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11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
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.
21
22

Case No. CV 04-1292 AHM (CTx)

**DEFENDANT INTERNET
CORPORATION FOR
ASSIGNED NAMES AND
NUMBERS' SUPPLEMENTAL
REQUEST FOR JUDICIAL
NOTICE**

[Concurrently filed with Reply in
Support of ICANN's Motion to
Dismiss; Reply in Support of
ICANN's Request for Judicial
Notice; [Proposed] Order]

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

1 PLEASE TAKE NOTICE that, pursuant to Federal Rule of Evidence 201,
2 defendant Internet Corporation for Assigned Names and Numbers ("ICANN")
3 hereby respectfully requests that, in considering its motion to dismiss pursuant to
4 Federal Rule of Civil Procedure 12(b)(6), the Court take judicial notice of the
5 following documents:

6 (G) **VeriSign, Inc.'s Memorandum of Points and**
7 **Authorities in Support of Motion to Dismiss Plaintiffs'**
8 **First Amended and Supplemental Complaint in**
9 ***Syncalot, Inc. et. al. v. VeriSign, Inc. et. al.*, Case No.**
10 **C 03-04378 MJJ (N.D. Cal. Apr. 13, 2004) (hereinafter**
11 **"VeriSign's Syncalot Motion"), a true and correct copy of**
12 **which is attached hereto as Exhibit G;**

13 (H) **United States Department of Commerce,**
14 **Statement of Policy, *Management of Internet Names***
15 ***and Addresses*, 63 Fed. Reg. 31741 (June 5, 1998), a true**
16 **and correct copy of which is attached hereto as Exhibit H;**

17 (I) **ICANN's Articles of Incorporation, as revised**
18 **Nov. 21, 1998, a true and correct copy of which is**
19 **attached hereto as Exhibit I;**

20 (J) **ICANN's Bylaws, as revised Nov. 21, 1998, a true**
21 **and correct copy of which is attached hereto as Exhibit J.**

22 These documents constitute facts not reasonably subject to dispute.
23 Accordingly, they may be properly considered in connection with ICANN's Rule
24 12(b)(6) motion to dismiss.

25 LEGAL STANDARD

26 A court may properly take notice of "matters of public record" pursuant to
27 Federal Rule of Evidence section 201, to the extent they are not subject to
28 reasonable dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).
This includes allegations made in pleadings and other documents filed in other
lawsuits. *See Burbank-Glendale-Pasadena Airport Authority v. City of Burbank*,
136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of pleadings filed in
state court action); *MGIC Indemnity Corp. v. Weisman*, 803 F.2d 500, 504-05 (9th
Cir. 1986) (taking judicial notice of allegations made in motion to dismiss and

1 supporting memorandum filed in different federal court action); *Kent v.*
2 *DaimlerChrysler Corp.*, 200 F. Supp. 2d 1208, 1219 (N.D. Cal. 2002) (taking
3 judicial notice of legal memorandum filed in state court action). Judicial notice of
4 matters of public record will not convert a Rule 12(b)(6) motion to a summary
5 judgment motion. *Lee*, 250 F.3d at 688; *Mir v. Little Co. of Mary Hospital*, 844
6 F.2d 646, 649 (9th Cir. 1988) (same); *Neilson v. Union Bank of Cal., N.A.*, 290 F.
7 Supp. 2d 1101, 1112 n. 37 (C.D. Cal. 2003) (same).

8 The Court may also take judicial notice of a "document the authenticity of
9 which is not contested, and upon which the plaintiff's complaint necessarily relies."
10 *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998); *see Van Buskirk v. CNN*,
11 284 F.3d 977, 980 (9th Cir. 2002) (under the Ninth Circuit's "incorporation by
12 reference" rule, a court may look beyond the pleadings without converting the Rule
13 12(b)(6) motion into one for summary judgment). This includes documents that are
14 integral to plaintiff's claim but not explicitly incorporated in the complaint. *Id.* *See*
15 *also Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1114 (C.D. Cal.
16 2003) (taking judicial notice of signed contracts relied upon in the complaint but
17 not incorporated); *In re Northpoint Communs. Group, Inc., Sec. Litig.*, 221 F. Supp.
18 2d 1090, 1095 (N.D. Cal. 2002) ("In ruling on a motion to dismiss, a court may take
19 judicial notice of a document if it is relied on in the complaint (regardless of
20 whether it is expressly incorporated therein) and its authenticity is not disputed.")

21 ARGUMENT

22 The allegations in VeriSign's complaint are inextricably intertwined with the
23 following documents that this Court may judicially notice.

24 VeriSign's Syncalot Motion (Exhibit G)

25 In the *Syncalot* litigation, plaintiffs brought an action against VeriSign
26 claiming that VeriSign's implementation of "Site Finder" (the "wildcard" referenced
27 frequently in VeriSign's complaint in this action) violated the antitrust laws and the
28 Lanham Act, intercepted private communications, converted plaintiffs' property,

1 and degraded the performance of the Internet. *See* Exhibit G at 1. VeriSign's
2 Syncalot Motion, which VeriSign filed in response to the plaintiffs' complaint in
3 that case, is a record of the District Court for the Northern District of California
4 ("Northern District") and is being offered for the existence of the arguments
5 VeriSign made to the *Syncalot* court, not for the truth or accuracy of those
6 arguments. *MGIC*, 803 F.2d at 504-05. VeriSign's Syncalot Motion is a fact not
7 subject to reasonable dispute and is maintained by the clerk of the Northern
8 District. Therefore, VeriSign's Syncalot Motion may be judicially noticed. *Lee*,
9 250 F.3d at 689.

10 Attachments to the MOU (Exhibits H-J)

11 VeriSign's Opposition to ICANN's Request for Judicial Notice disputes the
12 authenticity of the Memorandum of Understanding ("MOU") between ICANN and
13 the United States Department of Commerce ("DOC") because ICANN did not
14 provide the attachments to the MOU. RJN Opp. 6:9-13. While ICANN's initial
15 choice not to provide the attachments has no bearing on the authenticity of the
16 MOU, ICANN does not object to the Court judicially-noticing the attachments to
17 the MOU as requested by VeriSign. The attachments are a proper subject of
18 judicial notice in that they are part of the MOU,¹ which was incorporated by
19 reference into VeriSign's Complaint. Fed. R. Evid. § 106; *Fecht v. Price Co.*, 70
20 F.3d 1078, 1080 n.1 (9th Cir. 1995) (considering entire corporate disclosure
21 statement where only portions were mentioned in the complaint); *Nursing Home*
22 *Pension Fund v. Oracle Corp.*, 242 F. Supp. 2d 671, 767 (N.D. Cal. 2002) ("[T]he
23 district court may consider full texts of documents the complaint quotes only in
24 part.").

25
26
27 ¹ The bylaws attached to the MOU, dated Nov. 21, 1998, are not the current
28 bylaws. The current bylaws, dated Oct. 13, 2003, were properly submitted as
Exhibit B to ICANN's initial Request for Judicial Notice.

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CONCLUSION

ICANN's request that, in connection with its motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court take judicial notice of Exhibits G-J, attached hereto, should be granted.

Dated: May 3, 2004 JONES DAY

By: _____
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS