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Jeffrey A. LeVee (State Bar No. 125863)  
Sean W. Jaquez (State Bar No. 223132)  
Samantha S. Eisner (State Bar No. 230344)  
JONES DAY  
555 South Flower Street  
Fiftieth Floor  
Los Angeles, CA 90071-2300  
Telephone: (213) 489-3939  
Facsimile: (213) 243-2539

Attorneys for Defendants  
INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS and erroneously named  
INTERNET ASSIGNED NUMBERS AUTHORITY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

C. ITOH MIDDLE EAST E.C. (Bahrain)  
through the real party in interest, NATIONAL  
UNION FIRE INSURANCE COMPANY OF  
PITTSBURGH, PA,

Plaintiff,

v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS,  
INTERNET ASSIGNED NUMBERS  
AUTHORITY, the PEOPLE'S REPUBLIC  
OF THE CONGO, and THE CONGOLESE  
REDEMPTION FUND,

Defendants.

**CASE NO. SC090220**

Assigned for all purposes to  
Honorable John L. Segal

**REPLY IN SUPPORT OF  
DEMURRER TO COMPLAINT BY  
DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS AND  
ERRONEOUSLY-NAMED  
DEFENDANT INTERNET  
ASSIGNED NUMBERS AUTHORITY**

[Reply In Support of Request for Judicial  
Notice filed concurrently herewith;  
Supplemental Request for Judicial Notice  
and Declaration of Samantha Eisner filed  
concurrently herewith; Compendium of  
Non-California Authorities and  
[Proposed] Order in Support of  
Supplemental Request lodged  
concurrently herewith]

DATE: November 3, 2006  
TIME: 8:30 a.m.  
DEPT: M

Complaint Filed: June 28, 2006

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## INTRODUCTION

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Plaintiff’s opposition brazenly ignores both the law and the facts. As to the law, plaintiff insists that it has the right and the ability to assert claims against ICANN related to the “.cg” Top Level Domain, despite the multiple legal obstacles that plaintiff faces, each of which plainly prevents plaintiff from pursuing its claims against ICANN in this Court. As to the facts, plaintiff would simply prefer that the Court not know the true facts, and thus plaintiff opposes the taking of judicial notice with respect to facts that, again, are without dispute and outcome-determinative.

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This lawsuit should not have been filed, and now it should be dismissed, without leave to amend.

## LEGAL STANDARD

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Plaintiff incorrectly argues that this Court must accept plaintiff’s complaint at face value, even where facts alleged in the complaint are demonstrably wrong. (Opp. 3:12-4:7.) This is not the law. When ruling on demurrer, a court assumes only material facts to be true, but disregards contentions, deductions, and conclusions of law. *Zelig v. County of Los Angeles*, 27 Cal. 4th 1112, 1126 (2002); *Moore v. Regents of the Univ. of Cal.*, 51 Cal. 3d 120, 135-36, 42, ns.18, 19, 37 (1990); *Serrano v. Priest*, 5 Cal. 3d 584, 591 (1971). And when the material facts are contradicted by judicially-noticeable material, those facts should be disregarded.<sup>1</sup> *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006). If a complaint attempts to plead the “‘legally impossible,’” a demurrer is properly sustained with prejudice. *Schick v. Lerner*, 193 Cal. App. 3d 1321, 1328 (1987).

### I. ICANN HAS PROPERLY ASSERTED A FSIA JURISDICTIONAL CHALLENGE.

For a trial court to render a valid judgment, it must have jurisdiction to do so. The question of jurisdiction is always fundamental, and if there is an absence of jurisdiction over either the person, *or the subject matter*, a court has no power to act. *People v. Am. Contractors Indem. Co.*, 33 Cal. 4th 653, 660-61 (2004).

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<sup>1</sup> Plaintiff devotes four pages of its opposition to re-hashing arguments relating to ICANN’s Request for Judicial Notice. (Opp. 3:12-7:2.) ICANN addresses those arguments in its Reply thereto and supports the propriety of judicially noticing each document placed before this Court in support of ICANN’s Demurrer. (*See generally*, Reply RJN.)

