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

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 WEST DISTRICT
12

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

15 Plaintiff,)
16)

17 v.)

18 INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS,)
19 INTERNET ASSIGNED NUMBERS)
AUTHORITY, the PEOPLE'S)
20 REPUBLIC OF THE CONGO, and THE)
CONGOLESE REDEMPTION FUND,)
21)

22 Defendants.)
23)

Case No. SC090220

The Hon. John L. Segal

**DECLARATION OF EDWARD
E. JOHNSON**

Hearing: November 3, 2006
Time: 8:30 a.m.
Dept.: M

Action Filed: June 28, 2006

24 Under CAL. CIV. PROC. CODE §2015.5, Edward E. Johnson declares as follows:

25 1. I am a member of the Bar of the State of California, and associated with
26 the firm of Sullivan & Cromwell LLP, counsel to C. Itoh Middle East E.C. (Bahrain), through
27 the real party in interest National Union Fire Insurance Co. of Pittsburgh, Pa., Plaintiff in this
28 action.

1 2. I submit this declaration in support of Plaintiff's Opposition to
2 Defendants' Demurrer and Opposition to Defendants' Request for Judicial Notice. I have
3 personal knowledge of the facts set forth herein, and, if called to testify, could and would testify
4 competently thereto.

5 3. Attached hereto as Exhibit 1 is a true and correct copy of "Defendant
6 Internet Corporation for Assigned Names and Numbers' and Erroneously Named Internet
7 Assigned Numbers Authority's Response to Plaintiff's First Set of Requests for the Production
8 of Documents," dated August 14, 2006.

9 4. Attached hereto as Exhibit 2 is a true and correct copy of the Request for
10 Entry of Default filed by Plaintiff on October 2, 2006, seeking entry of default of Defendants
11 The People's Republic of the Congo and the Congolese Redemption Fund.

12 5. Attached hereto as Exhibit 3 is a true and correct copy of an e-mail sent by
13 Boaz S. Morag, a Partner at Cleary, Gottlieb, Steen & Hamilton LLP and the Congo's outside
14 counsel in several pending litigations, to Mark F. Rosenberg on August 31, 2006.

15 6. Attached hereto as Exhibit 4 is a true and correct copy of a document titled
16 "Joint Project Agreement Between The U.S. Department Of Commerce And The Internet
17 Corporation For Assigned Names And Numbers," found at:
18 http://www.ntia.doc.gov/ntiahome/domainname/agreements/jpa/ICANNJPA_09292006.htm.

19 7. Attached hereto as Exhibit 5 is a true and correct copy of a document
20 found at:
21 http://www.ntia.doc.gov/ntiahome/domainname/iana/ianacontract_081406.pdf.
22 On page 3 n. 5 of ICANN's brief in support of its demurrer, ICANN describes this document as a
23 "new IANA Contract" that supersedes the document ICANN attached as Exhibit D to the
24 Declaration of Sean Jaquez.

25 8. Attached hereto as Exhibit 6 is a true and correct copy of a document titled
26 "NIC - Network Information Center: Acceptable domain names and policy," found at:
27 <http://www.nic.cg/cgi-bin/policy.pl>.

28

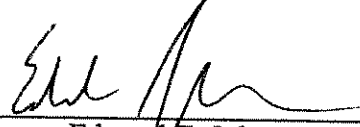
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9. Attached hereto as Exhibit 7 is a true and correct copy of a document titled "Principles And Guidelines For The Delegation And Administration Of Country Code Top Level Domains," found on ICANN's website at:
http://gac.icann.org/web/home/ccTLD_Principles.rtf.

10. Attached hereto as Exhibit 8 is a true and correct copy of a press release titled "New Agreement Means Greater Independence in Managing the Internet's System of Unique Identifiers," dated September 29, 2006, found on ICANN's website at:
<http://www.icann.org/announcements/announcement-29sep06.htm>.

11. Attached hereto as Exhibit 9 is a true and correct copy of the Answer and Affirmative Defenses of U.S. Dept. of Commerce & U.S. Dept. of State, filed in *ICM Registry, LLC v. U.S. Dept. of Commerce and U.S. Dept. of State* (D.D.C. June 19, 2006).

I declare under penalty of perjury of the laws of California that the foregoing is true and correct. Executed at Los Angeles, California on October 10, 2006.



Edward E. Johnson

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Sean W. Jaquez (State Bar No. 223132)
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INTERNET CORPORATION FOR ASSIGNED
7 NAMES AND NUMBERS and erroneously named
INTERNET ASSIGNED NUMBERS AUTHORITY
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11 **WEST DISTRICT**

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

15 Plaintiff,

16 v.

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

21 Defendants.

CASE NO. SC090220

**DEFENDANT INTERNET
CORPORATION FOR ASSIGNED
NAMES AND NUMBERS' AND
ERRONEOUSLY NAMED
DEFENDANT INTERNET
ASSIGNED NUMBERS
AUTHORITY'S RESPONSE TO
PLAINTIFF'S FIRST SET OF
REQUESTS FOR THE
PRODUCTION OF DOCUMENTS**

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

25 RESPONDING PARTIES: INTERNET CORPORATION FOR ASSIGNED NAMES
26 AND NUMBERS, erroneously named INTERNET
ASSIGNED NUMBERS AUTHORITY

27 SET NUMBER: ONE

28

1 Pursuant to California Code of Civil Procedure sections 2031.210 – 2031.260 ,
2 Defendants Internet Corporation for Assigned Names and Numbers (“ICANN”) and erroneously
3 named Internet Assigned Numbers Authority (“IANA”)¹ (collectively, “Defendants”) hereby
4 submit their objections and responses to the First Request for Production of Documents (the
5 “Requests”) by Plaintiff C. Itoh Middle East E.C. (Bahrain) through the real party in interest,
6 National Union Fire Insurance Company of Pittsburgh, PA (“Plaintiff”) as follows:

7 **PRELIMINARY STATEMENT**

8 Plaintiff’s Complaint concerns a *single* country-code Top-Level Domain (“ccTLD”) for
9 the Republic of Congo. The Requests, however, ask Defendants to produce *all* material
10 concerning *any* ccTLD and to produce substantial material concerning the Domain Name System
11 (“DNS”) as a whole. This is the exact type of irrelevant, burdensome, oppressive, and vague
12 discovery that the California Code of Civil Procedure prohibits – particularly at a time when the
13 Court’s subject matter jurisdiction is uncertain and the legal sufficiency of the claim itself has yet
14 to be tested (both matters that Defendants will address in their demurrer).

15 The General Objections that follow apply to all responses that Defendants make to the
16 Requests. Defendants’ responses are made subject to and without waiving: (1) the right to object
17 on any and all proper grounds to the use of these responses in any other action or proceeding;
18 (2) the right to object to the admissibility of these responses; (3) the right to object on any and all
19 proper grounds to any other discovery procedure involving or relating to the subject matter of the
20 Requests; and (4) the right at any time to revise, correct, add to, or clarify these responses.

21 Defendants have made an effort to respond to the Requests as Defendants understand and
22 interpret them. If Plaintiff subsequently asserts a different interpretation, Defendants reserve the
23 right to supplement these responses.

24 Defendants’ responses to these Requests are based upon facts presently known to
25 Defendants. Defendants’ investigation and discovery, including the review of their own files, is
26 continuing and Defendants may subsequently learn additional facts and uncover additional

27 ¹ IANA is a function performed by ICANN pursuant to an agreement with the United
28 States Department of Commerce. See IANA Contract, *available at*
<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>. IANA is not an entity and cannot be a
defendant to any action. As such, Defendants object to any inclusion of IANA to this lawsuit.

1 documents in their possession. Defendants reserve the right to rely upon all such evidence as it
2 may become available during the course of discovery and to use the same at trial or otherwise in
3 this action. However, Defendants undertake no duty to supplement these responses beyond any
4 requirement imposed by law.

5 GENERAL OBJECTIONS

6 The following objections apply to each Request, and are incorporated by this reference
7 into each and every response hereinafter stated as if set forth in full therein:

8 **I. Expansion of Obligations Under California Code of Civil Procedure**

9 Defendants object to each and every Request on the grounds, and to the extent that it is
10 inconsistent with, or enlarges upon, Defendants' obligations in responding to the Requests as
11 imposed by law. The objections in this paragraph will hereafter be referred to as the "Obligation
12 Objection."

13 **II. Premature**

14 Defendants object to each and every Request on the ground that discovery is premature.
15 Defendants have not yet responded to the Complaint and will do so by demurrer to test the legal
16 sufficiency of the claim and the Court's subject matter jurisdiction. The objection in this
17 paragraph will hereafter be referred to as the "Premature Objection."

18 **III. Privileged Or Protected Material**

19 Defendants object to each and every Request on the grounds, and to the extent that it seeks
20 information: (1) that is protected from discovery pursuant to the attorney-client privilege, joint
21 defense privilege, the attorney work product doctrine, or any other applicable privilege; (2) that
22 was prepared in anticipation of litigation; or (3) that is otherwise protected from disclosure under
23 the relevant California procedural rules, or relevant case law. The objections in this paragraph
24 will hereafter be referred to as the "Privileged Objection."

25 **IV. Proprietary Or Confidential Information**

26 Defendants object to each and every Request on the grounds, and to the extent that it seeks
27 proprietary or confidential information or trade secrets, disclosure of which would be prejudicial
28 to Defendants, any witness testifying on behalf of Defendants, the clients of such witness, or the

1 person or persons who provided the information to Defendants. The objections in this paragraph
2 will hereafter be referred to as the "Confidential Objection."

3 **V. Government Contracts**

4 Some of the information requested by Plaintiff concerns certain agreements between
5 Defendants and the United States Department of Commerce for ICANN's performance of the
6 IANA function and certain other technical coordination of the DNS. Defendants object to each
7 and every Request on the grounds, and to the extent that it seeks proprietary or confidential
8 information, disclosure of which is prohibited by those contractual relationships. The objections
9 in this paragraph will hereafter be referred to as the "Government Objection."

10 **VI. Over Breadth**

11 Defendants object to each and every Request on the grounds, and to the extent that it is
12 overbroad or fails to relate to the allegations contained in Plaintiff's Complaint. Defendants
13 further object to the definition of "CONCERNING" as overbroad. The objections in this
14 paragraph will hereafter be referred to as the "Overbroad Objection."

15 **VII. Relevant Time Period**

16 The Requests fail to state the time period for which information is being sought.
17 Defendants object to this lack of a date limitation, as it is overbroad and is not likely to lead to the
18 discovery of admissible evidence, as it calls for information that bears no rational relationship to
19 the allegations within Plaintiff's Complaint. Additionally, requiring Defendants to undertake a
20 search of such limitless scope imposes an undue burden on Defendants. Thus, Defendants object
21 to each and every Request on the grounds, and to the extent that it seeks information without any
22 restriction as to date. The objections in this paragraph will hereafter be referred to as the "Time
23 Period Objection."

24 **VIII. Relevance**

25 Defendants object to each and every Request on the grounds, and to the extent that it seeks
26 information that is neither relevant to the subject matter of the pending proceedings, nor
27 reasonably calculated to lead to the discovery of admissible evidence. The objections in this
28 paragraph will hereafter be referred to as the "Relevance Objection."

1 **IX. Undue Burden**

2 Because the Requests are overbroad and seek irrelevant information, they place an undue
3 burden on Defendants. Thus, Defendants object to each and every Request on the grounds, and to
4 the extent that it is unduly burdensome. The objections in this paragraph will hereafter be
5 referred to as the "Burden Objection."

6 **X. Annoyance, Harassment Or Oppression**

7 Defendants object to each and every Request on the grounds, and to the extent that it is
8 designed to cause undue annoyance, harassment, or oppression. The objections in this paragraph
9 will hereafter be referred to as the "Oppression Objection."

10 **XI. Vagueness And Ambiguity**

11 Defendants object to each and every Request on the grounds, and to the extent that it is
12 vague and/or ambiguous, and, as such, would require Defendants to speculate as to the meaning
13 of the Request. The objections in this paragraph will hereafter be referred to as the "Vagueness
14 Objection."

15 **XII. Information Otherwise Available**

16 Defendants object to each and every Request on the grounds, and to the extent that it seeks
17 information that is readily accessible to Plaintiff or is publicly available. The objections in this
18 paragraph will hereafter be referred to as the "Publicly Available Objection."

19 **RESPONSE TO DOCUMENT REQUESTS**

20 **REQUEST NO. 1:**

21 All documents concerning any of the following:

22 (i) the People's Republic of the Congo (by whatever name it is or has been known,
23 including the Republic of the Congo, and La République Populaire Du Congo),

24 (ii) the Congolese Redemption Fund (by whatever name it is or has been known,
25 including La Caisse D'Amortissement Congolaise),

26 (iii) Société Nationale des Pétroles du Congo (by whatever name it is or has been
27 known, including SNPC),

1 (iv) Office National des Postes et Télécommunications (by whatever name it is or has
2 been known, including ONPT and ONPT Congo),

3 (v) Société de Télécommunications du Congo (by whatever name it is or has been
4 known, including SOTELCO),

5 (vi) Interpoint Switzerland (by whatever name it is or has been known),

6 (vii) NIC Congo Liason Office in Switzerland (by whatever name it is or has been
7 known), and

8 (viii) Interpoint SARL (by whatever name it is or has been known).

9 **RESPONSE TO REQUEST NO. 1:**

10 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
11 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
12 Objections. Without waiving and subject to these objections, Defendants request that Plaintiff
13 narrow the scope of this Request to identify specific subject matters or materials that are
14 reasonably calculated to lead to the discovery of admissible evidence. Defendants further request
15 that Plaintiff define a relevant time period for this Request.

16 **REQUEST NO. 2:**

17 All documents concerning the Internet domain name .cg.

18 **RESPONSE TO REQUEST NO. 2:**

19 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
20 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
21 Objections. Defendants further object that the Request improperly defines the .cg ccTLD as an
22 "Internet domain name." Defendants will assume for purposes of their response to this Request
23 that Plaintiff is referring specifically to the .cg ccTLD (as opposed to all domain names that are
24 registered in the .cg top level domain). Without waiving and subject to these objections,
25 Defendants respond as follows: Many documents potentially responsive to this Request are
26 available on the Internet, including Defendants' web sites. For example, information is publicly
27 available at <<http://www.icann.org/cctlds/>>; <<http://www.iana.org/cctld/>>;
28 <<http://www.nic.cg/cgi-bin/index.pl>>;

1 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein. To the
2 extent that Plaintiff seeks information beyond a public source, Defendants request that Plaintiff
3 narrow the scope of this Request to identify specific subject matters or materials that are
4 reasonably calculated to lead to the discovery of admissible evidence. Defendants further request
5 that Plaintiff define a relevant time period for this Request.

6 **REQUEST NO. 3:**

7 All documents concerning the URL <http://www.nic.cg>.

8 **RESPONSE TO REQUEST NO. 3:**

9 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
10 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
11 Objections. Without waiving and subject to these objections, Defendants respond as follows:
12 Many documents potentially responsive to this Request are available on the Internet. For
13 example, information is publicly available at <<http://www.nic.cg/cgi-bin/index.pl>> (i.e., the NIC
14 web site itself) and <<http://www.iana.org/root-whois/cg.htm>>. To the extent that Plaintiff seeks
15 information beyond a public source, Defendants request that Plaintiff narrow the scope of this
16 Request to identify specific subject matters or materials that are reasonably calculated to lead to
17 the discovery of admissible evidence. Defendants further request that Plaintiff define a relevant
18 time period for this Request.

19 **REQUEST NO. 4:**

20 All documents concerning any delegation (including any re-delegation) or any change in
21 authority, management or control concerning the following country-code top-level domains
22 ("ccTLDs"): .cg, .tv., .to, .co, .zr, .cd, .fm, .am, .cc, .md, .ws, .la.

23 **RESPONSE TO REQUEST NO. 4:**

24 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
25 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
26 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
27 information regarding ccTLDs other than ".cg", the ccTLD at issue in the Complaint. Defendants
28 also object to this Request as duplicative of, and subsumed by, Request No. 5. Without waiving

1 and subject to these objections, Defendants respond as follows: This request is extremely
2 overbroad. Even so, many documents potentially responsive to this Request are available on the
3 Internet, including Defendants' web sites. For example, information is publicly available at
4 <<http://www.icann.org/cctlds/>>; <<http://www.iana.org/cctld/>>; <<http://ccnso.icann.org/>>;
5 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein. To the
6 extent that Plaintiff seeks information beyond a public source, Defendants request that Plaintiff
7 narrow the scope of this Request to identify specific subject matters or materials that are
8 reasonably calculated to lead to the discovery of admissible evidence. Defendants further request
9 that Plaintiff define a relevant time period for this Request.

10 **REQUEST NO. 5:**

11 All documents concerning any delegation (including any re-delegation) or any change in
12 authority, management or control concerning any country-code top-level domain.

13 **RESPONSE TO REQUEST NO. 5:**

14 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
15 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
16 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
17 information regarding ccTLDs other than ".cg", the ccTLD at issue in the Complaint. Without
18 waiving and subject to these objections, Defendants respond as follows: The Request is absurdly
19 overbroad. Even so, many documents potentially responsive to this Request are available on the
20 Internet, including Defendants' web sites. For example, information is publicly available at
21 <<http://www.icann.org/cctlds/>>; <<http://www.iana.org/cctld/>>; <<http://ccnso.icann.org/>>;
22 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein. To the
23 extent that Plaintiff seeks information beyond a public source, Defendants request that Plaintiff
24 narrow the scope of this Request to identify specific subject matters or materials that are
25 reasonably calculated to lead to the discovery of admissible evidence. Defendants further request
26 that Plaintiff define a relevant time period for this Request.

1 **REQUEST NO. 6:**

2 For the ccTLDs listed in Request No. 4, all documents concerning any communication
3 between ICANN or IANA and a government or public authority concerning the ccTLD relevant
4 to that government or public authority.

5 **RESPONSE TO REQUEST NO. 6:**

6 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
7 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
8 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
9 information regarding ccTLDs other than “.cg”, the ccTLD at issue in the Complaint. Defendants
10 also object to this Request as duplicative of, and subsumed by, Request No. 7. Defendants further
11 note that many documents potentially responsive to this Request are available on the Internet,
12 including Defendants’ web sites. For example, information is publicly available at
13 <<http://www.icann.org/cctlds/>>; <<http://www.icann.org/correspondence/>>;
14 <http://www.icann.org/government/>; <<http://gac.icann.org/web/index.shtml>>;
15 <<http://www.iana.org/cctld/>>; <<http://ccnso.icann.org/>>;
16 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein.

17 **REQUEST NO. 7:**

18 All documents concerning any communication between ICANN or IANA and a
19 government or public authority concerning the ccTLD relevant to that government or public
20 authority.

21 **RESPONSE TO REQUEST NO. 7:**

22 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
23 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
24 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
25 information regarding ccTLDs other than “.cg”, the ccTLD at issue in the Complaint. Indeed, this
26 Request is absurdly overbroad. Even so, defendants note that many documents potentially
27 responsive to this Request are available on the Internet, including Defendants’ web sites. For
28 example, information is publicly available at <<http://www.icann.org/cctlds/>>;

1 <<http://www.icann.org/correspondence/>>; <http://www.icann.org/government/>;
2 <<http://gac.icann.org/web/index.shtml>>; <<http://www.iana.org/cctld/>>; <<http://ccnso.icann.org/>>;
3 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein.

4 **REQUEST NO. 8:**

5 All documents concerning policies and procedures concerning ccTLDs, including any
6 proposals concerning any such policies or procedures.

7 **RESPONSE TO REQUEST NO. 8:**

8 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
9 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
10 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
11 information regarding ccTLDs other than “.cg”, the ccTLD at issue in the Complaint. Defendants
12 further note that many documents potentially responsive to this Request are available on the
13 Internet, including Defendants’ web sites. For example, information is publicly available at
14 <<http://www.icann.org/cctlds/>>; <<http://www.icann.org/correspondence/>>;
15 <<http://gac.icann.org/web/index.shtml>>; <<http://www.iana.org/>>; <<http://ccnso.icann.org/>>;
16 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein. To the
17 extent that Plaintiff seeks information beyond a public source, Defendants request that Plaintiff
18 narrow the scope of this Request to identify specific subject matters or materials that are
19 reasonably calculated to lead to the discovery of admissible evidence. Defendants further request
20 that Plaintiff define a relevant time period for this Request.

21 **REQUEST NO. 9:**

22 All documents concerning policies and procedures concerning the Root Servers, including
23 any proposals concerning any such policies or procedures.

24 **RESPONSE TO REQUEST NO. 9:**

25 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
26 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
27 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
28 information regarding aspects of Defendants’ operations unrelated to the .cg ccTLD at issue in the

1 Complaint. Even so, many documents potentially responsive to this Request are available on the
2 Internet, including Defendants' web sites. For example, information is publicly available at
3 <<http://www.icann.org/>>; <<http://www.iana.org/>>;
4 <<http://www.ntia.doc.gov/ntiahome/domainname/domainhome.htm>>; and links located therein.

5 **REQUEST NO. 10:**

6 All documents concerning the substitution of one ccTLD with another ccTLD, such as the
7 replacement of .zr with .cd.

8 **RESPONSE TO REQUEST NO. 10:**

9 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
10 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
11 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
12 information regarding ccTLDs other than ".cg", the ccTLD at issue in the Complaint. Even so,
13 many documents potentially responsive to this Request are available on the Internet, including
14 Defendants' web sites. For example, information is publicly available at
15 <<http://www.icann.org/cctlds/>>; <<http://www.icann.org/correspondence/>>;
16 <<http://www.iana.org/cctld/>>; <<http://ccnso.icann.org/>>;
17 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; <[http://www.iso.org/iso/en/prods-
18 services/iso3166ma/index.html](http://www.iso.org/iso/en/prods-services/iso3166ma/index.html)>; and links located therein.

19 **REQUEST NO. 11:**

20 Documents sufficient to identify all Legal Actions (1) concerning any ccTLD, the Domain
21 Name System, ("DNS") or the Root Servers and (2) to which ICANN or IANA was or is a party,
22 except for Legal Actions disclosed at <http://www.icann.org/general/litigation.htm> as of the date of
23 this subpoena.

24 **RESPONSE TO REQUEST NO. 11:**

25 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
26 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
27 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
28 information regarding numerous aspects of Defendants' operations unrelated to the .cg ccTLD at

1 issue in the Complaint. Defendants also object to the definition of "Legal Action" as overbroad.
2 Even so, and as the Request notes, responsive documents are publicly-available on ICANN's web
3 site.

4 **REQUEST NO. 12:**

5 All documents concerning any change to DNS information stored on any of the Root
6 Servers.

7 **RESPONSE TO REQUEST NO. 12:**

8 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
9 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
10 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
11 information regarding numerous aspects of Defendants' operations unrelated to the .cg ccTLD at
12 issue in the Complaint. Even so, many documents potentially responsive to this Request are
13 available on the Internet, including Defendants' web sites. For example, information is publicly
14 available at <<http://www.icann.org/cctlds/>>; <<http://www.iana.org/>>;
15 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein.

16 **REQUEST NO. 13:**

17 All documents concerning any agreement (including any potential agreement) between
18 ICANN or IANA and any person, corporation, government or other entity, concerning the Root
19 Servers, DNS, or ccTLDs (including .cg).

20 **RESPONSE TO REQUEST NO. 13:**

21 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
22 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
23 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
24 information regarding numerous aspects of Defendants' operations unrelated to the .cg ccTLD at
25 issue in the Complaint. Defendants also object to this request on the grounds, and to the extent
26 that it infringes on privacy rights. Even so, many documents potentially responsive to this
27 Request are available on the Internet, including Defendants' web sites. For example, information
28

1 is publicly available at <<http://www.icann.org/>>; <<http://www.iana.org/>>;
2 <<http://www.ntia.doc.gov/ntiahome/domainname/domainhome.htm>>; and links located therein.

3 **REQUEST NO. 14:**

4 All documents concerning any role played (including any actual or potential control or
5 authority exercised) by ICANN or IANA concerning ccTLDs (including .cg), including any such
6 role concerning the provision of rights to, provision of interests in, assignment of, or registration
7 of any ccTLD (including .cg).

8 **RESPONSE TO REQUEST NO. 14:**

9 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
10 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available
11 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
12 information regarding ccTLDs other than “.cg”, the ccTLD at issue in the Complaint. Without
13 waiving and subject to these objections, Defendants respond as follows: Defendants do not have
14 any “actual or potential control or authority . . . concerning the provision of rights to, provision of
15 interests in, assignment of, or registration of any ccTLD,” and so Defendants are unaware that
16 any document exists. To the extent that the Request calls for documents “concerning any role
17 played . . . by ICANN or IANA concerning ccTLDs,” much of that information is available on the
18 Internet, including Defendants’ web sites. For example, information is publicly available at
19 <<http://www.icann.org/cctlds/>>; <<http://www.icann.org/correspondence/>>;
20 <<http://www.iana.org/cctld/>>; <<http://ccnso.icann.org/>>;
21 <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links located therein.

22 **REQUEST NO. 15:**

23 All documents concerning any role played (including any actual or potential control or
24 authority exercised) by ICANN or IANA concerning any delegation or change to any DNS
25 information concerning ccTLDs (including .cg).

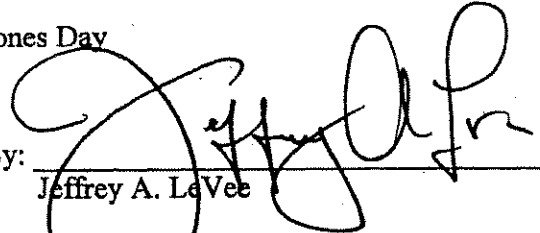
26 **RESPONSE TO REQUEST NO. 15:**

27 Defendants assert the Obligation, Premature, Privileged, Confidential, Government,
28 Overbroad, Time Period, Relevance, Burden, Oppression, Vagueness, and Publicly Available

1 Objections. Defendants further specifically object to the Request as overbroad in that it seeks
2 information regarding ccTLDs other than “.cg”, the ccTLD at issue in the Complaint. Without
3 waiving and subject to these objections, Defendants respond as follows: Defendants do not have
4 any “actual or potential control or authority” to delegate, redelegate, dedelegate, or change any
5 DNS information concerning ccTLDs, and so Defendants are unaware that any document exists.
6 To the extent that the Request calls for documents “concerning any role played . . . by ICANN or
7 IANA concerning any delegation or change to any DNS information concerning ccTLDs,” much
8 of that information is available on the Internet, including Defendants’ web sites. For example,
9 information is publicly available at <<http://www.icann.org/cctlds/>>;
10 <<http://www.icann.org/correspondence/>>; <<http://www.iana.org/cctld/>>;
11 <<http://ccnso.icann.org/>>; <<http://www.ntia.doc.gov/ntiahome/domainname/iana.htm>>; and links
12 located therein.

13 Dated: August 14, 2006

Jones Day

By: 
Jeffrey A. LeVee

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

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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 August 14, 2006, I served a copy of the within document(s):

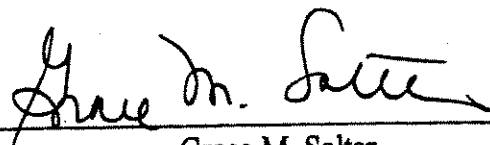
DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS' AND ERRONEOUSLY NAMED DEFENDANT INTERNET ASSIGNED NUMBERS AUTHORITY'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS

- 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 August 14, 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. Federal Express
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

COPY

982(a)(6)

RECEIVED
OCT 02 2006
BY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Robert A. Sacks (No. 150146)
Sullivan & Cromwell LLP
1888 Century Park East, Suite 2100, Los Angeles, California 90067
TELEPHONE NO.: (310) 712-6600
FAX NO. (Optional): (310) 712-8800
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): C. Itoh Middle East (Bahrain)

FOR COURT USE ONLY
CASE NUMBER:
SC090220

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: Santa Monica Courthouse
MAILING ADDRESS: 1725 Main Street
CITY AND ZIP CODE: Santa Monica, California 90401
BRANCH NAME:

PLAINTIFF/PETITIONER: C. Itoh Middle East (Bahrain)
DEFENDANT/RESPONDENT: Internet Corp. for Assigned Names & Num. et al

REQUEST FOR (Application)
 Entry of Default Clerk's Judgment
 Court Judgment

- 1. TO THE CLERK: On the complaint or cross-complaint filed
a. on (date): June 28, 2006
b. by (name): C. Itoh Middle East (Bahrain), through real party in interest National Union Fire Insurance Co.
c. Enter default of defendant (names): The People's Republic of the Congo; the Congolese Redemption Fund
d. I request a court judgment under Code of Civil Procedure sections 585(b), 585(c), 989, etc., against defendant (names):

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code Civ. Proc., § 585(d).)

- e. Enter clerk's judgment
(1) for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)
 Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure section 415.46.
(2) under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on the reverse (item 5).)
(3) for default previously entered on (date):

2. Judgment to be entered.

	Amount	Credits acknowledged	Balance
a. Demand of complaint	\$	\$	\$
b. Statement of damages *			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse)	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$	\$	\$

g. Daily damages were demanded in complaint at the rate of: \$ per day beginning (date):
(* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)

- 3. (Check if filed in an unlawful detainer case) Legal document assistant or unlawful detainer assistant information is on the reverse (complete item 4).
Date: October 2, 2006

Robert A. Sacks
(TYPE OR PRINT NAME)

Robert A. Sacks / EEU
(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY
(1) Default entered as requested on (date):
(2) Default NOT entered as requested (state reason):
Clerk, by _____, Deputy

PLAINTIFF/PETITIONER: C. Itoh Middle East (Bahrain)

CASE NUMBER:

DEFENDANT/RESPONDENT: Internet Corp. for Assigned Names & Num. et al

SC090220

4. Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.). A legal document assistant or unlawful detainer assistant did did not for compensation give advice or assistance with this form. (If declarant has received any help or advice for pay from a legal document assistant or unlawful detainer assistant, state):

a. Assistant's name:

b. Street address, city, and zip code:

c. Telephone no.:

d. County of registration:

e. Registration no.:

f. Expires on (date):

5. Declaration under Code of Civil Procedure Section 585.5 (required for entry of default under Code Civ. Proc., § 585(a)). This action

a. is is not

b. is is not

c. is is not

on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. Declaration of mailing (Code Civ. Proc., § 587). A copy of this Request for Entry of Default was

a. not mailed to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (names):

b. mailed first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date): October 2, 2006

(2) To (specify names and addresses shown on the envelopes):

The People's Republic of the Congo, the Congolese Redemption Fund, Regie National Des Travaux Publics et de la Construction, B.P. 2073, Brazzaville, Republique Populaire du Congo

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date:

Edward Johnson

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. Memorandum of costs (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

a. Clerk's filing fees \$

b. Process server's fees \$

c. Other (specify): \$

d. \$

e. TOTAL \$

f. Costs and disbursements are waived.

9. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

8. Declaration of nonmilitary status (required for a judgment). No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. App. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Edward Johnson

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Exhibit A

COPY

UNFORMED COPY
HE CIB/EI/NA/BI/BS
Los Angeles Superior Court

AUG 03 2008

John A. Clarke, Executive Officer/Clerk
By B. Rodriguez, Deputy

1 Robert A. Sacks (Cal. Bar No. 150146)
 2 Edward E. Johnson (Cal. Bar No. 241065)
 3 SULLIVAN & CROMWELL LLP
 1888 Century Park East
 4 Los Angeles, California 90067-1725
 (310) 712-6600
 (310) 712-8800 facsimile

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

8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES.

11 WEST DISTRICT

12

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

16 Plaintiff,

17 v.

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

21 Defendants.

22 Case No. SC090220

23 PROOF OF SERVICE OF SUMMONS
24 AND COMPLAINT

1 TO ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

2 Plaintiff C. Itoh Middle East E.C. (Bahrain), acting through the real party in
3 interest National Union Fire Insurance Company of Pittsburgh, PA. ("NUFI") has served a
4 Summons; Complaint; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum; Alternative
5 Dispute Resolution (ADR) Information; and Notice of Case Assignment on Defendants the
6 People's Republic of the Congo and the Congolese Redemption Fund, as follows:

7 1. On June 28, 2006, in accordance with the special arrangement in the
8 contract giving rise to the Congo's obligation at issue in this case, NUFI served the Summons;
9 Complaint; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum; Alternative Dispute
10 Resolution (ADR) Information; and Notice of Case Assignment, by U.S. Mail and Federal
11 Express, on the Congo at the following address:

12 Regie National Des Travaux Publics et de la Construction
13 B.P. 2073
14 Brazzaville
15 Republique Populaire du Congo.

16 The Federal Express package was delivered and signed for by N. Gami K on July 5, 2006. The
17 tracking results confirming that the package was delivered and signed for are attached hereto as
18 Exhibit A.

19 2. On July 12, 2006, pursuant to 28 U.S.C. § 1608(a)(3), NUFI also served,
20 by U.S. Mail and Federal Express, the Summons, with French translation; Complaint, with
21 French translation; Notice of Suit, with French Translation, pursuant to 22 C.F.R. § 93.2; Civil
22 Case Cover Sheet; Civil Case Cover Sheet Addendum; Alternative Dispute Resolution (ADR)
23 Information; and Notice of Case Assignment on:

24 Roldphe Adade
25 Minister of Foreign Affairs
26 International Cooperation & Relations with Francophone Countries
27 B.P. 2070, Brazzaville
28 Congo.

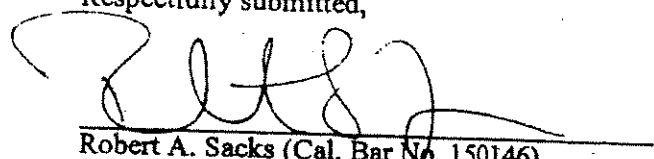
29 The Federal Express package was delivered and signed for by M. Abela K on July 17, 2006. The
30 tracking results confirming that the package was delivered and signed for are attached hereto as
31 Exhibit B.

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3. On July 17, 2006, to ensure that the Congo received notice of this action, NUFI also sent the summons and complaint to the Congo's U.S. counsel, Boaz Morag Esq. of Cleary, Gottlieb, Steen & Hamilton, by email. A copy of the email is attached hereto as Exhibit C. Mr. Morag represents the Congo in other judgment enforcement litigation commenced by judgment creditors of the Congo, including Texas litigation in which NUFI is a plaintiff.

Dated: August 3, 2006

Respectfully submitted,



Of Counsel:
Mark F. Rosenberg
Jacob F.M. Oslick
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
(212) 558-4000
(212) 558-3588 facsimile

Robert A. Sacks (Cal. Bar No. 150146)
Edward E. Johnson (Cal. Bar No. 241065)
SULLIVAN & CROMWELL LLP
1888 Century Park East
Los Angeles, California 90067-1725
(310) 712-6600
(310) 712-8800 facsimile

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

Exhibit A



[Close Window](#)

Track Shipments
Detailed Results

Print

Tracking number	791983756577	Reference	009226014301253
Signed for by	N.GAMI K		5
Ship date	Jun 28, 2006	Destination	Brazzaville CG
Delivery date	Jul 5, 2006 2:44 PM	Delivered to	Receptionist/Front Desk
		Service type	Priority Pak
		Weight	4.0 lbs.

Status Delivered

Date/Time	Activity	Location	Details
Jul 5, 2006	2:44 PM Delivered	Brazzaville CG	
Jun 30, 2006	8:54 AM In transit	PARIS FR	
	5:18 AM In transit	PARIS FR	
	5:15 AM In transit	PARIS FR	
	1:24 AM Departed FedEx location	PARIS FR	
Jun 29, 2006	8:32 PM Arrived at FedEx location	PARIS FR	
	3:18 AM Departed FedEx location	MEMPHIS, TN	
	1:25 AM Arrived at FedEx location	MEMPHIS, TN	
Jun 28, 2006	8:06 PM Departed FedEx location	LOS ANGELES, CA	
	7:07 PM Arrived at FedEx location	LOS ANGELES, CA	
	6:21 PM Left origin	MARINA DEL REY, CA	
	6:19 PM Package data transmitted to FedEx		
	5:26 PM Picked up	MARINA DEL REY, CA	

[Email results](#) | [Track more shipments](#)

Subscribe to tracking updates (optional)

Your Name:

Your Email Address:

Email address	Language	Exception updates	Delivery updates
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>

Select format: HTML Text Wireless

Add personal message:

Not available for Wireless or non-English characters.



Track/History Address Book Preferences Last Ship Reports My Profile

<< Log out Home

Your Shipment Details:

Ship to:	Regis National Des Travaux Publics et de la Construction B.P. 2073 Brazzaville, CG 310 712-8604	Package Type: Pickup/Drop Off: Weight: Dimensions: Declared Value: Shipper Account Number:	FedEx Pak Drop Off 4 LBS 0 x 0 x 0 in 0 USD 158929384
From:	Edward Johnson Sullivan & Cromwell LLP 1888 Century Park East, Suite 2100 Los Angeles, CA 90067 US 310 712-8600 791983756577	Bill transportation to: Bill duty/taxes to: Courtesy Rate Quote Special Services: Purpose: Shipment Type:	158929384 0 *127 Express
Tracking no:	0092260143012535		
Your reference:			
Ship date:	Jun 28 2008		
Service Type:	International Priority		

Print

Print

Please Note

*The courtesy rate shown here may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, miscommunication, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the goods, is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details.

Exhibit B



[Close Window](#)

Track Shipments
Detailed Results

Print

Tracking number 792150344130
Signed for by M.ABELA K
Ship date Jul 12, 2006
Delivery date Jul 17, 2006 2:00 PM

Reference 009226014301253
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Destination Brazzaville CG
Delivered to Receptionist/Front Desk
Service type Priority Pak
Weight 5.0 lbs.

Status Delivered

Date/Time	Activity	Location	Details
Jul 17, 2006	2:00 PM Delivered	Brazzaville CG	
Jul 14, 2006	8:43 AM In transit	PARIS FR	
	5:18 AM In transit	PARIS FR	
	5:15 AM In transit	PARIS FR	
	3:10 AM Departed FedEx location	PARIS FR	
Jul 13, 2006	10:03 PM Departed FedEx location	PARIS FR	
	8:41 PM Arrived at FedEx location	PARIS FR	
	2:36 AM Departed FedEx location	MEMPHIS, TN	
	1:35 AM Arrived at FedEx location	MEMPHIS, TN	
Jul 12, 2006	7:50 PM Departed FedEx location	LOS ANGELES, CA	
	7:18 PM Arrived at FedEx location	LOS ANGELES, CA	
	6:22 PM Left origin	MARINA DEL REY, CA	
	5:24 PM Picked up	MARINA DEL REY, CA	
	4:24 PM Package data transmitted to FedEx		



Subscribe to tracking updates (optional)

Your Name:

Your Email Address:

Email address	Language	Exception updates	Delivery updates
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>

Select format: HTML Text Wireless

Add personal message:

Not available for Wireless or non-English characters.



Track/History [Home](#) [Track/History](#) [Track/History](#) [Track/History](#) [Track/History](#) [Track/History](#) [Track/History](#)

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Your Shipment Details:

Ship to:	Roidphe Adada Ministry of Foreign Affairs B.P. 2070 Brazzaville, CG 310 712-6604	Package Type:	FedEx Pak
		Pickup/Drop Off:	Drop Off
		Weight:	3 LBS
		Dimensions:	0 x 0 x 0 In
		Declared Value:	1 USD
From:	Edward Johnson Sullivan & Cromwell LLP 1888 Century Park East, Suite 2100 Los Angeles, CA 90067 US 310 712-6600	Shipper Account Number:	158929384
		Bill transportation to:	158929384
		Bill duty/taxes to:	158929384
		Courtesy Rate Quote:	*115
		Discounted variable %:	0.00
		Special Services:	
Tracking no:	792150344130	Purpose:	
Your reference:	0092260143012535	Shipment Type:	Express
Ship date:	Jul 12 2008		
Service Type:	International Priority		

Print

Print/History

Please Note

*The courtesy rate shown here may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable [FedEx Service Guide](#) or the FedEx Rate Sheets for details on how shipping charges are calculated.

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdirection, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the contents, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details.

Exhibit C

Johnson, Edward E.

Subject: FW: Congo



ICANN



ICANN

complaint.pdf (8 MB) mmons.pdf (113 KI)

-----Original Message-----

From: Rosenberg, Mark F.
Sent: Monday, July 17, 2006 3:08 PM
To: bmorag@cgsh.com
Subject: Congo

Boaz,

Enclosed please find a copy of the creditors suit complaint filed by NUFI in California. Feel free to call me at 212-558-3647 if would like to discuss it.

Regards,

Mark

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the
3 age of eighteen years and am not a party to this action. My business address is Sullivan &
4 Cromwell LLP, 1888 Century Park East, Suite 2100, Los Angeles, California 90067-1725.

5 I served the below listed document(s) described as:

6 **PROOF OF SERVICE OF SUMMONS AND COMPLAINT**

7 on August 3, 2006, on all other parties in this action by placing a true copy of the above
8 document(s) enclosed in sealed envelopes addressed as follows:

9
10 **SEE ATTACHED SERVICE LIST**

11 For copies served by United States Mail, I placed each such envelope with
12 postage thereon fully prepared for the deposit in the United States mail in accordance with the
13 office practice of Sullivan & Cromwell LLP, which practice is that when correspondence is
14 deposited with the Sullivan & Cromwell LLP personnel responsible for delivering
15 correspondence to the United States Postal Service, such correspondence is delivered to the
16 United States Postal Service that same day in the course of business.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed on August 3, 2006 at Los Angeles, California.

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22 _____
23 Roberta Striplin
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SERVICE LIST

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Via United States Mail:

Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90401

Internet Assigned Names Authority
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90401

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

The Congolese Redemption Fund
Regie National Des Travaux Publics et de la Construction
B.P. 2073
Brazzaville
Republique Populaire du Congo

Johnson, Edward E.

From:
Sent:
To:
Subject:

----- Original Message -----

From: Boaz S Morag <bmorag@cgsh.com>
To: Rosenberg, Mark F.
Sent: Thu Aug 31 17:46:34 2006
Subject: Re: NUFI California Action

Mark,

If the Congo does appear, it will join in some or all of the arguments already made by ICANN so my view is that you should agree on a briefing schedule of the demurrer on file that is acceptable to NUFI, ICANN and the court.

Boaz S. Morag
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
(212) 225-2894 (tel.)
(212) 225-3999 (fax)

"Rosenberg, Mark F." <RosenbergM@sullcrom.com>

31 August 2006 05:09 PM

To
bmorag@cgsh.com

cc

Subject
NUFI California Action

Boaz,

As you may know, ICANN has filed a demurrer to NUFI's creditors suit in California state court (a copy of which I emailed to you earlier). I have been speaking with ICANN's counsel regarding a briefing schedule, and in that regard was wondering if the Congo is going to be appearing and filing a brief. If so, it would be useful to know that so that an orderly briefing schedule for all parties can be agreed upon.

Thanks.

Mark

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**JOINT PROJECT AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF COMMERCE AND
THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

PREAMBLE

The U.S. Department of Commerce (Department) has an agreement (the Joint Project Agreement) with the Internet Corporation for Assigned Names and Numbers (ICANN) for the purpose of the joint development of the mechanisms, methods, and procedures necessary to effect the transition of Internet domain name and addressing system (DNS) to the private sector.

The Department continues to support private sector leadership in the innovation and investment that has characterized the development and expansion of the Internet around the globe. Furthermore, the Department continues to support the work of ICANN as the coordinator for the technical functions related to the management of the Internet DNS. Both Parties agree that preserving the security and stability of the Internet DNS is a priority, with ICANN's focus on DNS security matters being critical to this effort.

AGREEMENT BETWEEN THE PARTIES

In recognition of the Parties' desire to institutionalize the private sector technical coordination and management of the Internet DNS to the private sector, the Parties hereby agree as follows:

I. To strike Section V.B. from the Joint Project Agreement in its entirety and to substitute the following:

B. Department. The Department reaffirms its policy goal of transitioning the technical coordination of the DNS to the private sector in a manner that promotes stability and security, competition, bottom-up coordination, and representation. Consistent with this objective, the Department agrees to perform the following activities:

1. *Transparency and Accountability:* Continue to provide expertise and advice on methods and administrative procedures to encourage greater transparency, accountability, and openness in the consideration and adoption of policies related to the technical coordination of the Internet DNS;
2. *Root Server Security:* Continue to consult with the managers of root name servers operated by the U.S. Government and with other responsible U.S. Government agencies with respect to operational and security matters, both physical and network, of such root name servers and recommendations for improvements in those matters;
3. *Governmental Advisory Committee:* Participate in the Governmental Advisory Committee so as to facilitate effective consideration by ICANN of GAC advice on the public policy aspects of the technical coordination of the Internet DNS; and
4. *Monitoring:* Continue to monitor the performance of the activities conducted pursuant to this Agreement.

II. To strike Section V.C. from the Joint Project Agreement in its entirety and to substitute the following:

C. ICANN. ICANN reaffirms its commitment to maintaining security and stability in the coordination of the technical functions related to the management of the DNS and to perform as an organization founded on the principles of stability and security, competition, bottom-up coordination, and representation. In conformity with the ICANN Board-approved mission and core values, ICANN agrees to perform the following activities:

1. *Accountability:* To take action on the Responsibilities set out in the Affirmation of Responsibilities established by the ICANN Board in ICANN Board Resolution 06.71, dated September 25, 2006, (Responsibilities) and attached hereto as Annex A; and
2. *Reporting:* To publish, on or before December 31st of each year, an ICANN Annual Report that sets out ICANN's progress against the following:
 - a. ICANN Bylaws;
 - b. ICANN's Responsibilities; and
 - c. ICANN's Strategic and Operating Plans.

III. Strike Section VII from the Joint Project Agreement in its entirety and to replace it with:

- A. This Agreement will become effective upon signature of ICANN and the Department. This Agreement will terminate on September 30, 2009.
- B. In furtherance of the objective of this Agreement, and to support the completion of the transition of DNS management to the private sector, the Department will hold regular meetings with ICANN senior management and leadership to assess progress. In addition, the Department will conduct a midterm review of progress achieved on each activity and Responsibility that will include consultation with interested stakeholders.
- C. This Agreement may not be amended except upon the mutual written agreement of the Parties. Either Party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other Party. If this Agreement is terminated, each Party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

IV. Except as specifically modified by this document, the terms and conditions of the Joint Project Agreement remain unchanged.

FOR THE NATIONAL
TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION:

FOR THE INTERNET CORPORATION
FOR ASSIGNED NAMES AND
NUMBERS:

Name: John M.R. Kneuer

Title: Acting Assistant Secretary for
Communications and Information

Date: September _____, 2006

Name: Dr. Paul Twomey

Title: President and CEO

Date: September _____, 2006

ANNEX A

AWARD / CONTRACT		1. This Contract is a rated order under DPAS (15 CFR 350)	Rating	Page 1 of Pages 32
2. Contract (Priced, Init. Ident.) No. SA130106CNG048		3. Effective Date Aug 11, 2006	4. Requisition / Purchase Request / Project No. NTIA/12-6-0269	
5. Issued By US Department of Commerce CAS, OS Business Solutions Team 1401 Constitution Ave. NW Room 6521 Washington, DC 20230 Carol Silverman CXS 202-482-5543 csilverman@dpc.gov		Code SA1301	6. Administered By (If other than item) See Item 5 Code SA1301	
7. Name and address of Contractor (No., Street, City, State and Zip Code) INTERNET CORPORATION FOR ASSIGNED NAMES 4675 ADMIRALTY WAY, STE 330 MARINA DEL REY CA 902926648		Vendor ID: 00000428 DUNS: 045511487 CEC: Cage Code: 4A4S9 TIN: 954712218	8. Delivery <input type="checkbox"/> FOB Origin <input type="checkbox"/> Other (See below)	
9. Discount for prompt payment Net 30		10. SUBMIT INVOICES Item (4 copies unless otherwise specified) Address shown in: CAMS0007		
11. Site To / Mark For National Tel. and Info. Admin 1401 Constitution Ave. NW Room 488S, HCHB Washington, DC 20230		Code NTIA-HCH	12. Payment will be made by NOAA NPA HQ/FR - Route: OFA332 Bldg. CXXI - Station 2133 20020 Century Blvd Germantown, MD 20874-1143 Code CAMS0007	
13. Authority for using other than full and open competition <input type="checkbox"/> 10 U.S.C. 2304C() <input type="checkbox"/> 41 U.S.C. 253 (C) ()		14. Accounting and Appropriation Data		



15A ITEM NO.	15B SUPPLIES/SERVICES	15C QUANTITY	15D UNIT	15E UNIT PRICE	15F AMOUNT
	The Contractor shall provide the services in accordance with the terms, conditions, and prices described herein. The Contractor's proposal, dated August 2, 2006, is hereby incorporated by reference.				

