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    ASSIGNED NAMES AND NUMBERS
11

12   UNITED STATES DISTRICT COURT

13   CENTRAL DISTRICT OF CALIFORNIA

14

15 VERISIGN, INC., a Delaware corporation,	Case No. 04 CV 1292 AHM (CTx)
16 Plaintiff,	**DECLARATION OF JOHN O. JEFFREY IN SUPPORT OF DEFENDANT INTERNET**
17 v.	**CORPORATION FOR ASSIGNED NAMES AND NUMBERS' SPECIAL**
18 INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, a	**MOTION TO STRIKE VERISIGN'S SECOND, THIRD, FOURTH, FIFTH, AND SIXTH**
19 California corporation; DOES 1-50,	**CLAIMS AS STRATEGIC LAWSUITS AGAINST PUBLIC**
20 Defendants.	**PARTICIPATION (C.C.P. § 425.16)**
21	
22	
23	Date: May 17, 2004
24	Time: 10:00 a.m.
25	Courtroom of the Honorable A. Howard Matz

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I, John O. Jeffrey, declare:

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).

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.

The Internet

3.   The Internet is a vast network of interconnected computers and computer networks. Every computer connected directly to the Internet has a unique number. These numbers, which are known as Internet Protocol ("IP") addresses, are necessary for computers to communicate with each other over the Internet. An example of an IP address might be: 98.27.241.30.

4.   Because IP addresses can be cumbersome and difficult for Internet users to remember or to use, the IP address system has been overlaid with a more user-friendly system of "domain names," which associates a unique alpha-numeric character string with a specific IP address.

5.   Internet domain names consist of a string of "labels" separated by periods. Top level domains, or "TLDs," are the labels found to the right of the last period and include (among others) the domains ".com," ".gov," ".net" and ".biz," which are sometimes referred to as "generic" TLDs (known as "gTLDs"), and domains designating countries or other geographic areas such as .us, .fr, and .uk,

1 referred to as "country code" TLDs (known as "ccTLDs"). There are

2 approximately 250 different top level domains, including both gTLDs and ccTLDs,

3 administered and operated by numerous different entities, both inside and outside of

4 the United States.

5   6.   The Internet is accessible by tens of millions of users throughout the

6 world. According to the Internet Systems Consortium, VeriSign's .com registry

7 accounts for approximately 45% of all the Internet domain names registered in the

8 world. A true and correct copy of the article "Distribution by Top-Level Domain

9 Name by Name, Jan. 2004," is located on the Internet at

10 http://www.isc.org/index.pl?/ops/ds/reports/2004-01/dist-bynum.php, and is

11 attached hereto as Exhibit 1.

12 **ICANN**

13   7.   ICANN is a not-for-profit corporation that was organized under

14 California law in 1998. ICANN's mission "is to coordinate, at the overall level, the

15 global Internet's systems of unique identifiers, and in particular to ensure the stable

16 and secure operation of the Internet's unique identifier systems." Bylaws, Art. 1,

17 § 1. A true and correct copy of ICANN's Bylaws is attached as Exhibit B to

18 ICANN's RJN.

19   8.   In November 1998, the United States Department of Commerce

20 ("DOC") entered into a Memorandum of Understanding ("MOU") with ICANN.

21 The MOU granted ICANN responsibility for, among other things, the technical

22 management of the domain name system. True and correct copies of the MOU, and

23 its amendment 6, are attached as Exhibits C and D to ICANN's RJN. ICANN

24 continues to operate today pursuant to the MOU, as amended, which provides the

25 context for most of ICANN's activities. The DOC, however, retains ultimate

26 approval over many of these activities, as explained in the MOU.

27   9.   To fulfill its mission, ICANN seeks to develop consensus wherever

28 possible, and it pursues that goal through public debate, public comment, open

1   meetings, and regular website updates regarding its activities. Thus, the bulk of

2   ICANN's activity, including "announcements" and "demands" of the nature alleged

3   in VeriSign's complaint, occurs either on the Internet or in meetings open to the

4   public. For example, ICANN's quarterly Board meetings are open to the public. It

5   maintains open and transparent processes, and regularly posts on the Internet its

6   minutes, transcripts of its meetings, and other important information and

7   correspondence. ICANN's website is located at http://www.icann.org.

8   10.   One of ICANN's functions has been to enter into contracts with the

9   operators of various Internet "registries." These companies maintain the "zone" or

10   "master" file for the "top level domains" of the Internet. TLD registries are, in

11   some senses, similar to phone books in that the registry operators maintain a list

12   (and a variety of other relevant information) about each of the domains within the

13   TLD. ICANN presently has contracts with a number of registry operators.

14   VeriSign operates the registry for the .com and .net TLDs pursuant to the most

15   recent registry agreements between VeriSign and ICANN, which were entered into

16   in May 2001 (the "Registry Agreements"). Those contracts, approved by the U.S.

17   Department of Commerce, specify the manner in which VeriSign will operate these

18   registries. A true and correct copy of the .com Registry Agreement is attached as

19   Exhibit E to ICANN's Request for Judicial Notice ("RJN") filed in connection with

20   ICANN's motion to dismiss dated April 5, 2004.

21   11.   On or about September 15, 2003, VeriSign implemented a "wildcard"

22   in the .com zone as part of a new feature it referred to as "Site Finder." VeriSign

23   provided no notice to ICANN or to the public that it would be adding the wildcard

24   to the .com registry. On October 3, 2003, Paul Twomey, ICANN's president, sent

25   VeriSign a letter, stating that the introduction of the wildcard violated the .com

26   Registry Agreement with ICANN, that VeriSign must suspend the change, and that

27   failure to suspend would cause ICANN to enforce its contractual rights under that

28   agreement. Had VeriSign not elected to suspend the wildcard, I do not believe that

1 ICANN would have had any alternative for pursuing its contract rights other than to

2 follow the dispute resolution procedures under the Registry Agreement, which

3 ICANN was seriously and in good faith contemplating. A copy of the October 3

4 Letter is attached as Exhibit F to ICANN's RJN.

5   12.   In response to ICANN's October 3 Letter, VeriSign removed the

6 wildcard.

7   I declare under penalty of perjury that the foregoing is true and correct. This

8 declaration was signed on April 12, 2004, at Marina del Rey, California.

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10   _____

11   John O. Jeffrey

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