1 The Foreign Sovereign Immunities Act (“FSIA”) contains both a personal and a subject-  
2 matter jurisdictional requirement. Immunity of the foreign sovereign presents an issue of  
3 personal jurisdiction. 28 U.S.C. §§ 1604-05. Where, as here, a plaintiff seeks to attach *the*  
4 *property* of a foreign sovereign, this presents an issue of subject-matter jurisdiction. *Republic of*  
5 *Austria v. Altmann*, 541 U.S. 677, 691 (2004) (“At the threshold of every action . . . against a  
6 foreign state, . . . the court must satisfy itself that one of the [FSIA] exceptions [to immunity]  
7 applies,’ as ‘subject-matter jurisdiction in any such action depends’ on that application.”) (citing  
8 *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 493-94 (1983)); *see FG Hemisphere*  
9 *Assocs. v. Republique du Congo*, 455 F.3d 575, 584 (5th Cir. 2006) (stating that *Altmann*’s  
10 jurisdictional stance applies to claims for exceptions to immunity from attachment under § 1610);  
11 *Corzo v. Banco Central de Reserva del Peru*, 243 F.3d 519, 522 (9th Cir. 2001) (court may only  
12 assume jurisdiction over foreign nation property if a FSIA exception applies).

13 Plaintiff’s opposition argues that the FSIA is not jurisdictional but merely provides  
14 waivable affirmative defenses that can be raised by the foreign state alone. (Opp. 11:18-19;  
15 12:10-12.) Plaintiff is wrong.

16 **A. The FSIA Subject-Matter Immunity Is Absolute.**

17 The United States Supreme Court has held that the FSIA exceptions to immunity are  
18 jurisdictional. Plaintiff tries to limit the FSIA to providing “merely an affirmative defense.”  
19 (Opp. 12:11.) But the case law that plaintiff cites does not stand for that proposition. Plaintiff  
20 relies on *Ministry of Defense & Support for the Armed Forces for the Islamic Republic of Iran v.*  
21 *Cubic Defense Sys.*, 385 F.3d 1206 (9th Cir. 2004) *vac’d on other grounds* 126 S.Ct. 1143 (2006)  
22 (“*MOD*”). (Opp. 12:13-14.) But far from calling immunity from attachment an affirmative  
23 defense, the *MOD* court states that for issues of attachment “the enumerated exceptions to the  
24 FSIA provide the *exclusive source of subject-matter jurisdiction* over civil actions brought  
25 against foreign states.” *Id.* at 1221 (emphasis added) (citing *Flatow v. Islamic Republic of Iran*,  
26 308 F.3d 1065, 1069 (9th Cir. 2003)). Plaintiff’s “affirmative defense” concept also was rejected  
27 in *Rubin v. Islamic Republic of Iran*, No. 06-11053, 2006 U.S. Dist. LEXIS 73383, at \*7, n.3 (D.  
28 Mass. Sept. 30, 2006) (“Here, there [does not] appear[] to be . . . a federal statute requiring

1 possible immunity under § 1609 to be treated as an affirmative defense that can be raised only by  
2 the foreign sovereign, as opposed to the trustee custodian of the attached property.”)<sup>2</sup>

3 **B. As A Third Party, ICANN May Assert The FSIA Subject-Matter Immunity.**

4 The law is clear that third parties may claim the FSIA subject-matter immunity. Indeed,  
5 in *Walker Int'l Holdings Ltd. v. Republic of Congo*, 395 F.3d 229 (5th Cir. 2004), the court  
6 allowed a third party holding property of the Congo to raise a FSIA subject-matter immunity  
7 challenge to an attempt to attach property under § 1610(a). *Walker*, 395 F.3d at 234 (no support  
8 for assertion that the sovereign has the exclusive right to raise FSIA subject-matter jurisdiction  
9 challenge); see *FG Hemisphere Assocs.*, 455 F.3d at 584 (“The [subject-matter] sovereign  
10 immunity claim may be raised by a garnishee as well as by a foreign sovereign.”) Plaintiff claims  
11 that this Court should ignore *Walker* (Opp. 11:19-23; n.13), but the case law on which plaintiff  
12 relies is inapposite.<sup>3</sup>

