

1 RONALD L. JOHNSTON (State Bar No. 057418)  
ronald.johnston@aporter.com  
2 LAURENCE J. HUTT (State Bar No. 066269)  
laurence.hutt@aporter.com  
3 BRIAN K. CONDON (State Bar No. 138776)  
brian.condon@aporter.com  
4 JAMES S. BLACKBURN (State Bar No. 169134)  
james.blackburn@aporter.com  
5 ARNOLD & PORTER LLP  
777 South Figueroa Street, 44th Floor  
6 Los Angeles, California 90017-5844  
Telephone: (213) 243-4000  
7 Facsimile: (213) 243-4199

8 Attorneys for Defendant VeriSign, Inc.

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION  
14

15 COALITION FOR ICANN  
TRANSPARENCY INC., a Delaware  
16 corporation,

17 Plaintiff,

18 v.

19 VERISIGN, INC., a Delaware corporation;  
INTERNET CORPORATION FOR  
20 ASSIGNED NAMES AND NUMBERS, a  
California corporation,

21 Defendants.  
22  
23

Case No. 5:05-CV-04826 (RMW)

REQUEST FOR JUDICIAL NOTICE OF  
DEFENDANT VERISIGN, INC. IN  
SUPPORT OF ITS MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT UNDER RULE 12(b)(6)

Date: June 9, 2006  
Time: 9:00 a.m.  
Dept: 6

1 Defendant VeriSign, Inc. (“VeriSign”), in support of its Motion to Dismiss First Amended  
2 Complaint Under Rule 12(b)(6), hereby requests that the Court take judicial notice, pursuant to  
3 Federal Rule of Evidence 201, of the following documents:

4 1. The proposed 2006 .com Registry Agreement between VeriSign and the Internet  
5 Corporation for Assigned Names and Numbers (“ICANN”) (the “2006 .com Agreement”),  
6 including its appendices, a true and correct copy of which is attached hereto as Exhibit A;

7 2. Amendment 3 to the ICANN/Department of Commerce (“DOC”) Memorandum of  
8 Understanding (“MOU”), a true and correct copy of which is attached hereto as Exhibit B;

9 3. A weblog maintained by Bret Fausett, counsel for CFIT, entitled “icann.Blog,” and  
10 which is publicly available at [http://blog.lextext.com/blog/\\_archives/2005/11](http://blog.lextext.com/blog/_archives/2005/11), a true and correct  
11 copy of which is attached hereto as Exhibit C.

12 I. LEGAL STANDARD

13 In ruling on a motion to dismiss, a district court “may consider facts that ‘are contained in  
14 materials of which the court may take judicial notice.’” *Heliotrope Gen., Inc. v. Ford Motor Co.*,  
15 189 F.3d 971, 981 n.18 (9th Cir. 1999). A court properly may take judicial notice of “matters of  
16 public record, including ‘records and reports of administrative bodies.’” *George W. v. Dep’t of*  
17 *Educ.*, 149 F. Supp. 2d 1195, 1201-02 (E.D. Cal. 2000).

18 A district court may also “consider a document the authenticity of which is not contested,  
19 and upon which the plaintiff’s complaint necessarily relies.” *Parrino v. FHP, Inc.*, 146 F.3d 699,  
20 706 (9th Cir. 1998); *see also Van Buskirk v. CNN, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002) (under the  
21 Ninth Circuit’s “incorporation by reference” rule, a court may look beyond the pleadings on a  
22 motion to dismiss without converting the motion into one for summary judgment).

23 In addition, the Court may take judicial notice of facts posted on Internet websites where, as  
24 here, the facts are “capable of ready determination” and “widely available to anyone with Internet  
25 access.” *Enterprise Rent-A-Car Co. v. U-Haul Int’l, Inc.*, 327 F. Supp. 2d 1032, 1042 & n.4 (E.D.  
26 Mo. 2004) (taking judicial notice of facts on Internet website); *see also Hendrickson v. Ebay Inc.*,  
27 165 F. Supp. 2d 1082, 1084 n.2 (C.D. Cal. 2001) (taking judicial notice of website and the  
28 “information contained therein”); Fed. R. Evid. 201(b).

1 Finally, judicial notice of matters of public record, and/or matters not reasonably subject to  
2 dispute, does not convert a Rule 12(b)(6) motion into a motion for summary judgment. *GE Engine*  
3 *Serv. UNC Holding I, Inc. v. Century Indemn. Co.*, 250 F. Supp. 2d 1237, 1240 (C.D. Cal. 2001).  
4 Nor can a plaintiff avoid a judicially noticeable document simply because it contradicts the  
5 plaintiff's allegations. *Oceanic Cal., Inc. v. City of San Jose*, 497 F. Supp. 962, 964 (N.D. Cal.  
6 1980) (“[T]he court is not bound to ignore legally significant facts disfavorable to plaintiff which  
7 appear on the face of the complaint or which are proper subjects of judicial notice.”); *Saxton v.*  
8 *McDonnell Douglas Aircraft Co.*, 428 F. Supp. 1047, 1049 n.5 (C.D. Cal. 1977) (a court may “take  
9 judicial notice of things which are contrary to the pleadings and give them the same effect as if they  
10 had been set up as a defense in the answer and the proof were plenary”).

## 11 II. ARGUMENT

### 12 A. Proposed 2006 .com Agreement (Exhibit A) and Amendment 3 to the ICANN/DOC 13 Memorandum of Understanding (Exhibit B)

14 The terms of the 2006 .com Agreement are central to the claims CFIT seeks to assert by this  
15 action, and, in fact, CFIT attached the 2006 .com Agreement as Exhibit 2 to its First Amended  
16 Complaint (“FAC”). (FAC, Ex. 2.) CFIT did not, however, attach the appendices to the 2006 .com  
17 Agreement, which VeriSign submits should be included so that the Court may consider the  
18 proposed agreement in its entirety. In particular, the inclusion of appendix 9 is essential to  
19 VeriSign’s arguments that the proposed Central Listing Service (“CLS”) is not among the services  
20 that VeriSign and ICANN have agreed may be introduced under the 2006 .com Agreement, and that  
21 VeriSign accordingly would have to seek ICANN approval before it may introduce CLS under that  
22 agreement. The entire 2006 .com Agreement is publicly available on ICANN’s website and its  
23 existence, contents, and terms are facts not reasonably subject to dispute. *See*  
24 <http://www.icann.org/topics/verisign-settlement.htm>.

25 Similarly, CIFT references the MOU between ICANN and the DOC in its complaint. (FAC,  
26 ¶ 59.) Amendment 3 to the MOU is essential to VeriSign’s argument that the DOC must approve  
27 the proposed 2006 .com Agreement before that agreement becomes effective. Like the 2006 .com  
28 Agreement, Amendment 3 to the MOU is readily available on ICANN’s website, and its existence,

1 contents, and terms are facts not reasonably subject to dispute. *See*

2 <http://www.icann.org/general/amend3-jpamou-25may01.htm>.

3 If a “plaintiff fails to introduce a pertinent document as part of his pleading, [the] defendant  
4 may introduce the exhibit as part of his motion attacking the pleading.” *Branch v. Tunnell*, 14 F.3d  
5 449, 453-54 (9th Cir. 1994) (quoting 5 Charles Alan Wright & Arthur Miller, *Federal Practice and*  
6 *Procedure* § 1327, at 762-63 (2d ed. 1990), *overruled on other grounds*, 307 F.3d 1119 (9th Cir.  
7 2002). Both the 2006 .com Agreement and the MOU are referenced in CFIT’s amended complaint,  
8 are of critical importance to the issues before the Court, and are capable of accurate and ready  
9 determination. They are therefore appropriate for judicial notice. *See Parrino*, 146 F.3d at 706.

10 B. Bret Fausett’s Weblog (Exhibit C)


11 The weblog maintained by CFIT’s counsel, Bret Fausett, demonstrates the validity of  
12 VeriSign’s argument that CFIT lacks standing to pursue the instant lawsuit and that it has not cured  
13 the defects described in this Court’s February 28, 2006 Order dismissing CFIT’s original complaint.  
14 As Mr. Fausett candidly asserts in his November 23 posting to his weblog, entitled “From Behind  
15 the Irony Curtain”: “Nowhere on [its] [web]site does CFIT disclose who formed it, who is funding  
16 it, or who has joined the ‘coalition.’” A true and correct copy of the above webposting is publicly  
17 available, not subject to reasonable dispute, and capable of accurate and ready determination at  
18 [http://blog.lextext.com/blog/\\_archives/2005/11](http://blog.lextext.com/blog/_archives/2005/11). *See Enterprise Rent-A-Car*, 327 F. Supp. 2d at  
19 1042 & n.4; *see also Hendrickson*, 165 F. Supp. 2d at 1084 n.2; Fed. R. Evid. 201(b). VeriSign  
20 therefore requests that the Court take judicial notice of Mr. Fausett’s previous statements on CFIT’s  
21 lack of transparency.

1 III. CONCLUSION

2 For the foregoing reasons, VeriSign respectfully requests that the Court take judicial notice  
3 of Exhibits A-C attached hereto.

4  
5 DATED: April 13, 2006

ARNOLD & PORTER LLP  
RONALD L. JOHNSTON  
LAURENCE J. HUTT  
BRIAN K. CONDON  
JAMES S. BLACKBURN

8  
9 By:   
James S. Blackburn  
Attorneys for VeriSign, Inc.