15G. TOTAL AMOUNT OF CONTRACT US\$ 0.00

Sec.	Description	Pages	(x)	Sec.	Description	Pages
Part I - The Schedule				Part II - Contract Clauses		
A	Solicitation/Contract	1		I	Contract Clauses	12-25
B	Supplies or Services and Prices/Cost	2-3		Part III - List of Documents, Exhibits and other attach.		
C	Description/Specs/Work Statement	3-6		J	List of Attachments	25
D	Packaging and Marking	6-7		Part IV - Representations and Instructions		
E	Inspection and Acceptance	7		K	Representations, Certifications and other statements of Offerors	
F	Deliveries or Performance	7-9		L	Invoic., Corrs. and Notices to Offerors	
G	Contract Administration Data	9		M	Evaluation factors for Award	
H	Special Contract Requirements	9-12				

Contracting Officer will complete item 17 or 18 as applicable

17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 3 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligation of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract; (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attached are listed herein.)	18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation number including the additions or changes made by you which additions or changes are set forth above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.
---	---

19A. Name and Title of Signer (Type or Print) Kurt J. Egan, Vice President, Business Operations	20A. Name of Contracting Officer Carol Silverman 202-482-5543 csilverman@dpc.gov
19B. Name of Contractor By  (Signature of person authorized to sign)	20B. United States of America By  (Signature of Contracting Officer)
19C. Date Signed 11 August 2006	20C. Date Signed 8/14/06

Supplies or Services and Prices/Costs

Item No.	Supplies/Services	Quantity	Unit	Unit Price	Amount
0001	BASE YEAR - October 1, 2006 - September 30, 2007 The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the attached statement of work.	1	JB	0.00	0.00
0002	OPTION YEAR 1 - October 1, 2007 - September 30, 2008 The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the attached statement of work.	1	JB	0.00	0.00
0003	OPTION YEAR 2 - October 1, 2008 - September 30, 2009 The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the attached statement of work.	1	JB	0.00	0.00
0004	OPTION YEAR 3 - October 1, 2009 - September 30, 2010 The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the attached statement of work.	1	JB	0.00	0.00
0005	OPTION YEAR 4 - October 1, 2010 - September 30, 2011 The Contractor shall provide the services necessary for the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the attached statement of work.	1	JB	0.00	0.00

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 CONTRACT TYPE

- (a) This is a cost contract.
- (b) In accordance with Federal Acquisition Regulation (FAR) 16.302(a), a cost contract is a cost-reimbursement contract in which the contractor receives no fee.
- (c) The cost principles established in the Office of Management and Budget (OMB) Circular A-122 shall apply to this contract. OMB Circular A-122 may be retrieved from the following url:

www.whitehouse.gov/omb/circulars/a122/a122.html

(d) The requirements identified in the statement of work shall be performed by the Contractor at no cost to the United States Government. If the Contractor intends on establishing and collecting fees from third parties (*i.e.*, other than the Government) for the functions performed under this contract, the Contractor shall notify the Contracting Officer in writing at least sixty days prior to the fee being applied and provide documentation which identifies the rationale for the fee, the parties to be charged, and the cost basis for the fee in accordance with OMB Circular A-122 and FAR clause 52.215-2, Audit and Records – Negotiations, Alternate II. The Contracting Officer shall approve any fee in writing prior to the Contractor imposing the fee.

At the time of purchase order award, the estimated value of this purchase order is less than \$10,000.

B.2 PERIOD OF PERFORMANCE (CAR 1352.215-70)(MAR 2000)

- (a) The period of performance of this contract is for a Base Year that commences on October 1, 2006 to September 30, 2007.
- (b) This contract contains four option years of twelve months each. The Government may exercise the option year through the issuance of a unilateral modification. The exercise of an option year will be in compliance with FAR 52.217-9. The Government is not obligated to the Option Years in the contract unless a modification is issued by the Contracting Officer exercising the option year.
- (c) The four option periods that may be exercised are as follows:

<u>Period</u>	<u>Duration</u>
Option Period I	October 1, 2007 to September 30, 2008
Option Period II	October 1, 2008 to September 30, 2009
Option Period III	October 1, 2009 to September 30, 2010
Option Period IV	October 1, 2010 to September 30, 2011

SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C. 1352.211-70 STATEMENT OF WORK/SPECIFICATIONS (MARCH 2000)

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities to perform the following the Statement of Work/Specifications

C.1. BACKGROUND

- C.1.1 The U.S. Department of Commerce (DoC), National Telecommunications and Information Administration (NTIA) has initiated this agreement to maintain the continuity and stability of services related to certain interdependent Internet technical management functions, known collectively as the Internet Assigned Numbers Authority (IANA).
- C.1.2 Initially, these interdependent technical functions were performed on behalf of the Government under a contract between the Defense Advanced Research Projects Agency (DARPA) and the University of Southern California (USC), as part of a research project known as the Terranode Network Technology (TNT). As the TNT project neared completion and the DARPA/USC contract neared expiration in 1999, the Government recognized the need for the continued performance of the IANA functions as vital to the stability and correct functioning of the Internet. On December 24, 1998, USC entered into a transition agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) under which ICANN secured directly from USC, all necessary resources, including key personnel, intellectual property, and computer facility access critical to the continued performance of the IANA functions. Having assumed these key resources (as well as other responsibilities associated with privatization of the Internet domain name system), ICANN was uniquely positioned to undertake performance of these functions. On February 8, 2000, March 21, 2001, and then on March 13, 2003, the DoC entered into an agreement with ICANN to perform the IANA functions. In connection with its work under these agreements, ICANN has developed and maintained close, constructive working relationships with a variety of interested parties, including Internet standards development organizations and technical bodies.
- C.1.3 The Government acknowledges that data submitted by applicants in connection with the IANA function is confidential information. To the extent permitted by law, the Government shall accord any data submitted by applicants in connection with the IANA functions with the same degree of care as it uses to protect its own confidential information, but not less than reasonable care, to prevent the unauthorized use, disclosure or publication of confidential information. In providing data that is subject to such a confidentiality obligation to the Government, the Contractor shall advise the Government of that obligation.

C.2 CONTRACTOR REQUIREMENTS

- C.2.1 The Contractor must perform the required services for this purchase order as a prime Contractor, not as an agent or subcontractor. The Contractor must possess and maintain through the performance of this acquisition a physical address within the United States. The Government reserves the right to inspect the premises, systems, and processes of all security and operational components used for the performance of these requirements.
- C.2.2 The Contractor shall furnish the necessary personnel, material, equipment, services, and facilities to perform the following requirements without any cost to the Government. On or after the effective date of this purchase order, the Contractor may establish and collect fees from third parties (*i.e.*, other than the Government) for the functions performed under this purchase order, provided the fee levels are approved by the Contracting Officer before going into effect, which approval shall not be withheld unreasonably and provided the fee levels are fair and equitable and provided the aggregate fees charged during the term of this purchase order do not exceed the cost of providing the requirements of this purchase order. The Government will review the Contractor's accounting data at anytime fees are charged to verify that the above conditions are being met.
- C.2.2.1 DoC NTIA has a requirement for a Contractor to maintain the operation of the Internet by performing the IANA functions. In performance of this purchase order, the Contractor shall furnish the necessary personnel, material, equipment, services, and facilities (except as otherwise specified), to perform the following IANA requirements.

SA1301-06-CN-0048

- C.2.2.1.1 Coordinate the assignment of technical protocol parameters - - This function involves the review and assignment of unique values to various parameters (e.g., operation codes, port numbers, object identifiers, protocol numbers) used in various Internet protocols. This function also includes the dissemination of the listings of assigned parameters through various means (including on-line publication) and the review of technical documents for consistency with assigned values.
- C.2.2.1.2 Perform administrative functions associated with root management - - This function addresses facilitation and coordination of the root zone of the domain name system, with 24 hour-a-day/7 days-a-week coverage. It includes receiving requests for and making routine updates of the country code top level domain (ccTLD) contact (including technical and administrative contacts) and nameserver information. This function also includes receiving delegation and redelegation requests, investigating the circumstances pertinent to those requests, and making recommendations and reporting actions undertaken in connection with processing such requests. All requests, collectively referred to as "IANA root management requests," must be processed promptly and efficiently, and in accordance with processing metrics set forth in Section J - Appendix A. These processing metrics will be posted prominently on Contractor's website. Contractor shall develop and implement a process no later than January 30, 2007, for consulting with the relevant governments and ccTLD managers to encourage greater efficiency and responsiveness to these entities in processing ccTLD requests, consistent with the processing metrics.
- C.2.2.1.3 Allocate Internet Numbering Resources - - This function involves overall responsibility for allocated and unallocated IPv4 and IPv6 address space and Autonomous System Number space. It includes the responsibility for delegation of IP address blocks to regional registries for routine allocation, typically through downstream providers, to Internet end-users within the regions served by those registries. This function also includes reservation and direct allocation of space for special purposes, such as multicast addressing, addresses for private networks as described in RFC 1918, and globally specified applications.
- C.2.2.1.4 Other services - - The Contractor shall perform other IANA functions and implement modifications in performance of the IANA functions as needed upon mutual agreement of the parties.
- C.2.3 Secure Systems -- Computing and communications systems operated by the Contractor shall be installed and operated in accordance with best business and security practices. The Contractor shall implement authenticated communications between it and its customers when carrying out all IANA requirements. Such practices and configuration of all systems shall be documented.
- C.2.4 Secure Data -- The Contractor shall ensure the authentication, integrity, and reliability of the data in performing the IANA requirements, including the data relevant to DNS, root zone file, and IP address allocation.
- C.2.5 Computer Security Plan -- A Computer Security Plan is required. The plan shall be developed and implemented no later than December 1, 2006, and updated annually. The plan shall be delivered to the Government upon request.
- C.2.6 Director of Security -- The Contractor shall designate a Director of Security who shall be responsible for ensuring technical and physical security measures, such as personnel access controls. The name of the Director of Security shall be provided to the Government prior to contract award. The Contracting Officer's Technical Representative (COTR) shall also be notified and consulted in advance when there are personnel changes in this position.

C.3 REPORTING REQUIREMENTS

- C.3.1 Monthly Performance Progress Report -- The Contractor shall prepare and submit to the Contracting Officer and COTR a performance progress report every month (no later than 15 calendar days following the end of each month) that contains statistical and narrative information on the performance of the IANA functions (*i.e.*, assignment of technical protocol parameters; administrative functions associated with root zone management; and allocation of internet numbering resources) during the previous 30-day period. The report shall include a narrative summary of the work performed for each of the functions, and shall include the tables set forth in Section J - Appendix B, completed by the Contractor with appropriate details and particularity. The report shall also describe major events, problems encountered, and any projected significant changes, if any, related to the performance of Section C.2.
- C.3.2 Audit Data -- The Contractor shall generate and retain security process audit record data for one year and provide an annual audit report to the Contracting Officer and the COTR. Specific audit record data will be provided to the Contracting Officer and COTR upon request. All root operations shall be included in the audit, and records on modifications to the root zone file shall be retained for a period of at least one year.
- C.3.3 Final Report -- The Contractor shall prepare and submit a final report on the performance of the IANA functions that documents standard operating procedures, including a description of the techniques, methods, software, and tools employed in the performance of the IANA functions. This report shall be submitted to the Contracting Officer and the COTR no later than 30 days after expiration of the purchase order.

