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10 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

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15 VERISIGN, INC., a Delaware
corporation,

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND NUMBERS, a
California corporation; DOES 1-50,

20 Defendants.
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Case No. CV 04-1292 AHM (CTx)

**DEFENDANT INTERNET
CORPORATION FOR
ASSIGNED NAMES AND
NUMBERS' RESPONSE TO
PLAINTIFF VERISIGN, INC.'S
EVIDENTIARY OBJECTIONS
TO DECLARATION FILED BY
ICANN IN SUPPORT OF
SPECIAL MOTION TO
STRIKE VERISIGN'S
SECOND, THIRD, FOURTH,
FIFTH, AND SIXTH CLAIMS**

Date: May 17, 2004
Time: 10:00 a.m.
Courtroom of the
Honorable A. Howard Matz

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INTRODUCTION

Defendant Internet Corporation for Assigned Names and Numbers (ICANN) hereby responds to plaintiff VeriSign, Inc.'s ("VeriSign's") evidentiary objections to the declaration of John O. Jeffrey ("Mr. Jeffrey") and exhibits presented by ICANN in support of its special motion to strike. VeriSign's evidentiary objections are general and vague in as much as they address entire paragraphs, as opposed to individual lines or ideas, and are supported only by legal conclusions. While ICANN frequently cannot tell exactly what VeriSign is objecting to and on what grounds, ICANN has attempted to respond fully to each objection.

OBJECTIONS TO DECLARATION OF JOHN O. JEFFREY

<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
¶ 1 "I am an attorney admitted to the State Bar of California, and I am General Counsel and Secretary of defendant Internet Corporation for Assigned Names and Numbers ('ICANN'). I have personal knowledge of the matters set forth herein and am competent to testify to those matters. I make this declaration in support of ICANN's Motion to Strike VeriSign's Second, Third, Fourth, Fifth, and Sixth Claims as Strategic Lawsuits Against Public Participation (C.C.P. § 425.16)."	Improper Legal Conclusion (FRE 701) ¹	ICANN has no idea what the basis of this objection is. Mr. Jeffrey's statement that he has personal knowledge of the matters in his declaration is not a legal conclusion. The statement lays the foundation for his declaration.

¹ The Federal Rules of Evidence are referred to throughout as the "FRE."

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<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
¶ 2 "This motion concerns VeriSign's allegations that ICANN's statements have interfered with VeriSign's ability to take certain actions with respect to the .com registry of the Internet. VeriSign operates the .com registry pursuant to a contract it entered with ICANN in May 2001. In order to understand VeriSign's contract with ICANN for operation of the .com registry, it is helpful to understand the manner in which the Internet's domain name system works."	Lack of Personal Knowledge (FRE 602)	Mr. Jeffrey has personal knowledge that VeriSign operates the .com registry. He also has personal knowledge of the existence of the 2001 .com Registry Agreement.

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<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
<p>¶ 6 "The Internet is accessible by tens of millions of users throughout the world. According to the Internet Systems Consortium, VeriSign's .com registry accounts for approximately 45% of all the Internet domain names registered in the world. A true and correct copy of the article 'Distribution by Top-Level Domain Name by Name, Jan. 2004,' is located on the Internet at http://www.isc.org/index.pl?/ops/ds/reports/2004-01/dist-bynum.php, and is attached hereto as Exhibit 1."</p>	<p>Lack of Personal Knowledge (FRE 602) Hearsay (FRE 802)</p>	<p>As general counsel for ICANN, Mr. Jeffrey has personal knowledge that the number of users who have access to the Internet is in the tens of millions. Mr. Jeffrey also has personal knowledge of the Internet Systems Consortium's January, 2004 article. To the extent Mr. Jeffrey's statements about the article are hearsay, they fall within the exception of FRE 807 because the article is published on the Internet and its web address was provided to the court, giving the court circumstantial guarantees that Mr. Jeffrey's statements about the article are trustworthy.</p>

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<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
¶9 "To fulfill its mission, ICANN seeks to develop consensus wherever possible, and it pursues that goal through public debate, public comment, open meetings, and regular website updates regarding its activities. Thus, the bulk of ICANN's activity, including 'announcements' and 'demands' of the nature alleged in VeriSign's complaint, occurs either on the Internet or in meetings open to the public. For example, ICANN's quarterly Board meetings are open to the public. It maintains open and transparent processes, and regularly posts on the Internet its minutes, transcripts of its meetings, and other important information and correspondence. ICANN's website is located at http://www.icann.org ."	Lack of Personal Knowledge (FRE 602) Improper Lay Opinion / Legal Conclusion (FRE 701)	Mr. Jeffrey has personal knowledge of ICANN's practice of allowing public participation in its decisions and activities. To the extent any of this paragraph contains "opinions," those opinions are based on Mr. Jeffrey's own rational observations, and are not legal conclusions.

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<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
<p>¶10 "One of ICANN's functions has been to enter into contracts with the operators of various Internet 'registries.' These companies maintain the 'zone' or 'master' file for the 'top level domains' of the Internet. TLD registries are, in some senses, similar to phone books in that the registry operators maintain a list (and a variety of other relevant information) about each of the domains within the TLD. ICANN presently has contracts with a number of registry operators. VeriSign operates the registry for the .com and .net TLDs pursuant to the most recent registry agreements between VeriSign and ICANN, which were entered into in May 2001 (the 'Registry Agreements'). Those contracts, approved by the U.S. Department of Commerce, specify the manner in which VeriSign will operate these registries. A true and correct copy of the .com Registry Agreement is attached as Exhibit E to ICANN's Request for Judicial Notice ('RJN') filed in connection with ICANN's motion to dismiss dated April 5, 2004."</p>	<p>Lack of Personal Knowledge (FRE 602) Improper Lay Opinion / Legal Conclusion (FRE 701)</p>	<p>Mr. Jeffrey has personal knowledge of ICANN's practice of entering into registry agreements. Mr. Jeffrey states general facts about the 2001 .com Registry Agreement and the facts surrounding its execution, but does not draw any legal conclusions about the agreement. To the extent Mr. Jeffrey states an opinion about ICANN's practices, his opinion is rationally based on his own perception.</p>

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<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
<p>¶11 "On or about September 15, 2003, VeriSign implemented a 'wildcard' in the .com zone as part of a new feature it referred to as 'Site Finder.' VeriSign provided no notice to ICANN or to the public that it would be adding the wildcard to the .com registry. On October 3, 2003, Paul Twomey, ICANN's president, sent VeriSign a letter, stating that the introduction of the wildcard violated the .com Registry Agreement with ICANN, that VeriSign must suspend the change, and that failure to suspend would cause ICANN to enforce its contractual rights under that agreement. Had VeriSign not elected to suspend the wildcard, I do not believe that ICANN would have had any alternative for pursuing its contract rights other than to follow the dispute resolution procedures under the Registry Agreement, which ICANN was seriously and in good faith contemplating. A copy of the October 3 Letter is attached as Exhibit F to ICANN's RJN."</p>	<p>Lack of Personal Knowledge (FRE 602) Improper Lay Opinion / Legal Conclusion (FRE 701) Hearsay (FRE 802)</p>	<p>Mr. Jeffrey has personal knowledge of the circumstances surrounding the implementation of "Site Finder" and does not draw any legal conclusions. Moreover, Mr. Jeffrey's statement about the October 3 letter is not hearsay because it is not offered to prove that VeriSign was in fact violating the 2001 .com Registry Agreement but that ICANN <i>believed</i> VeriSign was violating the agreement and informed VeriSign of the same. To the extent the statement would otherwise constitute hearsay, it falls within the exception of FRE 807 because the Court</p>

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<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
		was provided with a copy of the letter and therefore has circumstantial guarantees that Mr. Jeffrey's statements about the letter are trustworthy. Also, VeriSign has not denied the authenticity of the letter and has not opposed the Court taking judicial notice of the letter.

<u>Paragraph</u>	<u>Objection</u>	<u>Response</u>
¶12 "In response to ICANN's October 3 Letter, VeriSign removed the wildcard."	Lack of Personal Knowledge (FRE 602) Improper Lay Opinion / Legal Conclusion (FRE 701)	Mr. Jeffrey has personal knowledge of the implementation and subsequent removal of the wildcard. To the extent he gives an opinion, it is rationally based on his own observations. Further, VeriSign's complaint confirms that Mr. Jeffrey's statement is accurate.

OBJECTIONS TO EXHIBIT 1 TO MR. JEFFREY'S DECLARATION

VeriSign objects to the Internet Systems Consortium's article "Distribution by Top-Level Domain Name by Name, Jan. 2004" on a number of grounds. VeriSign's reliance on FRE 602 (irrelevance) and 701 (lack of personal knowledge) do not apply because those rules apply to witnesses, not documentary evidence. FRE 802, the hearsay rule, is also inapplicable because the article itself is a first-hand statement made by the Internet Systems Consortium regarding its findings with respect to top level domain names. Further, the article is relevant. According to the Internet Systems Consortium, VeriSign's .com registry accounts for approximately 45% of all the Internet domain names registered in the world. This is relevant to ICANN's Special Motion to Strike because it tends to show that

1 ICANN's interpretation of the 2001 .com Registry Agreement was a matter of
2 public significance.

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Dated: May 10, 2004

JONES DAY

By: _____
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS