party to this civil action, we will not be limited to the above actions. In such an event, we reserve the right to raise any and all defences we deem appropriate, and take any other action necessary to defend ourselves."

There could be no mistake about it. Network Solutions had thrown its lot in with Stephen Cohen, and if Gary Kremen wanted to get sex.com back, he would have to do it on his own. The chances of success were tiny: Cohen was aggressive, canny, and had millions to spend on the legal case. Besides, the only company capable of handing the domain back had made it clear it was actively hostile towards Sex.com's original owner.

The Dimmick affidavit was a last-ditch effort to end the dispute without litigation and it failed. And so on 9 July 1998, an incredible 995 days after Cohen had stolen sex.com, Gary Kremen, an individual, and Online Classifieds Inc., a Delaware company, sued Stephen Cohen and five of his companies – Ocean Fund International, Sand Man Internacional, Sporting Houses Management, Sporting Houses of America and Sporting Houses General – for stealing his property.

The District Court of the Northern District of California based in San Jose - chosen specifically because of its reputation for hearing cutting-edge technology cases - gave it case number 20718, and Judge James Ware was assigned. The legal battle had begun

## 10: Stephen Michael Cohen

Stephen Michael Cohen is a psychiatrist's nightmare. With the IQ of a genius, an obsessive attention to detail, tremendous drive and insurmountable optimism, he could have been anything in life. But his broken family background pushed him away from society's arms and into emotional seclusion and a career of heartless, predatory crime.

Born on 23 February 1948 to a wealthy Jewish family in Los Angeles, Cohen's family was torn apart when his father, an accountant, left with his secretary to start a new life just over the Santa Monica hills in posh Beverly Hills. It had an enormous impact on the young boy forced to live with a bitter mother and two older sisters, and Cohen began to idolize his absent father, who was driving around in a Rolls Royce while his son was doing the dishes.

The experience never left him. Years later he would proudly claim his father did his accounts, but the fact was that Cohen had just hired someone with the same name, David Cohen. One of Cohen's earliest lawyers, Frank Butler, also recalls a strange connection with his father: "Winning was everything to Steve. Just because you prevailed in a case against him that did not mean that you would ever collect anything. He always counted himself a winner if he was ahead of you. Something deep inside of Steve simply makes him that way. I can't imagine what, but it has something to do with his father."

While Cohen built a fantasy around his successful, happy-go-lucky father, he also took a determined dislike to his mother, describing Renee Cohen as a hopeless gambler and drunk, although Cohen's ex-wife Susan Boydston always thought she was charming. Cohen sometimes claims his mother is dead, when in fact she still lives in the house in Las Vegas that he gave her. At other times, he claims she is half-crazy. As for Cohen's sisters, they refuse to talk about their younger brother. His ex-wives are equally unwilling to drag up old memories. Renee Cohen and her daughters asked Cohen to stay away from his father's funeral.

Stephen Michael Cohen has married five times – each time to a woman of lesser intelligence whom he initially charmed but then manipulated and conned with callous disregard, leaving behind unpaid loans and sometimes children whom he then failed to support. Nevertheless, having been raised by three women, Cohen has an instinctive feminine understanding. He has an unusually comfortable chatting style, but remains incapable of forming lasting emotional relationships or even friendships with women. Instead, throughout his life, he has treated women as no more than fronts for his phoney businesses, as a source of ready cash, and for his unending, pubescent desire for uncomplicated, disconnected sex.

The roots of his emotional weaknesses lie in the angry, out-of-control teenage Cohen. In desperate need of a father figure, he hated school, and, although clearly highly intelligent, he paid little attention and did badly. There is a certain irony in the fact that as he arrived at Van Nuys High School in San Fernando Valley, the young men who would go on to invent the Internet were just leaving. Vint Cerf, Jon Postel and Steve Crocker had left Van Nuys for the country's top universities and careers as software engineers, later designing the foundations of the Internet for the benefit of all. Stephen Cohen left Van

Nuys for a career as a criminal, and later designed ways to use the Internet for the benefit of one man. “So many wonderful people have done wonderful things for society,” he said once. “I’m not one of them.”

Cohen’s lack of education was to hamper and frustrate him for the rest of his life, but at the time he couldn’t care less. He became obsessed with sex, talking endlessly about it and bragging to classmates about how much he was “getting”. But the reality was that he was a loner who sat at the back of the class feeling superior because he knew he was so much smarter than everyone else. His arrogance made him unpopular, and this in turn made him increasingly bitter and introverted when no one recognised his brilliance. But suddenly something in the teenage Cohen switched on and he emerged from his snide, mocking outward persona with a startling gift for persuasion.

Cohen found he was able to talk with absolute conviction about something he had made up just seconds earlier, and he was smart enough to see where people’s minds were going, and get there before them. At first he just told lies to amuse himself by highlighting others’ gullibility, but it soon extended to manipulation, particularly with girls. It was a magical fit – the one thing that he truly excelled at helped him get the one thing he wanted. Sex and lies. But before Cohen had much of a chance to enjoy his new-found skill, high school came to an end and he was forced to enter the real world.

With only a high-school diploma and poor grades, Cohen’s options were severely limited. There was no way he was going back into education, and the thought of having to work for someone less intelligent than himself – someone who would tell him what to do – was too much. The only thing he did have, apart from a very large chip on his shoulder, was an uncanny confidence and an unconfined willingness to lie to get whatever he wanted. Add it all up and it was inevitable that crime beckoned.

We don’t know what Cohen’s first scam was, or who was its victim, or even where it was perpetrated, as Cohen refuses to discuss or sometimes even acknowledge his extensive criminal past. But what we do know is that he was 19, freewheeling and living in California during the Summer of Love, 1967. Cohen had hit the jackpot. Not only did the free-love philosophy mean uncomplicated and bountiful sex, but the multitude of stoned hippies – usually naive middle-class kids – presented Cohen with a golden opportunity to get back at the people he hated. He worked his magic and soothed his soul by ripping them off. The result was that he didn’t have to work, adding to his general feeling of euphoria. The experience forever forged his personality.

But there was one more crucial experience that Cohen was to go through before the hippies left town for the history books: his first brush with the law. Someone of Cohen’s age, with his name, and living in the same area, was arrested and appeared in court accused of cheating people in fake marijuana deals. Abandoning the last of his scruples – if he still had any – the accused put on a performance that decided him on a life of crime. He simply talked his way out of it, baldly lying to the judge about what had happened, and doing so with such conviction that he walked free. The man who emerged from the courthouse was fearless, ruthless and utterly determined to feed off the weaknesses of others.

The hippie movement was beginning to fold, but Cohen, a member of the Free Love Association, hung on to his favourite aspect of it by making himself a part of the swinging community that quickly grew up in southern California. It eventually led to him to start up a sex club in a well-to-do residential area of Los Angeles, to build one of the first ever sex chatrooms, and, of course, to take over sex.com. But back in early 1970s his main priority was finding a new way to get cash.

And so Cohen became a “paperhanger” – a passer of bad cheques. At the time, long before electronic transfers of funds, many banks and even shops would happily cash cheques, especially if they had been charmed by the man handing them the worthless piece of paper. To Cohen, it was free money. He would open an account with a minimal amount of money, get a bundle of personal cheques, and then cash each one for an amount far exceeding the actual funds in the account. By the time the first cheque bounced, he had already cashed all the others at a number of different banks across California. Then he would open another account and do the same again.

“Cohen is a classic conman,” explains one of the key attorneys in the sex.com case, Jim Wagstaffe. “I have had many dealings with conmen and they’ve sat there and looked me in the eye and told me the biggest load of rubbish and they could have had their mother there, be sitting on her knee.”

In his rare moments of semi-honesty, Cohen admits to his criminal beginnings (“I had some misdemeanours when a young kid. I went through the judicial system. But I did not do jail time”), although on occasion these early forays are given the full treatment, and the one-man scam becomes an international multi-million-dollar laundering operation. For seven years, between 1972 and 1979, paperhanging was a good living for minimal effort. The problem was, while his charm was sufficient to get bank tellers to cash the cheques, his expertise wasn’t sufficient to bypass the authorities.

Inevitably they caught up with him, and Cohen appeared in court a second time in March 1974 for cashing two cheques at two different beachfront Californian banks for \$280 and \$295 – the equivalent of around \$1,000 today. Cohen’s early court experience had left him with nothing but disdain for the law courts, however, and by the time he was finally sentenced in April 1975 and given five years’ probation, he was already pulling the same scam. This time, however, he struck upon the idea of opening accounts under a slight variation of his own name – Stephen G. Cohen rather than Stephen M. Cohen. The hope was that cashiers wouldn’t notice such a tiny change and they didn’t – the scam worked beautifully.

Cohen was also learning to take greater risks. He would first cash a cheque for a small sum, and then return a week later to cash another one for a much larger amount. But the law caught up with him again. He appeared in court for grand theft and false impersonation in February 1977, this time relating to cheques for \$1,000 and \$2,500 – about \$14,000 in today’s money. It’s impossible to know how many times Cohen followed the same routine, but he pled guilty to these two counts and then charmed the judge into giving him three years’ probation plus a \$10,000 fine.

A third court appearance served as a wake-up call. Not that he had any intention of going straight – crime was far too easy, profitable and fun to give up. But Cohen did decide he needed a less risky method: paperhanging was a good introduction to confidence tricks, but next time he would end up in jail. And so he started experimenting with other scams where the victims were less resourceful and less powerful than banks. Under the conditions of his first parole (which he had violated), Cohen was not allowed to own various possessions, including a car, without the permission of his parole officer. So he had started leasing cars to bypass the order – a habit that was to stay with him for the rest of his life. Impressive cars lend the driver an air of wealth and respectability that is invaluable when trying to separate people from their possessions. But Cohen stupidly fell back on his previous habit, and appeared in court twice more for writing rubber cheques to two different car leasing companies.

He was sentenced in April 1978 and then again in December 1978, and each time talked his way out of trouble, receiving nothing but small fines since his frauds concerned sums under \$200. In the meantime, Cohen began testing and perfecting a range of new skills, including impersonating anyone from FBI agents to tax officials to delivery couriers, either to pull off a scam or scare people away. Ex-wife Susan Boydston tells of how he had a number of different phone lines coming into the house, including the bathroom. He would then use these different numbers to pretend to be different people, and sometimes would even vouch for one of his other alter-egos.

But it was not all fun and games. Cohen's temper was as uncontrollable as his sexual appetite. Boydston would eventually divorce him when she caught him in bed with two other women, but not before he had pressured her into wife-swapping parties, used her name to get and then abuse credit lines, and thrown her down the stairs for letting one of his many creditors into the house. (Cohen used to simply leave the countless writs and subpoenas on the hall table and claim he never received them.)

By the 1980s, Cohen was already thinking up bigger and better scams, and soon realised that if he was going to dive into the deeper end, he needed to know who he would be up against and how to work his way out. And so he signed up for law night classes at a local college to get an insight into the system that kept catching him out. He quit before completing the first year, but it was the start of an obsession with the law that henceforth would see Cohen misrepresent himself as an attorney. He took a job as a clerk with a local law firm where his boss, criminal counsel Roger Agajanian, tutored him on drawing up legal complaints.

Cohen certainly became adept at the specific areas of law that were of most financial advantage to him, but he wasn't prepared to put in the work past the point of immediate usefulness. Posing as an attorney Cohen could involve himself in deals but avoid being held responsible for them. He also found himself being drawn towards corporate law. The law surrounding companies, particularly in the United States, is designed to give people the best possible chance of turning their ideas into products and money. Individuals are encouraged to take risks, but at the same time the law allows for a business to go wrong and the person or people behind it not to be unduly punished by having to pay for the company's debts personally. US corporate law is a building block of capitalism.

When Cohen, aged 32, learnt this for the first time, his mind exploded with the possibilities. Most people see company law as an opportunity to make their dream come true, and at the same time as a safety cushion should things go wrong. Cohen could only see the cushion – plump with cash. He could effectively do the same as he had done with his personal chequebook and spend more than there was in the account, except that if he did it as a company, he could just declare bankruptcy, walk away, and it would all be perfectly legal. Stephen Cohen the individual could end up in court or jail, but a company run by Stephen Cohen could write thousands of bigger cheques and get away scot-free if the rules were carefully followed and then bent in the right places. And so, on 8 July 1980, he incorporated his first company, the Ynata Corporation. The name is strange but was particularly significant for Cohen. It was an acronym, and stood for “You’ll Never Amount To Anything” – something his mother had repeatedly told him as an under-achieving teenager.

Over the course of the next twenty years, Stephen Cohen incorporated no less than 18 companies in the states of California and Nevada alone. More were incorporated in other states and in other countries, including Mexico, Costa Rica, Puerto Rico, Vanuatu, Israel and the British Virgin Islands. Several of the companies were declared bankrupt and then simply reincorporated with the exact same name once the creditors had given up on recovering what they were owed. Nearly all were shell companies – companies in no more than name. Many had shares in one another, some were subsidiaries of others, and most had names extremely similar to others, all of which aided Cohen in hiding assets and avoiding liabilities. On top of these incorporated companies came dozens of other company names that were owned by one of the registered companies. By “doing business as” one of these, Cohen made it even harder for people to track him down.

Cohen was obsessed with company law and bankruptcy, and in particular how he could hide transactions as well as his own role in carrying them out. Once he had mastered US company law, he then started attending seminars and conferences on offshore banking, learning how to set up and run bank accounts in countries across the world. His focus was on countries that prized the security of the accounts holders as well as those that threw up institutional roadblocks for creditors. At one such meeting in Las Vegas, he met the man who would later nominally head the company through which he would filter tens of millions of dollars from sex.com. Originally called Ocean Fund International, Cohen would later change its name to the first company he had ever incorporated: Ynata. Except this Ynata was in the British Virgin Islands, very far from the prying eyes of the US legal system.

But back in 1980, aged 32, when Cohen founded his original Ynata corporation, he’d decided to stop the low-return, high-risk cheque fraud, but hadn’t yet landed on his next line of business. The answer came through the California Department of Consumer Affairs’ Bureau of Security & Investigative Services (BSIS). The BSIS is the branch of government that regulates the private security industry in California – everyone from private investigators to alarm companies. Cohen reasoned that if he was to branch off into other forms of fraud, it would be the private security industry rather than the police that would be after him. So he decided to learn about their workings from the inside.

He applied first for a repossession's licence, sat a simple two-hour multiple-choice exam, paid a registration fee, and was relieved to find he had passed the checks into his criminal past. He then went through the same process to get hold of a private investigator's licence, and again for a locksmith's licence. Ynata became a repossession agency, turning up at people's houses and taking away their belongings if they hadn't paid their bills. Mostly the repossession were cars, but once or twice they involved computers, which in those days were bulky metal machines that were still relatively rare even in California, home of the silicon revolution.