C.4 PERFORMANCE EXCLUSIONS

- C.4.1 This purchase order, in itself, does not authorize modifications, additions, or deletions to the root zone file or associated information. (This purchase order does not alter root system responsibilities as set forth in Amendment 11 of the Cooperative Agreement NCR-9218742 between the DoC and VeriSign, Inc.)
- C.4.2 This purchase order, in itself, does not authorize the Contractor to make material changes in established methods associated with the performance of the IANA functions. Changes in the established methods associated with the performance of the IANA functions may be implemented only upon mutual agreement of the parties.
- C.4.3 The performance of the functions under this contract, including the development of recommendations in connection with changes that constitute delegations and redelegations, shall not be, in any manner, predicated or conditioned on the existence or entry into any contract, agreement or negotiation between the Contractor and any party requesting such changes or any other third-party.

SECTION D - PACKAGING AND MARKING

D.1 MARKING DELIVERABLES (CAR 1352.247-72) (MAR 2000)

The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract, except for reports.

D.2 IDENTIFYING NOTATION AFFIXED TO CONTRACT DELIVERABLES

Unless otherwise specified, all documents prepared and submitted by the Contractor to the Government under this contract shall include the following information on the cover page of each document:

- (a) Name and business address of the Contractor
- (b) Contract number
- (c) Name and office location of the Contracting Officer's Technical Representative
- (d) Title of report.
- (e) Date of report.

SECTION E - INSPECTION AND ACCEPTANCE

E.1 CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2)(FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

WWW.ARNET.GOV

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

<u>CLAUSE NUMBER</u>	<u>DATE</u>	<u>TITLE</u>
52.246-3	MAY 2001	INSPECTION OF SUPPLIES - COST REIMBURSEMENT
52.246-5	APR 1984	INSPECTION OF SERVICES - COST REIMBURSEMENT

E.2 INSPECTION AND ACCEPTANCE

<u>CAR Clause Number</u>	<u>Title</u>	<u>Date</u>
1352.246-70	Inspection and Acceptance	March 2000

Final inspection and acceptance of all work performed, reports, and other deliverables will be performed by the Contracting Officer's Technical Representative identified in Section G.2 at the following location:

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 4701
Washington, D.C. 20230

SECTION F - DELIVERIES OR PERFORMANCE

F.1 CLAUSES INCORPORATED BY REFERENCE (FAR 52.252-2)(FEB 1998)

SA1301-06-CN-0048

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

WWW.ARNET.GOV/FAR

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

<u>CLAUSE NUMBER</u>	<u>DATE</u>	<u>TITLE</u>
52.242-15	AUG 1989	STOP WORK ORDER
52.247	APR 1984	F.O.B. DESTINATION, WITHIN CONSIGNEE'S PREMISES

F.2 PERIOD OF PERFORMANCE

The period of performance is set forth in Section B.2 of the contract.

F.3 PLACE OF PERFORMANCE

All work shall be performed by the Contractor at the Contractor's facility.

F.4 DISTRIBUTION OF DELIVERABLES

The Contractor shall submit copies of all deliverables specified below as follows:

COTR	1 Copy
Contracting Officer	1 Copy

F.5 DELIVERABLES

The Contractor shall provide the following deliverables in accordance with (IAW) Section C.3 of this contract:

Deliverable	Due Date
1. Performance Progress Reports IAW Section C.3.1	Monthly, no later than 15 calendar days following the end of each month
2. Audit Report IAW Section C.3.2	Annual
3. Final Report IAW Section C.3.3	30 days after expiration of the contract

F.6 GOVERNMENT RIGHTS TO DELIVERABLES

All deliverables provided under this task order become the property of the U.S. Government.

F.7 GOVERNMENT REVIEW OF DELIVERABLES

The Government shall review deliverables and determine acceptability. Any deficiencies shall be corrected by the Contractor and resubmitted to the Government within seven (7) workdays after notification.

F.8 REQUIRED DELIVERABLES

SA1301-06-CN-0048

The Contractor shall transmit all deliverables so that the deliverables are received by the parties listed above on or before the indicated due dates.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 CONTRACTING OFFICER'S AUTHORITY (CAR 1352.201-70) (MAR 2000)

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract and notwithstanding any provisions contained elsewhere in this contract, the said authority remains solely in the Contracting Officer. In the event the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority and no adjustment will be made in the contract terms and conditions, including price.

G.2 DESIGNATION OF CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (CAR 1352.201-71) (MAR 2000)

(a) Ms. Cathy Handley is hereby designated as the Contracting Officer's Technical Representative (COTR). The COTR may be changed at any time by the Government without prior notice to the Contractor by a unilateral modification to the contract. The COTR is located at:

COTR Address: National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Room 4701
Washington, D.C. 20230
Phone: (202) 482-1866
E-mail: chandley@ntia.doc.gov

The responsibilities and limitations of the COTR are as follows:

- (b) The COTR is responsible for the technical aspects of the project and serves as technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports and such other responsibilities as may be specified in the contract.
- (c) The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes, which affect the contract price, terms, or conditions. Any contractor requests for changes shall be referred to the Contracting Officer. No such changes shall be made without the expressed prior authorization of the Contracting Officer.
- (d) The COTR is responsible for: receiving all deliverables; inspecting and accepting supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor, which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual Scope of Work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment prior to forwarding to the Contracting Officer.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 PRINTING (CAR 1352.208-70) (MAR 2000)

SA1301-06-CN-0048

Unless otherwise specified in this contract, the Contractor shall not engage in, or subcontract for, any printing (as that term is defined in Title 1 of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with performing under this contract. Provided, however, that performing a requirement under this contract involving the duplicating of less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages, such pages not exceeding a maximum image size of 10 and 3/4 inches by 14 and 1/4 inches, will not be deemed printing.

H.2 ORGANIZATIONAL CONFLICT OF INTEREST (CAR 1352.209-71) (MAR 2000)

(a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which would give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.

(b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.

(c) Remedies - The Contracting Officer may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the contract for default, debar the Contractor for Government contracting, or pursue such other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including the paragraph (d), in any subcontract or consultant agreement hereunder.

H.3 RESTRICTIONS AGAINST DISCLOSURE (CAR 1352.209-72)(MAR 2000)

(a) The Contractor agrees, in the performance of this contract, to keep the information furnished by the Government and designated by the Contracting Officer or Contracting Officer's Technical Representative in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a need to know basis. The Contractor agrees to immediately notify the Contracting Officer in writing in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees that it will not disclose any information described in subsection (a) of this Section to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

H.4 COMPLIANCE WITH LAWS (CAR 1352.209-73)(MAR 2000)

The Contractor shall comply with all applicable laws and rules and regulations having the force of law which deal with or relate to performance hereunder or the employment by the Contractor of its employees.

H.5 DUPLICATION OF EFFORT (CAR 1352.231-70) (MAR 2000)

SA1301-06-CN-0048

The Contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The Contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The Contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the Contractor, whose responsibility it will be to account for it accordingly.

H.6 HARMLESS FROM LIABILITY (CAR 1352.233-71)(MAR 2000)

The Contractor shall hold and save the Government, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses to which they may be subject, for or on account of any or all suits or damages of any character whatsoever resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, their employees, and agents.

H.7 REGULATORY NOTICE (CAR 1352.252-70)(MAR 2000)

Contractors are advised that certain provisions and clauses, identified with the Commerce Acquisition Regulation (CAR) notation for identification purposes, have not yet been incorporated into the CAR. However, all of these items are binding for this acquisition and will eventually be contained in the CAR at Part 13 of Title 48 of the Code of Federal Regulations.

H.8 CONTRACTOR IDENTIFICATION RESPONSIBILITIES

(a) All Contractor personnel attending meetings, answering Government telephones, and working in other situations where their Contractor status is not obvious to third parties, are required to identify themselves as such to avoid creating an impression in the minds of the public that they are Government officials.

(b) All documents or reports produced by the Contractor shall be suitably marked as Contractor products or that Contractor participation is appropriately identified.

H.9 NOTICE REQUIREMENT

The Contractor agrees that it will immediately inform the Contracting Officer and the Contracting Officer's Technical Representative in the event that the Contractor's Chairman of the Board of Directors initiates any investigation by an independent auditor of potential corporate insolvency.

H.10 CERTIFICATION REGARDING TERRORIST FINANCING IMPLEMENTING EXECUTIVE ORDER 13224

(a) By signing and submitting this application, the prospective Contractor provides the certification set out below:

- (1) The Contractor, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts, as that term is defined in Executive Order 13224.

- (2) Before providing any material support or resources to an individual or entity, the Contractor will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.
- (3) The Contractor also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

(b) For the purposes of this certification, the Contractor's obligations under paragraph "a" are not applicable to the procurement of goods and/or services by the Contractor that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, unless the Contractor has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

(c) This certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by DoC prior to the end of its term.

PART II - CONTRACT CLAUSES
SECTION I - CONTRACT CLAUSES

I.1 CLAUSES INCORPORATED BY REFERENCE (52.252-2) (JUN 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[HTTP://WWW.ARNET.GOV/FAR](http://www.arnet.gov/far)

<u>CLAUSE NUMBER</u>	<u>DATE</u>	<u>TITLE</u>
52.204-07	OCT 2003	CENTRAL CONTRACTOR REGISTRATION
52.209-06	JAN 2005	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.215-08	OCT 1997	ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT
52.216-07	DEC 2002	ALLOWABLE COST AND PAYMENT [REFERENCE TO Subpart 31.2 is substituted with Subpart 31.7]
52.219-08	MAY 2004	UTILIZATION OF SMALL BUSINESS CONCERNS
52.222-03	JUN 2003	CONVICT LABOR
52.222-21	FEB 1999	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	APR 2002	EQUAL OPPORTUNITY
52.222-35	DEC 2001	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-36	JUN 1998	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-37	DEC 2001	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-39	APR 2006	COMBATING TRAFFICKING IN PERSONS

