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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

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 pursing 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.

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

LEGAL STANDARD

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.[1] *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).

[1] 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.)

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

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

A. <u>The FSIA Subject-Matter Immunity Is Absolute</u>.

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

possible immunity under § 1609 to be treated as an affirmative defense that can be raised only by the foreign sovereign, as opposed to the trustee custodian of the attached property.")[2]

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

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

---

[2] Plaintiff further tries to draw a division between sections 1604-05 (which plaintiff claims are jurisdictional) and sections 1609-10 at issue here (which plaintiff claims are not). (Opp. 12:10-25.) But the Supreme Court treats ***the entirety*** of the FSIA, sections 1602-1611, as jurisdictional. *Altmann*, 541 U.S. at 691; s*ee Flatow*, 308 F.3d at 1069 (stating that section 1610 is one of the FSIA exceptions that can serve as a grant of subject-matter jurisdiction). Indeed, plaintiff's sole reliance for its position is a Magistrate Judge's recommendation issued ***prior to*** the United States Supreme Court's decision in *Altmann*, which effectively overruled the Magistrate's 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).

[3] Plaintiff cites two cases that address a third party's attempt to assert the FSIA ***personal jurisdiction*** immunity claims – not ***subject-matter jurisdiction*** immunity from attachment under section 1610(a), as ICANN does here. *Republic of the Philippines v. Marcos*, 806 F.2d 344, 360 (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).

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

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

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

A. Authorities Do Not Treat TLDs As Property.

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

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

[4] 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.

[5] Plaintiff's Opposition raises a series of arguments that demonstrate a fundamental misunderstanding of trademark law. (Opp. 8 n.9.) ICANN's Demurrer references the Anticybersquatting Consumer Protection Act ("ACPA") and the PTO decisions to demonstrate that Congress and administrative agencies hold that TLDs are fundamentally different from domain names and that TLDs are not property. (Mot. 7:9-8:28.) Plaintiff's attempt to rationalize why Congress and the PTO excluded TLDs from trademark protection is flawed. Plaintiff – 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.

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

> The case at bench involves a fact pattern squarely on the 'service' side. . . . All evidence in the record indicates that [the .com TLD's] role differs little from that of the United States Postal Service: when an Internet user enters a domain-name combination, [the .com TLD] translates that domain-name combination to the registrant's 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.

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

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

B. <u>The .Cg ccTLD Is Not Located In The United States.</u>

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

[6] 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.)

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

California's only connection to the .cg ccTLD is ICANN's ability to ***recommend*** to the United States Department of Commerce ("DOC") that the .cg ccTLD be redelegated. (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.) ICANN's ability to make recommendations obviously does not establish the situs of the .cg ccTLD, which means that the Court lacks jurisdiction under both the FSIA and California Code of Civil Procedure Section 708.210.[7]

C. <u>The .Cg ccTLD Is Not Used For Commercial Activity In The United States.</u>

Plaintiff has not properly alleged that the .cg ccTLD is being used for commercial activity in the United States. (Mot. 11:13-12:15.) Plaintiff relies entirely on *Lloyd's Underwriters v. AO Gazsnabtranzit*, No. CIVA1:00-MI-0242-CAP, 2000 WL 1719493 (N.D. Ga. Nov. 2, 2002), for the proposition that the licensing of a ccTLD is commercial activity. (Opp. 14:16-18.) But the property at issue in *Lloyd's* was the ***licensing fees*** generated by Moldova's ***license agreements*** with three U.S. corporations registering medical-related domain names with the .cg ccTLD. *Id.*, at *2. Plaintiff here is ***not*** seeking the licensing fees generated by U.S. companies registering domain names in the .cg ccTLD. Rather, plaintiff seeks the .cg ccTLD itself, meaning that the *Lloyd's* decision is inapplicable.

[7] If this Court determines that situs could exist in the United States, California is not the appropriate jurisdiction to issue an order redelegating the .cg ccTLD. *Atkinson*, 49 Cal. 2d at 345. As noted in ICANN's Demurrer, the physical control of the "root zone file" connected to the .cg 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.)

D. The Congo Does Not "Own" The .Cg ccTLD.

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

III. PLAINTIFF'S OPPOSITION CONCEDES THAT THIS COURT LACKS JURISDICTION.

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

IV. PLAINTIFF HAS FAILED TO ALLEGE A CREDITOR'S SUIT.

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

A. Domain Names Are Not Subject To Garnishment.

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

[8] Curiously, plaintiff cites to the current version of ***the same GAC document*** for support. (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.)

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

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

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[9] Plaintiff's cases are inapposite. *In re Petruzzelli*, 139 B.R. 241, 243-44 (Bnkr., E.D. Cal. 1992) (listing only the "***basic exemptions*** from enforcement of money judgments") (emphasis 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 Cal. App. 2d 1, 7 (1942) (discussing the ***situs*** for attachment or execution of property, not ***exemption*** of property from enforcement of money judgments).

[10] Plaintiff makes the unavailing argument that ICANN has waived its right to claim that 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

B. The .Cg ccTLD Is Not Transferable.

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

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

(continued...)

that the .cg ccTLD is absolutely immune from garnishment under California Civil Procedure 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.)

[11] Plaintiff selectively references a ***different*** brief in the same case for the proposition that the DOC "has no regulatory authority over ICANN." (RJN Opp. 8:23-25.) But ICANN is not 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.)

[12] Plaintiff contends that ICANN has refused to provide any discovery on the redelegation 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.).

And the cases that plaintiff cites are inapplicable.[13]

CONCLUSION

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

Dated: October 27, 2006

JONES DAY

By: Jeffrey A. LeVee /swj
Jeffrey A. LeVee

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INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS AND ERRONEOUSLY NAMED INTERNET ASSIGNED NUMBERS AUTHORITY

[13] *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).

PROOF OF SERVICE

I, Grace M. Salter, declare:

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

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

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth in the attached Service List.

☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

☒ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

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

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

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

Grace M. Salter

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

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