But Cohen's compulsion to break the law soon took hold. Clearing out one house, he came across a few software licences and decided to sell them on by advertising them in a local paper. He was surprised by the demand and so simply made copies, reselling the same licence over and over again. It was only when the software company started receiving support calls from a number of people with the same licence that the scam was uncovered. Cohen avoided the purchasers' wrath by putting the company he was using through bankruptcy, but not before incorporating a second company, Repossessor's Inc., under which he continued to run his business. The new name was a clever ploy to make it harder for people to chase him. If anyone complained that they had been conned by a repossession company called Repossessors Incorporated, Cohen could simply claim that they must have simply mistaken his company for the generic industry.

Not content with these two companies, Cohen was also "doing business as" another two – South County Towing, and Day & Nite Towing. Somewhat ironically Cohen's repossession business came to an end in 1988 when the tow trucks he had bought to do the job were themselves repossessed after Cohen persistently failed to make payments on them. With creditors and angry customers chasing him, Cohen decided it was time for another bankruptcy. Incidentally, the first ever Cohen bankruptcy had been in Colorado two years earlier when he as an individual declared himself bankrupt with debts of \$4.87 million – just under the \$5 million that would mean an examiner would automatically be put on the case. His personal wealth he stated as \$8,450, plus "one dog, no value".

Although one of these bankruptcies put his beloved Ynata on the scrapheap, it wasn't for long. He simply reincorporated it two weeks later when he felt the heat was off. That wasn't the only thing that was suspicious. It turned out that Cohen had forged the signature of a former lawyer on the legal papers. The lawyer, Frank Butler, testified 12 months later that he hadn't worked for Cohen for over four years and hadn't spoken to him for two. Cohen's most recent skill – forgery – had come to light.

## 11: The Club

During the software-liscence selling scam, Cohen met two people who would have a big impact on his future – Barbara Cepinko, and her husband Steve Grande. Both of them worked for DEC (Digital Equipment Corporation), which at the time was the world's second largest computer company and at the peak of its powers. Cepinko had seen Cohen's ad and bought a licence from him. They hit it off.

Computers had already started to fascinate Cohen – there was a big buzz around them, yet few people had any real idea how they worked. He could smell the opportunities. And he found two ideal instructors in Barbara and Steve.

Barbara Cepinko was and remains a tough businesswoman. She started and runs an IT company called Midcom, which undertakes high-level corporate and classified government work for such clients as Bank of America, DEC, IBM, Lockheed, McDonnell Douglas, Silicon Graphics, Sun Microsystems, Xerox and Walt Disney.

Cepinko's husband Steve Grande is a technical whiz kid who in the early days of the Internet built the largest private network – known as a bulletin board system (BBS) – in the world. He later started an offshoot of Midcom called Medcom before starting and continuing to run the Net's largest website dedicated to trains – Trainweb.com.

Cohen became firm friends with both of them and they helped him back on his feet when he came out of jail years later, giving him a job and an address. But they were to fall out with Cohen when they found how far he had abused their trust. Cohen persuaded Barbara to sit on the board of his Sporting Houses companies, using her as a patsy to cover his activities. He broke into Steve's email account (steve@liberty.com) and used it to steal sex.com. He sent the fake Dimmick letter to NSI from a fax machine in Midcom's offices. He posed as Steve Grande and ordered goods for himself. He showed people around the company's secure computer facility against the company's firm policy. And he installed his own server without their knowledge, and then broke the law countless times with his own BBS.

His future lawyer Bob Dorband remarked that the one thing that really struck him about Cohen was his optimism. "Even in the darkest moments, he's a very optimistic person. It's like you just can't keep him down. No matter what happens." Cohen is happy to admit it, and even reveals a little of the strange forces that drive him: "Even when things have been bad, they've never been *that* shitty. I have done more in my life than probably all my friends put together."

Cohen spent hours discussing and playing about with locks – a fascination of Grande's – in his guise as a locksmith. And he persuaded Barbara Cepinko to get involved in the more salacious aspects of his businesses, including the sex club, the Los Angeles swinging scene, and eventually a supposed plan to build the world's biggest brothel in Nevada.

Cepinko's involvement in the adult world became a source of some tension between Grande and Cohen, but nonetheless they let him start and run – with some help from

Grande – his own bulletin board system (BBS). The French Connection BBS was one of the world's first efforts to combine the latest telecommunications technology with pornography. It also marked Cohen's first step into the world of online communications.

The setup, if not the actual technology, was simple: people would use their computer modems to dial and connect directly to the French Connection server at Midcom – it had its own telephone line. Once there, they could read messages left by others and leave their own messages on an electronic bulletin board. The real action though went on in subscriber-only parts of the BBS. To gain access to them, you had to supply your credit card details or send a cheque to one of the many PO boxes that Cohen operated. Once the fee had been collected, you received your own member number and password that gave you the level of access you had paid for: levels ranged from one (little) to six (everything). Level six cost \$24 a month – the equivalent of around \$40 today.

Cohen ran several different notice boards, a nudist board, a fetish board – he even ran a psychiatric board that was used exclusively by a group of doctors who had paid for the privilege. And while the bulletin boards were initially used for leaving messages for others to pick up – usually arranging or organizing swinging parties – advances in technology soon meant that pictures could be scanned and put into an electronic format that could then be downloaded by others. The number of subscribers soared as people joined the BBS to get hold of pornographic snaps of other members and scans of adult magazines.

But it wasn't only the virtual adult world that Cohen was interested in. On 2 July 1988, he opened The Club at 9881 Brier Lane in the exclusive Cowan Heights part of Tustin, five miles from his home.

Cowan Heights is a rich residential area in the hills southeast of Los Angeles. Made up of small windy lanes with very little street lighting and large comfortable houses, it is exceptionally peaceful. At night you can hear a pin drop. So it wasn't long before people started becoming concerned about their new neighbour. Brier Lane – which ends in a large circular turn-around – was jam-packed with upwards of fifty cars every Friday and Saturday night. As couples piled in and out of the house, often loudly and often drunk, the residents grew increasingly angry. To add to their suspicions that something untoward was going on, Cohen had blacked out the windows and raised the height of the fence at the front and side of the property so no one could see in.

The house itself – a spacious, non-descript, four-bedroom bungalow with a pool out the back – was owned by one Jackson C. Wang, who lived four miles away in Santa Ana and would later testify he had no idea what was going on. It didn't take residents long to figure out that Cohen was operating a sex club in their own street. They started holding meetings about what to do. A petition was quickly drawn up and enthusiastically signed.

The residents contacted the sheriff's department, but in the meantime The Club had started advertising itself in newspapers as "a social swing club for married and committed couples only", although bisexual and single women were, of course, exempted. A telephone answering machine described it as "a fun-loving group out for a good time ... great food, good friends, wild lovers and the time of our life".

The problem was that it wasn't against the law to run a sex club – partner-swapping was protected under the right of free association – and so the sheriff was at a loss over what to do. At that time, there were at least half a dozen other swing clubs in Orange County alone, according to Bob McGinley, president of the North American Swing Club Association, who was interviewed by the local newspaper, the *Orange County Register*, soon after Cohen's escapades became public knowledge.

The sheriff's department discovered, however, that Cohen was in violation of zoning rules covering businesses in a residential area. Since he was charging entry, the sheriff believed he could pin zoning violation charges on Cohen, who didn't have, nor had applied for, a licence. Fire marshals and zoning regulators agreed, and in May 1990 – nearly two years after Cohen had opened The Club – charges were filed against him.