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17 <sup>2</sup> Plaintiff further tries to draw a division between sections 1604-05 (which plaintiff claims  
18 are jurisdictional) and sections 1609-10 at issue here (which plaintiff claims are not). (Opp.  
19 12:10-25.) But the Supreme Court treats *the entirety* of the FSIA, sections 1602-1611, as  
20 jurisdictional. *Altmann*, 541 U.S. at 691; see *Flatow*, 308 F.3d at 1069 (stating that section 1610  
21 is one of the FSIA exceptions that can serve as a grant of subject-matter jurisdiction). Indeed,  
22 plaintiff’s sole reliance for its position is a Magistrate Judge’s recommendation issued *prior to* the  
23 United States Supreme Court’s decision in *Altmann*, which effectively overruled the Magistrate’s  
24 decision. *Nat’l Union Fire Ins. Co. v. People’s Republic of Congo*, No. 91 C 3172, Doc. No. 84  
(N.D. Ill. December 5, 1991).

25 <sup>3</sup> Plaintiff cites two cases that address a third party’s attempt to assert the FSIA *personal*  
26 *jurisdiction* immunity claims – not *subject-matter jurisdiction* immunity from attachment under  
27 section 1610(a), as ICANN does here. *Republic of the Philippines v. Marcos*, 806 F.2d 344, 360  
28 (2d Cir. 1986) (third party cannot raise the FSIA personal jurisdiction argument that former head  
of state did not waive sovereign immunity); *Rubin v. Islamic Republic of Iran*, 436 F. Supp. 2d  
938, 943 (N.D. Ill. 2006) (garnishee cannot raise the FSIA personal jurisdiction argument  
regarding Iran’s sovereign immunity claim).

29 In *Rubin v. Islamic Republic of Iran*, 408 F. Supp. 2d 549 (N.D. Ill. 2005), the court stated  
30 that *Marcos* is “not relevant to the inquiry” of the standing of a third party to raise the FSIA  
31 subject-matter immunity. *Rubin*, 408 F. Supp. 2d at 557 n.2. Also, plaintiff ignores the fact that  
32 the plaintiffs in a separate *Rubin* matter made *the same arguments* that plaintiff makes here but  
33 that court *followed Walker* to allow the garnishee to raise the FSIA subject matter immunity.  
34 *Rubin v. Islamic Republic of Iran*, No. 06-11053, 2006 U.S. Dist. LEXIS 73383, at \*7 (D. Mass.  
35 Sept. 30, 2006).



1 **II. PLAINTIFF HAS NOT ALLEGED AN EXCEPTION TO IMMUNITY UNDER**  
2 **THE FSIA.**

3 As stated in ICANN's Demurrer, in order for plaintiff to overcome subject-matter  
4 jurisdiction immunity, plaintiff must demonstrate that it is seeking to attach: (1) property of the  
5 Congo, (2) located in the United States, (3) that is used for commercial activity therein. (Mot.  
6 6:19 (citing *Af-Cap v. Republic of Congo*, 383 F.3d 361, 367 (5th Cir. 2004)).) Plaintiff's  
7 complaint has not met these requirements.

8 **A. Authorities Do Not Treat TLDs As Property.**

9 This case is not about a domain name as plaintiff contends; instead, this case is about a top  
10 level domain ("TLD").<sup>4</sup> As noted in ICANN's Demurrer, the courts, the U.S. Patent and  
11 Trademark Office ("PTO"), Congress, and Foreign Governments all make this distinction (Mot.  
12 7:3-9:15)<sup>5</sup>; the fact that the Complaint alleges otherwise does not mean that the Court must accept  
13 the allegation as true. *Evans*, 38 Cal. 4th at 6.

14 Plaintiff claims that a TLD is "property" because the Ninth Circuit in *Kremen v. Cohen*  
15 held that *domain names* are a form of intangible property for purposes of conversion. (Opp. 8:1-  
16 17 (citing *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th Cir. 2003)).) But the *Kremen* district court  
17 *excluded* TLDs from its analysis because a TLD is a *service* – not property. *Kremen v. Cohen*, 99  
18 F. Supp. 2d 1168, 1173 n.2 (N.D. Cal. 2000) ("The Court held that [the .com TLD function] . . .  
19 merely provides a service. . . . Thus, unlike the present action, in *Lockheed* the focus was on [the

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21 <sup>4</sup> To provide a basic analogy, a domain name is like a telephone number and a TLD is like  
a telephone company. The telephone company connects a person dialing a telephone number to  
the receiver corresponding to that number.

22 <sup>5</sup> Plaintiff's Opposition raises a series of arguments that demonstrate a fundamental  
23 misunderstanding of trademark law. (Opp. 8 n.9.) ICANN's Demurrer references the  
24 Anticybersquatting Consumer Protection Act ("ACPA") and the PTO decisions to demonstrate  
25 that Congress and administrative agencies hold that TLDs are fundamentally different from  
26 domain names and that TLDs are not property. (Mot. 7:9-8:28.) Plaintiff's attempt to rationalize  
27 why Congress and the PTO excluded TLDs from trademark protection is flawed. Plaintiff –  
28 without legal citation – states that the reason no property protections were provided to TLDs by  
Congress and the PTO is that "ICANN's control of [TLDs] ensures that each [TLD] has only one  
owner at any time, so trademark protection is unnecessary." (Opp. 8 n.9.) This "single owner"  
theory, however, could be applied to any variety of property, therefore – under plaintiff's test –  
negating any need for trademark protections. The fact that any property is capable of being  
vested in a single owner does not truly negate the need for providing trademark protections  
against others who would infringe upon that property right.

1 .com TLD] role, rather than the proper classification of a domain name.”). Moreover, the Ninth  
2 Circuit’s decision in *Lockheed Martin Corp. v. Network Solutions, Inc.* – which *Kremen* cites to –  
3 solidifies this point:

4           The case at bench involves a fact pattern squarely on the ‘service’  
5 side. . . . All evidence in the record indicates that [the .com TLD’s]  
6 role differs little from that of the United States Postal Service:  
7 when an Internet user enters a domain-name combination, [the .com  
8 TLD] translates that domain-name combination to the registrant’s  
9 IP Address and routes the information or command to the  
corresponding computer. Although [the .com TLD’s] routing  
service is only available to a registrant who has paid NSI’s fee, [the  
.com TLD] does not supply the domain-name combination any  
more than the Postal Service supplies a street address by  
performing the routine service of routing mail.

10 *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 984-85 (9th Cir. 1999).

11           Plaintiff’s misguided reliance on *Kremen* becomes even more obvious when applying the  
12 test used in *Kremen* to determine whether a property right exists. The test requires, among other  
13 things, that there “must be an interest capable of precise definition.” *Kremen*, 337 F.3d at 1030.  
14 The Ninth Circuit – applying California law – found that a domain name met this prong only  
15 because “[s]omeone who registers a domain name decides where on the Internet those who  
16 invoke that particular name – whether by typing it into their web browsers, by following a  
17 hyperlink, or by other means – are sent.” *Id.* But, unlike a domain name, a TLD is not “sent”  
18 anywhere. If an Internet user types “.cg” into a web browser or attempts to query “.cg” in some  
19 other manner, that user gets an error message. Plaintiff does not (and cannot) dispute this fact.

20           **B. The .Cg ccTLD Is Not Located In The United States.**

21           Assuming *arguendo* that the .cg ccTLD is a form of intangible property, plaintiff’s  
22 assertion that the .cg ccTLD is “located” in the United States is without merit. Plaintiff cites a  
23 decision from 1944 for the proposition that the situs of intangible property depends on what  
24 action is to be taken with reference to it. (Opp. 13:15-18. (citing *In re Waits’ Estate*, 23 Cal. 2d  
25 676, 680 (1944)).<sup>6</sup> The California Supreme Court, however, qualified its statement years later by  
26 stating: “in the absence of a settled rule governing [the situs of a specific intangible property

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28 <sup>6</sup> Plaintiff also cites to *Kremen*, but that case does not discuss the situs of an intangible  
property right, let alone the situs of a ccTLD. (Opp. 13:19-21.)

1 right],” the location of the intangible property right must be determined “in the light of the totality  
2 of contacts with the state involved” and the “bearing that local contacts have to the question of  
3 over-all fair play and substantial justice.” *Atkinson v. Superior Ct. of Los Angeles*, 49 Cal. 2d  
4 338, 345-347 (1957). As discussed in ICANN’s Demurrer and noted in an exhibit attached to the  
5 Complaint, the registrar that operates and maintains day-to-day authority and control over the .cg  
6 ccTLD is located in either the Congo or Switzerland. (Mot. 10:26 - 11:11; Compl., Ex. 13.) Case  
7 law – and the Complaint itself – supports these locations as being the situs of the .cg ccTLD.  
8 (Mot. 11 n.12; Compl. ¶ 42.)

9 California’s only connection to the .cg ccTLD is ICANN’s ability to *recommend* to the  
10 United States Department of Commerce (“DOC”) that the .cg ccTLD be redelegated. (Mot. 3:17  
11 – 5:7, 15:1-12; Eisner Decl., Ex. A at §§ C.2.1.2, C.4.1, C.4.2, C.4.3, Appx. A; Ex. B at 7 n.7.)  
12 ICANN’s ability to make recommendations obviously does not establish the situs of the .cg  
13 ccTLD, which means that the Court lacks jurisdiction under both the FSIA and California Code  
14 of Civil Procedure Section 708.210.<sup>7</sup>

15 **C. The .Cg ccTLD Is Not Used For Commercial Activity In The United States.**

16 Plaintiff has not properly alleged that the .cg ccTLD is being used for commercial activity  
17 in the United States. (Mot. 11:13-12:15.) Plaintiff relies entirely on *Lloyd’s Underwriters v. AO*  
18 *Gazsnabtranzit*, No. CIV A1:00-MI-0242-CAP, 2000 WL 1719493 (N.D. Ga. Nov. 2, 2002), for  
19 the proposition that the licensing of a ccTLD is commercial activity. (Opp. 14:16-18.) But the  
20 property at issue in *Lloyd’s* was the *licensing fees* generated by Moldova’s *license agreements*  
21 with three U.S. corporations registering medical-related domain names with the .cg ccTLD. *Id.*,  
22 at \*2. Plaintiff here is *not* seeking the licensing fees generated by U.S. companies registering  
23 domain names in the .cg ccTLD. Rather, plaintiff seeks the .cg ccTLD itself, meaning that the  
24 *Lloyd’s* decision is inapplicable.

25 <sup>7</sup> If this Court determines that situs could exist in the United States, California is not the  
26 appropriate jurisdiction to issue an order redelegating the .cg ccTLD. *Atkinson*, 49 Cal. 2d at 345.  
27 As noted in ICANN’s Demurrer, the physical control of the “root zone file” connected to the .cg  
28 ccTLD is with VeriSign, Inc. in Virginia pursuant to a separate agreement that VeriSign has with  
the U.S. Department of Commerce. (Mot. 11 n.11.) Moreover, the ultimate authority to  
redelegate the .cg ccTLD remains with the DOC in Washington, D.C. (Mot. 3:17-5:7, 15:1-12;  
Eisner Decl., Ex. A at §§ C.2.1.2, C.4.1, C.4.2, C.4.3, Appx. A; Ex. B at 7 n.7.)

1           **D. The Congo Does Not “Own” The .Cg ccTLD.**

2           Plaintiff claims that the Congo owns the .cg ccTLD because the Complaint says that it  
3 does. (Opp. 10:1-12.) But the Compliant relies entirely on a ICANN Government Advisory  
4 Committee (“GAC”) document that does not support plaintiff’s allegations.<sup>8</sup> (Mot. 9:16 – 10:25.)  
5 And, as ICANN already has explained, the GAC does not speak for ICANN; the GAC provides  
6 *advice* to ICANN. (*Id.*; see Eisner Decl., Ex. B at 2 (The GAC “permits the United States and  
7 other governments to provide *advice* to ICANN on matters of public policy”) (emphasis added).)

8           **III. PLAINTIFF’S OPPOSITION CONCEDES THAT THIS COURT LACKS JURISDICTION.**

9  
10           The Complaint alleges that the .cg ccTLD is actually controlled or held by purported  
11 agents or instrumentalities of the Congo (i.e., the Administrative or Technical Contacts for the .cg  
12 ccTLD) rather than the Congo itself. (Mot. 12:16-14:5.) As such, the Complaint fails to allege  
13 any basis for asserting jurisdiction of this Court to attach the .cg ccTLD because the Complaint  
14 has not alleged that these agents or instrumentalities have waived immunity separate and apart  
15 from the Congo. (*Id.*) Plaintiff fails to address these arguments in its opposition, effectively  
16 conceding that this Court lacks jurisdiction and that plaintiff’s creditor’s suit must be dismissed.  
17 *See Sacks v. FSR Brokerage, Inc.* 7 Cal. App. 4th 950, 960 (1992) (failure to offer arguments in  
18 opposition to material arguments supported granting of dispositive motion).

19           **IV. PLAINTIFF HAS FAILED TO ALLEGE A CREDITOR’S SUIT.**

20           As an independent basis for dismissal, plaintiff’s action fails because domain names are  
21 not subject to garnishment, and the .cg ccTLD is not transferable.

22           **A. Domain Names Are Not Subject To Garnishment.**

23           Plaintiff claims that the only property not subject to the enforcement of a money judgment  
24 is property that is explicitly exempted in California Civil Procedure Code Section 695 *et. seq.*  
25 (Opp. 9:3-15.) But the Law Revision Commission Comments to Section 695.010 list a slew of

26  
27           <sup>8</sup> Curiously, plaintiff cites to the current version of *the same GAC document* for support.  
28 (Opp. 10:9-12.) But the GAC only advises ICANN, and ICANN’s Bylaws and the GAC  
document itself clearly demonstrate this. (Mot. 9:16 – 10:25; Jaquez Decl., Ex. A; Eisner Decl.,  
Ex. B at 2.)

1 exemptions, none of which is exhaustive, and many of which are not specially provided for in  
2 Section 695 *et. seq.* Indeed, Section 695.010(a) states that the exemptions include all of those  
3 “provided by law.” Black’s Law Dictionary defines “law” as “[t]he aggregate of legislation,  
4 judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial  
5 and administrative action.” Black’s Law Dictionary, Eight Edition (2004). If the California  
6 Legislature wanted to limit the list of potential exemptions to those “provided by statute” – as  
7 plaintiff suggests – the Legislature knew how to do so (and has in fact done so in another  
8 subsection of Section 695. *See e.g.*, Cal. Civ. Proc. Code § 695.030(a) (“Except as otherwise  
9 provided *by statute*, property of the judgment debtor that is not assignable or transferable is not  
10 subject to enforcement of a money judgment.”) (emphasis added).)<sup>9</sup>

11 Plaintiff next argues that the Court should reject *Network Solutions, Inc. v. Umbro Int’l,*  
12 *Inc.*, 259 Va. 759 (2000) – which held that domains are not subject to garnishment – because  
13 *Umbro* found that “domain names are not property.” (Opp. 9:18-20.) But *Umbro* specifically  
14 stated that domain names *could be* a form of “intangible personal property,” much like *Kremen*  
15 contends. *Umbro*, 259 Va. at 769-73. The *Umbro* court, however, held that “[i]rrespective of  
16 *how a domain name is classified*,” a domain name must be exempt from garnishment because  
17 they are “inextricably bound to the domain name services that [a TLD] provides.” *Id.* at 770  
18 (emphasis added). Notably, plaintiff does not address the remaining case law that ICANN cites in  
19 support of its position that domains are not subject to enforcement of money judgments.<sup>10</sup> (Mot.  
20 14:17-26.)

21 \_\_\_\_\_  
22 <sup>9</sup> Plaintiff’s cases are inapposite. *In re Petruzzelli*, 139 B.R. 241, 243-44 (Bnkr., E.D. Cal.  
23 1992) (listing only the “*basic exemptions* from enforcement of money judgments”) (emphasis  
24 added); *Rojas v. Superior Court*, 33 Cal. 4th 407, 424 (2004) (discussing California Evidence  
Code Section 1119(b), which did not contain the phrase “provided by law”); *Partch v. Adams*, 55  
25 Cal. App. 2d 1, 7 (1942) (discussing the *situs* for attachment or execution of property, not  
26 *exemption* of property from enforcement of money judgments).

