

1 RONALD L. JOHNSTON (State Bar No. 057418)
LAURENCE J. HUTT (State Bar No. 066269)
2 SUZANNE V. WILSON (State Bar No. 152399)
JAMES S. BLACKBURN (State Bar No. 169134)
3 ARNOLD & PORTER LLP
1900 Avenue of the Stars, 17th Floor
4 Los Angeles, California 90067-4408
Telephone: (310) 552-2500
5 Facsimile: (310) 552-1191

6 Of Counsel:
RICHARD L. ROSEN (Admitted *pro hac vice*)
7 ARNOLD & PORTER LLP
555 Twelfth Street NW
8 Washington, D.C. 20004-1206
Telephone: (202) 942-5000
9 Facsimile: (202) 942-5999

10 BRIAN A. DAVIS (Admitted *pro hac vice*)
VERISIGN, INC.
11 21355 Ridgetop Circle
Dulles, Virginia 20166
12 Telephone: (703) 948-2300
Facsimile: (703) 450-7326

13 Attorneys for Plaintiff, VERISIGN, INC.

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 VERISIGN, INC., a Delaware
corporation,

17 Plaintiff,

18 v.

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

22 Defendants.

Case No. CV 04-1292 AHM (CTx)

**PLAINTIFF VERISIGN, INC.'S
EVIDENTIARY OBJECTIONS TO
SUPPLEMENTAL DECLARATION
FILED BY DEFENDANT ICANN IN
SUPPORT OF SPECIAL MOTION
TO STRIKE VERISIGN'S SECOND,
THIRD, FOURTH, FIFTH, AND
SIXTH CLAIMS AS STRATEGIC
LAWSUITS AGAINST PUBLIC
PARTICIPATION**

23 Date: May 18, 2004
Time: 10:00 a.m.
24 Courtroom: 14 – Spring Street Bldg.
Hon. A. Howard Matz

1 Plaintiff VeriSign, Inc. ("VeriSign") respectfully submits the following
2 objections to the Supplemental Declaration of John O. Jeffrey filed by Defendant
3 Internet Corporation for Assigned Names and Numbers ("ICANN") in support of its
4 Special Motion to Strike Verisign's Second, Third, Fourth, Fifth, and Sixth Claims as
5 Strategic Lawsuits Against Public Participation (the "Motion"). VeriSign reserves its
6 right to make additional objections to the evidence referenced herein if offered by the
7 Defendant for any other purpose at a later date.

8 The Supplemental Jeffrey Declaration is an improper and untimely attempt by
9 ICANN to submit supplemental evidence in its reply papers that should have been
10 submitted with ICANN's moving papers. As set forth in VeriSign's opposition to
11 ICANN's anti-SLAPP motion, ICANN bears the burden of establishing that the
12 October 3 letter is within the scope of the litigation privilege and, thus, constitutes
13 protected activity under the anti-SLAPP statute. ICANN failed to meet its burden,
14 submitting no admissible evidence in support of its contention that the October 3
15 letter was a protected pre-litigation demand letter. The Supplemental Jeffrey
16 Declaration is an attempt to correct this deficiency in ICANN's showing, by
17 submitting for the first time purported evidence of ICANN's good faith and serious
18 contemplation of a legally viable claim against VeriSign.¹ (Supp. Jeffrey Decl. ¶ 4.)
19 ICANN's attempt to bolster its prima facie case at this late date essentially amounts
20 to an admission that it has failed to meet its initial burden of showing that the anti-
21 SLAPP statute applies, and should be stricken.² See *Golden West Fin. v. WMA*

22 ¹ ICANN's late submission of supplemental evidence in support of its initial burden
23 regarding the applicability of the anti-SLAPP statute further demonstrates the need
24 for discovery on this issue. Such discovery is particularly appropriate where, as here,
25 evidence needed to support or refute claims made by ICANN is in the sole control of
the moving party. VeriSign is entitled to cross-examine Mr. Jeffrey regarding
ICANN's purported belief that it had a legally viable claim against VeriSign based on
the launch of Site Finder.

26 ² The introduction of new evidence in ICANN's reply brief is particularly
objectionable given that this Court has already made clear that "VeriSign's opposing
27 brief should address the sufficiency of ICANN's prima facie showing . . . [and] [i]f
ICANN's showing is deficient, that ends the analysis and moots the need for relief."
28 *VeriSign v. ICANN*, CV 04-1292 AHM (CTx), slip op. at 2 (C.D. Cal. April 23,
2004).