There were eight in total and all were misdemeanours, meaning Cohen wouldn't get a jail sentence even if found guilty. But for the residents of Brier Lane, it would be enough just to have the club shut down. When the police arrived at his house in Anaheim, ten minutes drive from the club, to question him, Cohen savoured the experience. He was rich, he was in charge of a sex club, and the law couldn't find anything more than zoning violations to stop him. As he would reminisce years later when asked about The Club: "Man, that was a great deal – husbands paid me to fuck their wives." Cohen was supremely confident, he answered the door in his dressing gown and started cracking jokes with the police officers. He just knew everyone wished they were him.

A pre-trial hearing was scheduled for 28 December – seven months away – and a provisional trial date of 15 January 1991 was arranged. In the end, the court case didn't start until six months later, during which time The Club continued as before, although Cohen made sure the guests were better behaved and cars were parked neatly by the house. It wasn't until 20 March 1991 that The Club was finally shut down, following a court order pending the court case. Cohen had been running a swinging club in a quiet residential street, blatantly, for his own pleasure and for profit for nearly three years, but he finally admitted defeat and shut it down.

And then he started the exact same business, again called The Club, in another house in the same district – although he refused to tell the press where. He wasn't the most popular man in Tustin. In the final weeks before the Brier Lane closure, however, the sheriff's department sent two undercover officers, one male and one female, posing as a couple to the house to investigate exactly what was going on. What they reported from their visits on consecutive Saturdays made juicy listening at the trial.

Porn films were played endlessly on a wide-screen television in the living room. There was a dance floor in the dining room complete with disco lights, a Jacuzzi in the back garden and a bar in the garage. The bedrooms contained padded bunk beds and tunnels with cosy crawl spaces. Investigator Charles Daly testified to seeing "a lot of shaking and dancing", and people strolling about in lingerie, towels or nothing at all. "There was dancing, drinking and one guy fell down drunk on the floor," he reported.

Daly went on to describe seeing people fondling one another in the lounge, and men “performing sex acts” on a topless woman on the dance floor. He also told the court he had witnessed group sex in one bedroom, and wife-swapping in another.

But while all the salacious detail added to the scandal and confirmed residents’ worst fears, it was Cohen’s money-making that the prosecution focused on. Couples were charged \$60 for annual membership plus \$30 on the door on Friday night, \$40 for Saturdays and \$10 for Sunday “pool parties”. The authorities estimated Cohen was making at least \$100,000 a year.

Prosecutors had decided that under the law all they could get Cohen on was running a business in the wrong area. “You can’t run a business out of a residential area, period,” deputy district attorney Kimberly Menninger told the *Orange County Register*. “The fact that it’s a sex club makes no difference.” The state was also delighted to discover an old county law shortly before the case went to court that prohibited any “adult-entertainment businesses” from operating “within 500 feet of any area zoned for residential use”. Even better, there was a precedent with a swinging club called Sea Breeze in Los Angeles that had been shut down and its owner sentenced to 75 hours community service for just such a violation the year before.

While the prosecution played down the activities in the house while letting jurors know exactly what went on inside, Cohen’s lawyer, Bill Kopeny, brazenly and cleverly put the sex issue in the spotlight. Kopeny played on the adulterous behaviour at the jury selection phase. Those who wouldn’t be offended by the notion of couples paying to enter a house so they could have sex with complete strangers were almost by definition going to have more open minds and so be more susceptible to his persuasion.

“Does anyone think it’s wrong to have sex outside of marriage?” Kopeny asked the potential jurors. “My husband was a cheater, so I don’t approve of it,” said one middle-aged woman, who was then excused. Would the description of explicit sex acts make any of them feel uncomfortable, and so raise the question of their effectiveness to serve as jurors. “As a schoolteacher, I think I may have bias in this case,” confessed one man. Judge Barbara Tam Nomoto excused him. Kopeny kept asking questions for another hour, and started again the next morning. Eventually, late in the morning of the next day, Friday 28 June 1991, the jury was decided, and Cohen’s three-day trial began.

The prosecutors knew Cohen was not only comfortable and blasé about sex, but was also charming and amusing. Kopeny played on what he correctly judged would be the jurors’ belief that what a man does in his own home is his own business. Prosecuting The Club was a violation of Cohen’s right to privacy, he argued. Successfully. And so the trial concentrated on hard facts and the laws regarding running businesses. What the prosecutors were soon to realise, however, was that Cohen was a master at hiding money and profits. With staggering self-confidence considering the size of the lie, Cohen swore that The Club was not a business at all and that he was actually making a loss. It existed purely to promote the sexual lifestyle of swinging, he testified.

While there could be no doubt of Cohen’s love of sexual adventurism, the idea that he would actually lose money promoting it was absurd to anyone who knew him. But, sure

enough, bank records proved – or at least to appear to proved – that he had never made any money from the venture.

On the third and last day of the trial, the jury deadlocked at eight-to-four in favour of finding Cohen innocent. Cohen had moved the club the month before the trial started, but he left it until the end of the trial to make the dramatic announcement that no more parties would take place there. He was found not guilty, and a fortnight later the deputy district attorney was forced to concede that her office didn't have the evidence to bring a new trial.

"Everybody wants to put the emphasis on sex and on swinging," Cohen said disingenuously after walking free. "It's my position that as long as there are no laws being broken and it's lawful conduct, the police and the state should be stopped from interfering." He thanked the jurors: "I'm sure that in conservative Orange County, there are not too many people who condone this type of activity. These people went out of their way to give a fair and honest vote."

It was a virtuoso performance, and all the more incredible considering that Cohen's world was beginning to fall apart around his ears. As soon as the trial ended, the *Orange Country Register* ran with what it had found out about Mr Cohen in the meantime.

On top of the sex club trial, the *Register* revealed, Cohen had also been sued by four of the biggest software companies in the world at that time – Microsoft, Ashton-Tate, WordPerfect and Lotus – for making their software freely available on his French Connection BBS. He had become one of the world's first software pirates.

He was also being investigated for bankruptcy fraud and pretending to be a lawyer in San Diego, the paper said, and he was fighting to keep his home after the government-created Resolution Trust Corporation won a hearing ordering Cohen out of his Trabuco Canyon house.

Unbelievably, in the middle of all this, and despite living on-and-off with his ex-wife Susan Boydston, Cohen married again. His new wife, whom he wed in August 1990, was Karon K. Brumfield, and the marriage was to last an even shorter time than the first, just over two years. But such was Cohen's manic confidence that he believed himself invincible, and his sheer audacity was enough to convince anyone he met – including the several women he asked to marry him – of the truth of what he told them.

## 12: The world's first software pirate

Cohen had boosted the membership of his online bulletin board by offering free subscriptions to members of The Club. Reflecting a philosophy that was to become virtually universal during the dotcom boom a decade later, he believed that getting as many people connecting to his server as possible, even if he let them on free of charge, would pay dividends later on.

As a further enticement, he uploaded the latest and greatest computer software – word processing, databases, operating systems – which paid-up members were invited to

download for free. Cohen assumed that the people he was taking money from would be unlikely to ruin the setup by reporting his copyright violations. But he bargained without Paul Curtis, who was president of an IBM PC user group in Orange County. Acting on a tip-off, Curtis set out to expose Cohen. He contacted the software manufacturers whose products were on the system and was asked to get proof. So he signed up to the French Connection BBS.

Cohen told him that access to the private boards would cost \$18 a month. While there, though, he could download whatever software he wanted. He even showed him around Medcom and pointed out the server on which he stored all the software. Curtis signed up for two months and started recording which programs were available, downloading full copies of Microsoft's MS-DOS 4.0 operating system – the precursor to Windows – as well as copies of the most popular software of the time: Lotus 1-2-3, WordPerfect, and the dBASE IV database program.

Cohen was no fool, and had put a disclaimer on the site saying that people were not to download any commercial software because it was licensed and any infringement would see users reported to the district attorney. But it was so easy to get hold of the software that Curtis testified it was clear French Connection was in fact implicitly encouraging the unauthorised distribution of the software.

Cohen's defence was strangely prescient, given the battle being waged today by music and film companies against so-called peer-to-peer file-sharing networks on the Internet including, most famously, Napster. "I'm not a cop, and it's not my position to sit on my computer watching how people use the software," he argued. "If we become aware of illegal activity, we'll be the first ones to report it." However, messages on the BBS asking for certain versions of software or complaining about corrupted software that had been previously posted, undermined Cohen's position somewhat.

With the evidence provided by Curtis, the software manufacturers jointly sued Cohen on 5 July 1989 – around the same time the residents of Tustin were signing petitions against his swinging club. Eventually, however, the software companies called off their attack, for the simple reason that it was clear that Cohen was finally heading for a fall, with or without a conviction for copyright infringement. The lawyer acting for the software companies, Carl Blumenstein, explained at the time that the litigation had petered out. "We haven't been actively litigating it because of Cohen's other difficulties," he said.

Apparently, Cohen was the only person who couldn't see how badly things were going. Relentlessly optimistic and utterly convinced of his ability to talk his way out of any problem, he carried on regardless. So when he was finally informed by a judge that he was going to jail, he couldn't believe it.

On 21 October 1991 it was abruptly made clear to Cohen that his 17-year winning streak was over. It was the last day of a trial in which Cohen, alongside the elderly Robert and Helen Polvadore, was accused of two charges of committing bankruptcy fraud and one of conspiracy to commit bankruptcy fraud. Cohen was also charged with making false statements and obstruction of justice. He had told the Polvadores, who were unlucky enough to have met Cohen a few years earlier while they were facing bankruptcy and in a

particularly vulnerable state, that he was a bankruptcy lawyer. He had introduced himself as Frank Butler, member of the State Bar of California, No. 79839. The real Frank Butler was sailing around the Pacific with his wife, blissfully unaware that his former client was borrowing his name.

The couple, having no reason to disbelieve him, hired Cohen, thereby providing him with access to their remaining funds, which he immediately set about embezzling. He disguised the funds by running them through a series of his own shell companies in a system that proved so complex that even an expert witness from the Inland Revenue Service confessed he was baffled.

Cohen managed to steal \$200,000 before the deception came to light, and the federal government wasted no time in bringing charges against him and the hapless Polvadore. Both Robert and Helen were acquitted of all charges. Cohen, on the other hand, was convicted of bankruptcy fraud, making false statements and obstruction of justice.

The jury was excused at 9.10 a.m. on 21 October 1991 and the judge, the Honourable Judith N. Keep, turned to Cohen's lawyer Michael Mayock: "Now, as to Mr Cohen, I would like your comments, if any, Mr Mayock, as it's my belief that I should seriously consider remanding him at this time."

Mayock put up a good fight. Cohen had had every reason to believe he would be convicted, Mayock argued, and yet he had complied with all the court orders and had turned up. He asked that the court consider Cohen's "background and his appearance and his readiness to accept this verdict". Stephen Cohen should be allowed to remain on bail prior to sentencing.

But both Mayock and Cohen had reckoned without the extraordinary persistence and abilities of special assistant US attorney Elizabeth Hartwig, who had spent months researching the man she was prosecuting and had begun to piece together the real Stephen Cohen. "Your Honour, it's precisely Mr Cohen's background that leads the government to ask that this court exonerate his bond and remand him at this point in time," she countered. "He is no longer an accused; he is convicted. He has made his appearances, but there's a major change in his status at this point. And as was clear from his testimony from the stand, this man changes his identity, changes his occupation, changes his location at will.

"He drives on a Colorado driver's license. He recently lost his house – it was finally foreclosed on after a number of shell corporations that had been holding the house had gone bankrupt ... He doesn't drive a car that he owns. They're always leased. His business, at least one of his businesses, was recently moved ... He has no occupation at this point in time other than whatever his self-employed occupations might be, be they phoney law firms or whatever else kind of business he chooses to go into. He has lied in courts repeatedly, not just in the matters that came before this court in the course of this trial but over a period of 15 years or so ..."

The judge ordered that Cohen be remanded immediately. Three months later, he was sentenced to 46 months in jail plus three years' probation. The flamboyant, confident, arrogant conman had finally been nailed and jailed. He began life as prisoner 94912-012.

## 13: Lights, cameras, actions

“Plaintiffs Gary Kremen (‘Kremen’) and Online Classifieds, Inc. (‘Online Classifieds’) bring this action seeking money damages, a declaration of ownership and exclusive rights for Plaintiffs’ Internet domain name “sex.com” (‘Sex.Com URL’) and for a mandatory injunction ordering Defendants to return to Plaintiffs the Sex.Com URL misappropriated by Defendants.” The 24-page complaint, filed on 10 July 1998, then outlined in plain terms what had happened.

Kremen had done his homework. The wording “Plaintiffs are informed and believe and on that basis allege ...” preceded each of 22 points that made up the case. Cohen lived in Mexico, was a US citizen and ran his businesses in the US, it stated. It alleged the five companies listed alongside Cohen as defendants were all shell corporations created by Cohen to confuse creditors and to move funds out of the US and into offshore accounts.

Ocean Fund International was based in the British Virgin Islands – a tax haven – and was “created to transfer assets outside the purview of the United States Court System”. Sand Man Internacional Limited was based in Tijuana, Mexico and was a wholly owned subsidiary of Ocean Fund International. It was also created to transfer assets outside the US.

And then the three Sporting Houses companies – Sporting Houses Management, Sporting Houses of America and Sporting Houses General – they all operated from the same address in the neighbouring state of Nevada, but were doing business in California.

As Kremen would later discover, starting several different companies with almost exactly the same name was an old and extremely effective ploy used by Cohen to bamboozle officials, customers and creditors. If one company was approached for whatever reason – usually non-payment – it simply stated that it was not the right company and ignored the demand. Cohen could then shuffle assets, money and even contracts between the companies to keep them out of the way of creditors.

If one company was pinned down, Cohen had it declared bankrupt and continued trading with the other company names. From the outside it looked as though nothing had changed. As for making one company wholly owned by another company, this enabled Cohen to restructure companies at a moment’s notice, and meant he could move funds invisibly from one to another while holding out only one company to the public. When the invisible company was based in a country with secretive banking laws, it’s not too hard to see how Cohen managed to hide his money so effectively.

The final trick was to put friends and acquaintances on the boards of directors of his various companies while maintaining complete control of the business. Sometimes he persuaded people to be on the board; at other times he simply put their names down and never told them. Cohen knew from his company law that this approach afforded him a legal escape from debts and investigations – the equivalent of wiping his fingerprints off the weapon. Unfortunately his fellow directors made it clear in depositions later on in the case that not only did Cohen retain day-to-day control of each company but they had no

idea what their responsibilities as directors were. Nonetheless, Kremen had managed to unravel this web of companies and clearly stated their true status in his complaint.

He also provided Cohen's history of fraud: "Cohen was convicted of Grand Theft in 1975 and convicted of, and incarcerated for, Bankruptcy Fraud, False Statements, and Obstruction Of Justice in 1989, in which Cohen fraudulently signed documents purporting [sic] to be an attorney under both his name and the names of others."

The complaint listed the reasons why the letter sent to NSI was a fraud and a forgery (the forged, misspelt signature, the incorrect information, the incorrect grammar), and tied it to Cohen (Cohen had used the same unusual font he had used for all of his businesses and several other forged documents in the past – and he had faxed the letter from his business fax number).

Kremen included Cohen's phone call purporting to be from NSI, stated that Cohen had been found by the courts to have "repeatedly and illegally impersonated attorneys", and that his intention was "to mislead and intimidate Plaintiffs into not pursuing their legal rights". Kremen pointed out that Cohen's claim to have a trademark in "sex.com" since 1979 was false because the ".com" top-level domain didn't exist in 1979. And then he outlined Cohen's lawsuits against other holders of 'sex' domains.

Finally, Kremen's complaint gave a simple and concise explanation of how the domain name system works and the method by which domains are registered, and went on to detail how he, Gary Kremen, had registered the domain sex.com back in May 1994 "by both certified mail and electronic registration".

It was a damning, well-researched and provable series of facts that could only point in one direction: Cohen was a thief and had stolen sex.com. The complaint then went on to list no less than 13 claims for relief: fraud; conspiracy to commit fraud; conversion; deceit; racketeering; inducing breach of contract; violation of business code; unfair competition; trademark infringement; interference with contractual relations; interference with economic advantage; interference with business interests; and deprivation of property rights.

Kremen and his lawyers felt pretty pleased with themselves. The decision to sue had been hard, and they had made absolutely sure of their ground before filing. The information they had was solid, the case was clear. They had Cohen bang to rights.

A date of Thursday 12 November – four months away – was given for the case to be heard in court before Judge Ware, and Kremen started dreaming about what he was going to do with the domain once he had regained it.

It took two months and 11 days for the cold realities of the law to hit home.

## 14: Sex and threats

Stephen Cohen had been in control of sex.com for nearly three years when Kremen finally sued him. He was now a big player in the adult industry, and getting bigger. He particularly enjoyed the opportunities to screw people, both literally and figuratively.

Cohen's whole way of life and his expanding empire depended entirely on his possession of sex.com. It was by far the most profitable website in the world, for the simple reason that millions of people typed the letters s-e-x-.c-o-m into their Web browsers and hit return. Ownership of sex.com was also the basis by which Cohen was threatening other domain-name owners. Soon, he dreamed, he would own every dotcom domain with the word "sex" in it. The possibilities were staggering.

So it is hardly surprisingly that Cohen decided to throw everything he had against Kremen's attempts to get the domain back. He asked DuBoff & Ross – the firm chasing the "sex" domains – to take on the Kremen case and to destroy his opponent. Partner Steven G. Ross agreed.

The response to Kremen's lawsuit was delivered a fortnight before the court deadline. It bore the title: "Notice of motion and motion to dismiss complaint pursuant to Fed.R.Civ.P.12(b)(6) for failure to state a claim upon which relief can be granted."

What reads like legal gobbledegook has its own very particular meaning in the US legal system. You can buy T-shirts that read: "Don't Make Me FRCP 12(b)(6) You!". You can even buy a thong with "12(b)(6)" printed on the front and tastefully pitched: "Whether you're taking home that guy from your Torts class or sleeping your way to partner, nothing says 'grant my motion' like 12(b)(6) on your crotch." Cost: \$9.99.

Reason 6, of sub-section B, under Rule 12 of the Federal Rules of Civil Procedure is infamous because it is the legal equivalent of laughing in your opponent's face. It says simply: You don't even have a reason to sue me. Go away.

It wasn't the last FRCP 12(b)(6) that Kremen was going to be faced with while trying to win back sex.com, but it was an early indication of how Cohen and his lawyers were going to play it. By the time the court case was closed nearly six years later (it has since been re-opened), the court had received just under 1,000 case dockets, amounting to tens of thousands of pages of legal argument. Lawyers call the technique "papering" – swamping the other side with so much information that you push their resources to the limit. And Kremen's resources were extremely limited.

Cohen's opposition motion quoted no less than 29 cases and eight statutes as providing the legal precedent for Kremen's case to be dismissed in its entirety. So involved, complex and precise were the legal arguments that it was nearly impossible to miss the fact that the reply motion didn't actually refute any of the allegations made by Kremen about Cohen stealing the domain. It also ignored 5 of the 13 claims for relief.

Incomplete though it was, Cohen's reply motion very nearly derailed Kremen's entire legal challenge. Most significant was the bold claim that Kremen's entire case was

without merit because neither he personally nor his company Online Classifieds had a legitimate claim on sex.com. In what sounds like a ridiculous splitting of hairs, Cohen found a possible loophole for the whole case to slip through. Kremen had registered sex.com under the name “Online Classifieds Inc.” because he thought – mistakenly as it turned out – that only companies or organizations were allowed to register domain names back in May 1994. However, Kremen had not actually incorporated the company until 23 June 1998, three weeks before he filed his lawsuit. Because of his long history of using corporate law to outfox creditors, Cohen noticed this omission almost immediately. “Neither Plaintiff can establish that it is a real party in interest with respect to the claims alleged in the Complaint,” the response argued.

Cohen’s response applied similar legal sleight of hand to the rest of Kremen’s case. And – Cohen being only too well aware that the devil was in the detail – his response also demanded extremely precise detail from Kremen’s side about what clauses in what contracts had been broken, the times and dates of offences, and so on.

The response also raised legal query after legal query, forcing Kremen to justify at every juncture his basis for making the claim. As the case progressed, this approach began to reach ludicrous heights, with Cohen and his lawyers making wild claims and assertions just to force Kremen to disprove them. That ate up Kremen’s attorneys’ time and had the beneficial effect of deflecting attention away from Cohen himself.

Unsurprisingly, Cohen fought particularly hard to have details of his criminal career and convictions removed from the case, filing a separate motion that argued they “occurred more than a decade ago” and so were “irrelevant and clearly included to prejudice the court”. Of course, Cohen’s criminal behaviour was not only directly related to the case but also vitally important – which is why Cohen was so determined to pull it out. His lawyers pressured Kremen’s legal team at every opportunity to cut out the information, attempting to shame them into action by arguing that they were playing dirty. It worked, and the focus of the case gradually turned to the law surrounding the Internet and domain names rather than Cohen’s criminal past. This was a massive strategic error on the part of Kremen’s lawyers, since the Internet existed, and still does even a decade later, in a legal grey area.

On Kremen’s team, it was Kathryn Diemer who was making the main strategic decisions. She saw the case as a unique legal matter. Domain names in 1998 were still undefined in law, but it was clear that they were becoming increasingly important. Through aggressive legal work, Network Solutions had managed to gain acceptance of its view that domain names were contracts with them but did not represent property. But the sex.com case was not only an opportunity to question Network Solutions’ view of things, and so structure future law; it was also going to be high-profile – a winning combination for any ambitious lawyer.