27 <sup>10</sup> Plaintiff makes the unavailing argument that ICANN has waived its right to claim that  
28 the .cg ccTLD is exempt from garnishment should this Court determine that the ccTLD is a form  
of intangible property. (Opp. 9 ns.10, 11.) Plaintiff seems to forget, however, that ICANN’s  
Memorandum of Garnishee argues that the .cg ccTLD is *not property* and if this Court were to  
determine that the .cg ccTLD is property, the Court would obviously have authority under  
California Civil Procedure Code Section 703.030(c) to consider any and all exemptions. Also,  
ICANN has specifically raised a number of *exceptions* that deem the .cg ccTLD absolutely  
immune from judgment enforcement whether a claim is ever made. For instance, ICANN argues

1           **B. The .Cg ccTLD Is Not Transferable.**

2           Plaintiff asks this Court to command ICANN to redelegate the .cg ccTLD to plaintiff  
3 because the Congo purportedly can do the same. (Opp. 10:13-18.) Plaintiff is wrong: the only  
4 way that the .cg ccTLD can be redelegated is through a lengthy process by which ICANN  
5 investigates the merits of the proposed redelegation and the qualifications of the proposed  
6 manager; ICANN decides to recommend the proposed redelegation to the DOC; the DOC decides  
7 to approve the redelegation; and finally VeriSign implements the redelegation in the root zone  
8 file. (Mot. 15:1-12.) The DOC recently confirmed each of these judicially-noticeable facts on  
9 October 16, 2006, in a pleading it filed with the United States District Court for the District of  
10 Columbia.<sup>11</sup> (Eisner Decl., Ex. B at 6-9.) Plaintiff offers no response to these facts other than  
11 legal conclusions and factual allegations that have nothing to do with the *redelegation* of a  
12 ccTLD but instead address purported licensing “agreements” between other ccTLDs and third-  
13 parties to perform certain functions with respect to those ccTLDs.<sup>12</sup>

14           Realizing the futility of its argument, plaintiff next argues that, even if the DOC must  
15 approve a ccTLD redelegation – making it non-transferable – this does not mean that a ccTLD  
16 cannot be garnished. (Opp. 10: 19-11:15.) But plaintiff’s position is contrary to the law. Cal.  
17 Civ. Proc. Code § 695.030(a) (“Except as otherwise provided by statute, property of the judgment  
18 debtor that is not assignable or transferable is not subject to enforcement of a money judgment.”)

19  
20  
21 (continued...)

22 that the .cg ccTLD is absolutely immune from garnishment under California Civil Procedure  
23 Code Section 695.060 because the DOC alone must approve any redelegation. (Mot. 15 n.15.)  
Moreover, the .cg ccTLD cannot be transferred or assigned, which is a necessity under Section  
695.030. (Mot. 15:1-12.)

24           <sup>11</sup> Plaintiff selectively references a *different* brief in the same case for the proposition that  
25 the DOC “has no regulatory authority over ICANN.” (RJV Opp. 8:23-25.) But ICANN is not  
26 claiming that the DOC has “regulatory authority.” Rather, the DOC’s right to approve  
redelegations is granted by contract. (Mot. 3:17 – 5:7, 15:1-12; Eisner Decl, Ex. A at §§ C.2.1.2,  
C.4.1, C.4.2, C.4.3, Appx. A; Ex. B at 6-7.)

27           <sup>12</sup> Plaintiff contends that ICANN has refused to provide any discovery on the redelegation  
28 of other ccTLDs, but that is not true. Indeed, ICANN has directed plaintiff to an Internet link to  
every single IANA Report for each proposed ccTLD redelegation. (*See e.g.*, Johnson Decl., Ex. 1  
at Request Nos. 4, 5; *see also* <http://www.iana.org/reports/cctld-reports.htm>.)

