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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14
15 REGISTERSITE.COM, et al.,

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR
19 ASSIGNED NAMES AND
20 NUMBERS, a California
21 Corporation; VERISIGN, INC., a
22 Delaware Corporation; and DOES 1-
23 150, inclusive,

24 Defendants.

Case No. CV 04-1368 ABC (CWx)

**DEFENDANT INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS' REQUEST
FOR JUDICIAL NOTICE IN
SUPPORT OF ITS MOTION TO
DISMISS CERTAIN CAUSES OF
ACTION FOR FAILURE TO STATE
A CLAIM UNDER FRCP 12(B)(6)**

[Filed concurrently with Notice of
Motion and Motion to Dismiss Certain
Causes of Action for Failure to State a
Claim under FRCP Rule 12(B)(6); and
[Proposed] Order]

25
26 PLEASE TAKE NOTICE that, pursuant to Federal Rule of Evidence 201,
27 defendant Internet Corporation for Assigned Names and Numbers ("ICANN")
28

1 hereby respectfully requests that, in considering its concurrently-filed motion to
2 dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court take
3 judicial notice of the following documents:

4 (A) **Order Denying Plaintiffs' Motion for**
5 **Preliminary Injunction** in *Dotster, Inc., etc. v. Internet*
6 *Corporation for Assigned Names and Numbers*, Case No.
7 CV 03-5045 JFW (MANx) (C.D. Cal. Nov. 10, 2003)
8 ("*Dotster* litigation"), a true and correct copy of which is
9 attached hereto as Exhibit A;

10 (B) **Stipulation and Proposed Order for Dismissal with**
11 **Prejudice** in *Dotster, Inc., etc. v. Internet Corporation for Assigned*
12 *Names and Numbers*, Case No. CV 03-5045 JFW (MANx) (C.D. Cal.
13 Dec. 5, 2003), a true and correct copy of which is attached hereto as
14 Exhibit B.

15 These documents constitute facts not reasonably subject to dispute.
16 Accordingly, they may be properly considered in connection with the Court's
17 consideration of ICANN's Rule 12(b)(6) Motion to Dismiss.

18 **LEGAL STANDARD**

19 A federal district court may properly take notice of "matters of public record"
20 pursuant to Federal Rule of Evidence section 201, to the extent they are not subject
21 to reasonable dispute. *Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir.
22 2001). Judicial notice of matters of public record will not convert "a Rule 12(b)(6)
23 motion to a summary judgment motion." *Id.* at 689; *Mir v. Little Co. of Mary*
24 *Hospital*, 844 F.2d 646, 649 (9th Cir. 1988) (same); *Neilson*, 290 F. Supp. 2d at
25 1112 n.37 (C.D. Cal. 2003) (same).

1 **ARGUMENT**

2 Judicial notice of the attached two documents is necessary to give the Court a
3 more complete understanding of the facts upon which Plaintiffs' entire complaint
4 rests and the prior adjudication of those issues in the *Dotster* litigation.

5 **Dotster Order Denying Motion for Preliminary Injunction**

6 Plaintiffs contend that ICANN has breached the Registrar Accreditation
7 Agreement ("RAA") that ICANN entered into with each Plaintiff by allowing
8 VeriSign to proceed with the Wait Listing Service ("WLS"). (See, e.g., FAC ¶¶
9 4.59-68, 16.5-16.28.) However, Plaintiffs are pursuing a claim that was already
10 decided by Judge Walters in November 2003. The existence of Judge Walter's
11 opinion in the *Dotster* litigation thus provides strong support for why Plaintiffs'
12 breach of contract claim against ICANN should fail.

13 The *Dotster* plaintiffs brought a motion for preliminary injunction seeking to
14 stop ICANN from permitting VeriSign to proceed with WLS; ICANN vigorously
15 opposed the motion, and Judge Walter denied it. The *Dotster* order is a record of
16 this Court and is being offered for the existence of the order, the identity of the
17 named parties, the subject of the dispute, and the Court's determinations. The order
18 is not a fact subject to reasonable dispute, and it is maintained by the clerk of this
19 Court. Therefore, the *Dotster* order may be judicially noticed. *Lee*, 250 F.3d at
20 689.

21 **Dotster Stipulation and Proposed Order for Dismissal with Prejudice**

22 Similarly, the fact that the *Dotster* plaintiffs stipulated to dismiss their claims
23 with prejudice after Judge Walters issued his November 2003 Order is strong
24 evidence that Plaintiffs' breach of contract claim against ICANN is without merit.
25 The *Dotster* dismissal with prejudice is a record of this Court and is simply being
26 offered for the existence of the dismissal with prejudice, the identity of the named
27 parties, and the subject of the dispute. The dismissal with prejudice is not a fact
28 subject to reasonable dispute, and it is maintained by the clerk of this Court.

1 Therefore, the *Dotster* dismissal with prejudice may be judicially noticed. *Lee*, 250
2 F.3d at 689.

3 **CONCLUSION**

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

7 Dated: May 28, 2004

JONES DAY

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10 By: 
Jeffrey A. LeVee

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Attorneys for Defendant INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS

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