And so the case began to stray away from nailing Cohen and getting Gary Kremen his domain back, and became instead a chance to redefine domain names in law while allowing the lawyers to make names for themselves. Since the case was being bankrolled by Levi and Warshavsky, the attorneys had free reign, and there was nothing Kremen could do about it. “They started to take over the case, and change it in ways Gary and I

didn't feel comfortable with," Falco recalls. "He was starting to get rather disgruntled with the whole experience."

The lawyers had left Network Solutions out of the initial complaint (Kremen and Falco had heeded the company's warning that it would "take any action necessary to defend ourselves" if it was named as a defendant), but Diemer and her colleagues Joel Dichter and Sean Moynihan wanted to go after it, and legal history, and so took the opportunity of a first amended complaint to add the company to the lawsuit.

In this first amended complaint, some minor changes were made to the original, more information was added about Cohen's criminal actions, and greater detail was provided to back up the claims Cohen had scoffed at, but otherwise the same complaint emerged – except with two additional claims for relief solely against NSI: Breach of Contract, and Negligence. The complaint also named its parent company, the Science Applications International Corporation (SAIC). Kremen's legal team had decided to aim high. Far too high as it turned out. They had either not done their homework or were hopelessly optimistic about what would happen next.

Network Solutions *was* the Internet in 1998. It had won the contract to register domain names from the US government in 1993, and two years later, in what was to prove a defining moment in the history of the Internet, the government had allowed Network Solutions to define on what terms it sold domains. And NSI decided that it wouldn't in fact sell them. Instead, people would be allowed to rent a domain from them for a consideration – \$50 per year for each name. The first person to apply would be granted the rights to rent a domain and would have first right of refusal to renew it, but that's as far as it went – Network Solutions would still retain overall control of all the names. It was an extraordinary act of calculated greed, effectively declaring that NSI owned all Internet real estate but would allow tenants to live there, but since NSI was the only show in town at the time, and because the US government no longer wanted to pick up the tab for the exploding computer network, it got its way. The approach stuck and continues to this day, informing the way that hundreds of millions of people and organizations interact with the Internet.

Picking a fight with NSI then, especially on its own turf, was not the wisest decision, even less so when you consider who its parent company was.

SAIC is, to all intents and purposes, the private arm of the US government's intelligence services. It retains very close ties to the US government at all levels, makes the vast majority of its money from government contracts, and its board of directors are a veritable *Who's Who* of top-ranking ex-government officials, including former heads of the National Security Agency (NSA), CIA, Pentagon and Department of Defense. In short, there is no more dangerous company to mess with in the United States of America.

SAIC is also the king of the Beltway Bandits – private companies located on the beltway around Washington DC that use insider information about what the federal government in Washington is planning in order to enrich themselves. SAIC learnt about Internet domain names and how the US government was planning to allow NSI to charge \$50 per domain per year from September 1995, and so, in a most extraordinary coup, it bought the

company – paying just \$4.5 million in its own stock in March 1995. Two years’ later, in September 1997, SAIC took NSI public but retained 78 percent of the company and, peculiarly, 97 percent of the voting rights. A third of the \$30 million raised went immediately into a dividend paid out to the owners of the privately held company. Investigations into this highly unusual chain of events – and blatant profiteering – hit a brick wall.

With some of the country’s most powerful and ruthless men personally profiting from NSI to the tune of millions of dollars, the company found it was afforded extraordinary protection. But the initial payday was nothing as compared to the eventual sale of NSI to VeriSign at the peak of the dotcom boom in March 2000 for an extraordinary \$21 billion.

The NSI situation had not gone unnoticed by the White House. The US government was still in a position to dictate who ran the Internet and, worried that a private company was effectively in charge of a huge global network that the government itself had built and funded, the Clinton administration started developing a new organization called the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN would be a non-profit organization to oversee the Internet – and NSI – with a brief to introduce competition on the Internet by adding more “top-level domains” like “.com” and by removing NSI’s monopoly on selling domains.

ICANN was created with a “memorandum of understanding” between it and the US government in November 1998, and the idea was that it would become autonomous within four years. Things didn’t quite work out like that though. Network Solutions fought bitterly to retain as much power as it could – hardly surprising considering its monopoly and billions of dollars were at stake.

Since the US government retained overall control, the fight ended up in Washington, distorting an already complex situation. Network Solutions lost its monopoly on selling domains, but retained control over all dotcoms; and the model where people effectively lease domains from the company was kept in place, although the per-domain annual fee paid to Network Solutions was gradually reduced from \$50 to \$6. The company also applied heavy political, legal and financial pressure on ICANN to restrict the number of new top-level domains it approved so that the dotcom name remained – and still does remain – dominant.

This fight at the top of the Internet was only officially settled in 2006 when ICANN agreed to a new contract that gave VeriSign – which had bought Network Solutions in March 2000 – permanent control of the dotcom registry, and VeriSign agreed to recognise ICANN’s authority. That deal was itself a matter of huge controversy, and led to a series of Congressional hearings. In the end, the deal was approved, but not before VeriSign pulled off another political coup by getting the US government itself – rather than ICANN – to award itself the right to decide who would run the dotcom registry in future.

But these battles lay in the future. When ICANN was created in November 1998, just before the dotcom boom kicked off, there were high hopes it would be able to bring some order to the Internet and, in particular, to wrestle the controls from NSI.

It was during this enormous power struggle, just one month before ICANN was created, that Gary Kremen filed his first amended complaint, in which he attempted to sue Network Solutions for fraud, deceit and negligence.

## 15: Policy and forgery

What NSI's reaction was when the first amended complaint arrived on its desk boldly stating the company had handed over control of sex.com "in violation of its own policies" is not recorded, but it is safe to assume that the people at NSI were not best pleased.

Within a month, NSI made it quite clear who the boss was when it came to domain names. Its legal reply was a blend of high-handedness, arrogance and aggression.

Kremen's complaint comprised 83 numbered paragraphs, and NSI took it upon itself to respond to every single one with the same line: "Network Solutions is currently without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph xx and, therefore, denies them." In a very few instances it deigned to recognize Kremen's allegation, and stated simply: "Network Solutions denies the allegations of paragraph xx." And NSI was to follow the exact same approach through every filing it was obliged to file with the court – utter disdain.

NSI did respond to one paragraph in detail, however. It was, predictably enough, to form the most controversial element of the fight. It was also startling in its audacity: "Network Solutions denies that any person or entity owns any domain name, including, without limitation, sex.com."

The company in charge of the vast majority of the Internet's property – including all dotcoms, dot-orgs and dot-nets – was stating in black and white that not only was Kremen wrong, but that he was so wrong that the company couldn't even be bothered to respond to his specific allegations.

It wasn't just idle talk either: NSI had built a legal philosophy based on its view of the Internet, and successfully applied it against inexperienced litigants. It may sound like common sense that if you buy a domain name, it is your property, but NSI could provide no less than 27 previous cases and five statutes that would tell you you were wrong.

NSI's response to Kremen came with no fewer than 37 defences – five times the number of claims against it. Many simply denied any form of wrongdoing; others came with exotic legal terminology, such as doctrine of laches, doctrine of estoppel, and doctrine of unclean hands. NSI's response accused Kremen of being personally negligent, and even borrowed Cohen's lack-of-standing argument that neither Kremen nor Online Classifieds were entitled to sue because sex.com had been registered to Online Classifieds but it didn't exist as a corporate entity until years later. Network Solutions had carefully reviewed everything Kremen had said – and dismissed every element of it. It hoped to intimidate Kremen's legal team and impress the court. And its strategy worked.

The vicious stuff came in the motion to dismiss from its parent company, SAIC, added a complainant and so entitled to file its own response.

## 16: The high road

The decision to include SAIC in the complaint was a foolish non-starter, and it allowed Network Solutions to frame the dispute as a battle between two rather grubby men, both desperate to make money from online pornography.

The same lawyers represented SAIC and Network Solutions, but SAIC's inclusion allowed David Dolkas, of Gray Cary Ware & Freidenrich, and Philip Sbarbaro, of Hanson & Molloy, two bites at the same apple. While NSI's response was one of lofty disdain, SAIC's was pure muck-raking. It came, appropriately enough, in the guise of an FRCP 12(b)(6).

"SAIC is a complete stranger to this dispute and had no involvement, whatsoever, in the events which give rise to this lawsuit," it argued. And it was right, it had no place in Kremen's complaint. But for a company that claimed to have no interest in the case, it certainly had plenty to say. "The World Wide Web is a wonderful medium that enables users to access a wide array of valuable and enriching information," it began, bizarrely. But then it hit home: "The Web also enables access to a wide array of prurient and pornographic Web sites available through a simple click of a mouse."

While Kremen's team was trying to make the case about the legal nature of domain names, NSI decided it would push both Kremen and Cohen in the mud-pit. "This case involves a fight for the rights to the domain name — **SEX.COM** — which is apparently used as part of the World Wide Web address for a pornographic Web site," it stated, with "sex.com" rendered in capital letters and bold separated either side by a long dash.

"Plaintiffs allege that in October 1995, the **SEX.COM** domain name was fraudulently transferred to Stephen Michael Cohen, alleged to be a convicted felon and now residing in Mexico. Plaintiffs sue an intriguing cast of characters – e.g. an ex-felon and off-shore companies – and Plaintiffs plead a variety of eye catching allegations against them – e.g. strong-arm tactics by the Defendants, fraud on the United States Patent and Trademark Office, forgery, and impersonating an attorney ... What is SAIC's involvement in this fight over **SEX.COM**? Absolutely nothing."

Despite SAIC stating it had "absolutely nothing" to do with the case, the motion then went on to list extensive legal arguments why it and Network Solutions were not liable in this case. And in a final *coup de grâce*, it announced that Network Solutions had put control and ownership of sex.com under the court's jurisdiction. It was for the court to decide what to do this with this domain name; NSI was washing its hands of the whole distasteful affair.

The judge got the message, and so did Kremen's team, who immediately dropped SAIC from the complaint.

## 17: Dismissal

This game of legal ping pong that was to last for two years began in earnest when Cohen's team filed their second response to Kremen's first amended complaint. There were 35 cases quoted (up from 29) to support Cohen's position; the number of statutes had actually fallen from eight to three, but had been beefed up with four federal procedure rules.

This system of amended complaints and opposing motions are quite common in US court cases – the idea being that the two sides thrash out precisely what it is they are arguing about before it appears in front of a judge. In the case of Cohen and his legal team, however, this amendment process was carefully and intentionally used to frustrate Kremen's case.

The central argument that neither Kremen nor Online Classifieds had sufficient legal standing remained, but it was clear that Stephen Cohen had personally had a hand in drafting the response because it came loaded with his particular blend of mockery and abuse.

The first amended complaint was, the response scoffed, “nothing more than a hodgepodge of general and conclusory allegations thrown together, with a generous portion of scandalous and irrelevant allegations directed primarily against defendant Cohen for good measure.” The charge of racketeering was “pled in the most sloppy fashion and the most general and conclusory terms,” the response continued. And details of Cohen’s criminal activities were “redundant, immaterial, impertinent, scandalous and/or irrelevant” (but note that the word “false” never made its way in there).

While this legal chest-beating was going on, Kremen soon realised that his biggest problem was closer to home: Seth Warshawsky had stopped paying into the KVI joint company. “Seth was playing games with the money,” Falco recalls, “and it got a little tense for a minute. No one was getting paid – Joel Dichter wasn’t getting paid, Diemer wasn’t getting paid, I wasn’t getting paid. And I don’t know if that was coming from Seth not doing it, or Ron. It’s impossible to know, because they had one entity. But I know that ultimately none of the attorneys for a period of time – a few months – were getting their cash.”

At the time, Seth Warshawsky was a big name, featured constantly in the media and reportedly pulling in more money than anyone save Stephen Cohen. But as with many things in Warshawsky’s life and career, the image he projected was no more than a carefully constructed cardboard facade. Warshawsky was in dire financial straits. At only 25 years old, he was living fast, and appeared to have everything money could buy. But within a few years his empire had collapsed in on itself, and it turned out that everything had been hired, rented or based on a promissory note. To get cash, he had resorted to illegally double or triple-charging his subscribers’ credit cards; old member accounts were reactivated and charged; his “live webcams” were revealed as tapes on a loop; the 18-year-olds due to lose their virginity live on the Web (watch for \$5) were not 18, not virgins, and weren’t going to have sex; and a hyped stock-exchange float never happened. In fact nothing about Seth Warshawsky turned out to be what it appeared. And

when the debt became impossible, he grabbed what possessions he could and fled to Thailand, where he lives still, occasionally chased by creditors, attorneys and ex-employees.

If anything, Seth Warshawsky was the first victim of the dotcom boom. His business appeared to be worth \$500 million thanks to crazed calculations that assumed because anyone in the world *could* go to a particular website that they *would*. But the money wasn't tangible, it never rested in any bank account, and Warshawsky, himself deluded about his wealth, was spending cash he simply didn't have – and would never have. The multi-millionaire left the US with millions of dollars of debt.

Warshawsky's failure to pay what he had promised caused Kremen's attorneys to ease off. They lost track of dates, and then simply didn't turn up at the first scheduled court date. The dates had changed because of the amended complaint, but Diemer had failed to notify the court officially, so the hearing went ahead as planned. It was sloppy and unprofessional, and Judge James Ware was very far from impressed.

The first Kremen's lawyers knew about it was when they received a stern letter nearly a month later. A new court date was ordered for 8 March 1999. And a new case-management conference was ordered on 25 March. The judge made it clear they had got off to a bad start: "The Court admonishes Plaintiffs to abide by the applicable court procedures or risk dismissal of the action due to failure to prosecute."

The money eventually arrived for the attorneys, but already the case was looking like a lame duck. A response to Cohen's response was produced. It was distinctly aggressive and clearly frustrated. "Defendants' intent and malice is demonstrated, either explicitly or implicitly, in almost every paragraph of the pleading," the complaint complained. Of most interest though was an attached copy of the email – supplied by NSI now that it was part of the case – that Cohen had sent to seal control of sex.com.

With hindsight, if Kremen's team had concentrated on nothing else but this email, it could have walked away with the domain just a few weeks later. But amid the legal tussling the case had lost its focus. There were no less than 13 different legal arguments in the complaint when it needed only 2 or 3. In the heat of battle, the lawyers had ended up retaliating to every punch Cohen threw. It left the case exhausted and giddy. Each of Cohen's quoted 35 cases was tackled, sometimes to the point of tedium. It was the wrong approach, and it allowed Cohen to drag out the case still further. Which he did, making the same points all over again in his response to Kremen's response to his response to Kremen's amended complaint.

"Would Gary have won this case in six months if he had had me and Wagstaffe on it?" pondered one of Kremen's future lawyers, Richard Idell, years down the line. "Probably."

"Yeah," admitted Kremen when told of this. "that's probably true. But I couldn't afford him at the time."