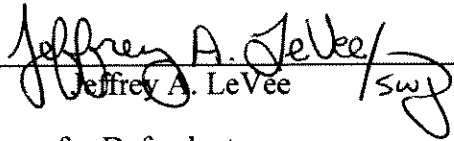
1 And the cases that plaintiff cites are inapplicable.<sup>13</sup>

2 **CONCLUSION**

3 Plaintiff's creditor's suit against ICANN and IANA should be dismissed with prejudice  
4 and the prior writs of execution and levy should be dissolved.

5 Dated: October 27, 2006

JONES DAY

7 By:  /swj  
Jeffrey A. LeVee

8 Attorneys for Defendants  
9 INTERNET CORPORATION FOR  
10 ASSIGNED NAMES AND NUMBERS AND  
11 ERRONEOUSLY NAMED INTERNET  
12 ASSIGNED NUMBERS AUTHORITY

13 <sup>13</sup> *Golden v. State*, 133 Cal. App. 2d 640, 643-45 (1955) (Cal. Civ. Proc. Code § 708.630 specifically provides that a liquor license may be applied in satisfaction of a money judgment); *In re Barnes*, 276 F.3d 927, 928 (7th Cir. 2002) (not applying California law); *Tenen v. Winter*, 94-cv-7934-CJS, Doc. No. 295 (W.D.N.Y. Apr. 12, 2002) (same); *Zurakov v. Register.com, Inc.*, 304 A.D.2d 176, 179-80 (N.Y. App. Div. 2003) (same); Cal. Civ. Proc. Code § 695.035(a)(3) (statute specifically provides that certain rights of a lessee to real estate may be applied in satisfaction of a money judgment).

1 **PROOF OF SERVICE**

2 I, Grace M. Salter, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071-2300. On October 27,  
6 2006, I caused to be served a copy of the within document(s):

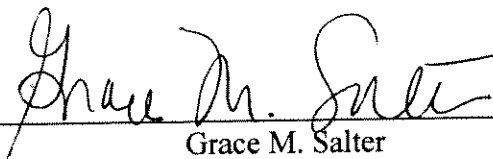
7 **REPLY IN SUPPORT OF DEMURRER TO COMPLAINT BY**  
8 **DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND**  
9 **NUMBERS AND ERRONEOUSLY-NAMED DEFENDANT INTERNET**  
10 **ASSIGNED NUMBERS AUTHORITY**

- 11  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
12 forth below on this date before 5:00 p.m.
- 13  by placing the document(s) listed above in a sealed envelope with postage thereon  
14 fully prepaid, in the United States mail at Los Angeles, California addressed as set  
15 forth in the attached Service List.
- 16  by placing the document(s) listed above in a sealed Federal Express envelope and  
17 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal  
18 Express agent for delivery.
- 19  by personally delivering the document(s) listed above to the person(s) at the  
20 address(es) set forth below.

21 I am readily familiar with the firm's practice of collection and processing correspondence  
22 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
23 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
24 motion of the party served, service is presumed invalid if postal cancellation date or postage  
25 meter date is more than one day after date of deposit for mailing in affidavit.

26 I declare that I am employed in the office of a member of the bar of this court at whose  
27 direction the service was made.

28 Executed on October 27, 2006, at Los Angeles, California.

  
\_\_\_\_\_  
Grace M. Salter



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**SERVICE LIST**  
***C. ITOH MIDDLE EAST E.C. (Bahrain) v. INTERNET CORPORATION FOR ASSIGNED***  
***NAMES AND NUMBERS, et al.***  
**LOS ANGELES SUPERIOR COURT, CASE NO. SC090220**

Robert A. Sacks, Esq. Via Hand Delivery  
Edward E. Johnson, Esq.  
Sullivan & Cromwell, LLP  
1888 Century Park East  
Suite 2100  
Los Angeles CA 90067-1725  
Phone: (310) 712-6600  
Fax: (310) 712-8800

The People's Republic of the Congo Via U.S. Mail  
Regie National Des Travaux Publics et de la Construction  
B.P. 2073  
Brazzaville  
Republique Populaire du Congo

The Congolese Redemption Fund Via U.S. Mail  
Regis National Des Travaux Publics et de la Construction  
B.P. 2073  
Brazzaville  
Republique Populaire du Congo