SA1301-06-CN-0048

52.223-06	MAY 2001	DRUG-FREE WORKPLACE
52.225-13	DEC 2003	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-01	JUL 1995	AUTHORIZATION AND CONSENT
52.227-02	AUG 1996	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.227-03	APR 1984	PATENT INDEMNITY
52.227-14	JUN 1987	RIGHTS IN DATA-GENERAL, ALTERNATES I, II, III, IV
52.232-20	APR 1984	LIMITATION OF COST
52.232-23	JAN 1986	ASSIGNMENT OF CLAIMS
52.232-25	OCT 2003	PROMPT PAYMENT
52.232-33	OCT 2003	PAYMENT BY ELECTRONIC FUNDS TRANSFER--CENTRAL CONTRACTOR REGISTRATION
52.233-01	JULY 2002	DISPUTES, ALTERNATE I
52.233-03	AUG 1996	PROTEST AFTER AWARD--ALTERNATE I (JUNE 1985)
52.233-04	OCT 2004	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM
52.237.03	JAN 1991	CONTINUITY OF SERVICES
52.239-01	AUG 1996	PRIVACY OR SECURITY SAFEGUARDS
52.242-01	APR 1984	NOTICE OF INTENT TO DISALLOW COSTS
52.242-04	JAN 1997	CERTIFICATION OF FINAL INDIRECT COSTS
52.242-13	JUL 1995	BANKRUPTCY
52.243-02	AUG 1987	CHANGES--COST-REIMBURSEMENT, ALTERNATE II (APR 1984)
52.244-02	AUG 1998	SUBCONTRACTS
52.244-06	FEB 2006	SUBCONTRACTS FOR COMMERCIAL ITEMS
52.246-20	MAY 2001	WARRANTY OF SERVICES [The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor within 120 days from the date of acceptance by the Government.]
52.249-05	SEPT 1996	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS)
52.249-14	APR 1984	EXCUSABLE DELAYS
52.253-01	JAN 1991	COMPUTER GENERATED FORMS

I.2 AUDIT AND RECORDS - NEGOTIATION, ALTERNATE II, (FAR 52.215-2)(JUNE 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting

Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification;
- or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General—(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That requires the subcontractor to furnish reports as discussed in paragraph (e) of this clause. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

SA1301-06-CN-0048

(h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Nonprofit Organizations," apply to this contract.

I.3 COST CONTRACT – NO FEE, ALTERNATE IV (FAR 52.216-11)(APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

I.4 OPTION TO EXTEND SERVICES (FAR 52.217-8) (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 30 days.

I.5 OPTION TO EXTEND THE TERM OF THE CONTRACT (FAR 52.217-09) (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 30 days prior to the expiration of the current performance period; provided, that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed sixty-six (66) months.

I.6 PATENT RIGHTS – RETENTION BY THE CONTRACTOR (SHORT FORM) (FAR 52.227-11)(JUN 1997)

(a) Definitions. (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.)

(2) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For

the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor. (1) The Contractor will disclose each subject invention to the Federal agency within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 2 years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file. (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest. (1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a

minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(g) Subcontracts. (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental

regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that—

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that—

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;
- (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(l) Communications. [Complete according to agency instructions.] The Government reserves the right to establish procedures regarding communications after contract award. Such procedures shall be subject to the mutual agreement of the parties.

I.7 RIGHTS IN DATA – RETENTION BY THE CONTRACTOR (LONG FORM) (FAR 52.227-12)(JAN 1997)

(a) Definitions. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

"Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; provided, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) Allocation of principal rights. The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent applications by Contractor.

(1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been

submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title; provided, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government's interest.

(d) Conditions when the Government may obtain title. The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor elects not to retain title to a subject invention;

(2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause (the agency may only request title within 60 days after learning of the Contractor's failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the time specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor.

(1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency

except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Contractor action to protect the Government's interest.

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) of this clause and paragraph (n)(2) of this clause, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of

conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in paragraph (g)(1) or (2) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) Subcontracts.

(1) The Contractor shall include the clause at 52.227-11 of the Federal Acquisition Regulation (FAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (FAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) Reporting utilization of subject inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in FAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. [Reserved]

(l) Communications. [Complete according to agency instructions.]

(m) Other inventions. Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by paragraphs (f)(2) and (f)(3) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by paragraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with paragraphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (f)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (f)(8) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by paragraph (c)(1) of this clause, an acceptable final report pursuant to subdivision (f)(7)(ii) of this clause, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being

withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

I.8 RIGHTS IN DATA – EXISTING WORKS (FAR 52.227-18)(JUN 1087)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

J.1 ATTACHMENTS

The following documents are attached to this solicitation:

<u>ATTACHMENT</u>	<u>Description</u>	<u>PAGE</u>
Appendix A	Processing Metrics	
Appendix B	Monthly Performance Progress Report Tables	

APPENDIX A - PROCESSING METRICS

PROCESS FOR IANA ROOT MANAGEMENT REQUESTS

Specific Steps to Process a Change Request

Request received by the Contractor -- The Contractor receives request to make changes to the root-zone and/or the authoritative WHOIS database. The *date of receipt* is the date upon which the Contractor receives a request, on a business day, during the hours of 9:00 am and 5:00 pm Pacific Time.

Confirmation of Receipt -- Within three (3) business days of the date of receipt, the Contractor shall send confirmation of receipt of the request and a transaction number to the Requester.

Contractor reviews request -- The submission is reviewed to determine the details of the changes requested. During this process, Contractor determines whether the request contains all of the information necessary to commence processing (complete request), or the request requires additional information or clarification from the Requester (incomplete request). If a request is complete, the Contractor shall commence *Request Processing*.

Notice of deficiency-- In the event that the request is deemed *incomplete*, the Contractor shall, within seven (7) calendar days of the date of receipt, provide to the Requester a notice of deficiency. This notice shall offer a detailed description of the deficiency(ies) in the request.

Deficiency cure-- A Requester must promptly cure any deficiency in a request. If a Requester fails to cure any deficiency in its request within fourteen (14) calendar days of the notice of deficiency, then the Contractor will deem the request closed. Multiple communications between the Requester and the Contractor may be necessary to ensure that deficiencies are clearly understood by all parties. Once the Contractor has determined that the Requester has cured the deficiency(ies), the Contractor shall deem the request complete and shall commence request processing.

Request Processing -- Within seven (7) calendar days of a request being deemed complete, Contractor shall send to Requester a notice of confirmation of requested changes. Requester shall provide confirmation of the requested changes within seven (7) calendar days of receipt of such notice from Contractor. If Contractor does not receive confirmation within seven (7) calendar days, Contractor shall send a second and final notice to Requester giving Requester an additional seven (7) calendar days to provide the required confirmation. If Requester fails to provide such confirmation after the second and final notice, then such request shall be deemed incomplete and shall be closed. Contractor shall deliver notification of the request closure to Requester within one (1) business day of closing the request. Contractor shall provide Requester with a grace period during which time if the Requester provides confirmation to Contractor within thirty (30) days of a request closure, the request shall be re-opened and processed as a completed and confirmed request. Within thirty (30) calendar days of the date that the request was deemed completed and confirmed, Contractor shall complete all processing and issue a report with a recommendation to the U.S. Department of Commerce regarding whether the proposed changes should be authorized.

APPENDIX B MONTHLY PERFORMANCE PROGRESS REPORT TABLES

OVERVIEW OF ROOT MANAGEMENT REQUESTS	
TOTAL ROOT MANAGEMENT REQUESTS AT IANA	
Requests Pending at Beginning of Month	
Requests Received during this Month	
Total Requests Completed or Administratively Closed This Month	
Requests Completed from Prior Months	
Requests Completed from this Month	
Requests Administratively Closed	
Requests Pending at Close of this Month	

TYPES OF ROOT MANAGEMENT REQUESTS	
Nameserver Changes	
Administrative Contact Changes	
Technical Contact Changes	
Data Changes (e.g., address, phone/fax number, URL for registration services)	
Requests for Redelelegation	
Root Server Changes	
TOTAL	

Note: The total number of changes takes into account that one request may contain multiple changes. During this month, IANA received [insert number] requests with multiple changes.

ROOT MANAGEMENT REQUESTS PENDING MORE THAN 30 DAYS					
TLD	Request Number	Type of Request	Request Submitted Date	Last Contractor/Requestor Activity Date	Detailed Status and Activity towards Resolution

NAMESERVER, ADMINISTRATIVE AND TECHNICAL CONTACT, AND DATA CHANGES														
TLD	Request Number	Type of Change	Date of Receipt of Request	Date of Receipt Confirmation	Initial Review and Results	Date of Notice of Deficiency	Requestor Cure Date	Date of Requestor Confirmation	Request Closed Date	Date of Conclusion of Processing	Transmittal Date to DOC	Change in Database	Status of Request	Number of Days to Complete Request

LEGEND FOR TYPE OF CHANGE ENTRIES: 1 - Nameserver Change; 2 - Administrative Contact Change; 3 - Technical Contact; 4 - Data Change; 5 - Redelegation

INSTRUCTIONS FOR COMPLETING DETAILED STATUS ENTRIES: Provide a detailed narrative of the current activity for each open change request and Contractor's proposed steps to process the subject request within the prescribed 30-day limit. These entries should also indicate possible complications that might arise in connection with processing that request, as well as Contractor's methods for addressing these issues.

IPv4 UNICAST ADDRESS BLOCKS ALLOCATIONS				
Request Submitted	Request Completed	Duration	Registry	/8s Provided

IPv4 MULTICAST ASSIGNMENTS			
Request Submitted	Request Completed	Duration	Registry

IPv6 UNICAST ADDRESS BLOCKS ALLOCATIONS				
Request Submitted	Request Completed	Duration	Registry	Request

IPv6 MULTICAST ASSIGNMENTS			
Request Submitted	Request Completed	Duration	Addresses

AUTONOMOUS SYSTEM (AS) NUMBER ASSIGNMENTS				
Request Submitted	Request Completed	Duration	Registry	Blocks

NIC - Network Information Center

Acceptable domain names and policy

NIC is the delegated authority for registering domain names in the .cg top-level domains. The domain name space is served on a first in first out basis. NIC has a rather liberal policy about domain name.

The domains are registered just under the top level domain code. There is no domain like domain.co.cg like in some other countries.

The registration of one (1) domain is free of charge for the citizens and lawfully residents of our country. We can require a copy of a valid passport or residence permit from time to time. A company or an NGO duly registered in our country and operated from there also qualify. Legal institutions, governments, ministries, churches and other authorities of our country have a right for free domains at the highest priority.

In order to avoid foreign entities to register free domains with us, we generally require that the applicant faxes us the proof of his citizenship/right of residence. A subsidiary of a foreign company, even if registered in our country, is regarded as a foreign entity.

The foreign entities are not obliged to keep a DNS or an administrative contact in the country. Except those qualified by NIC as restricted or undesirable, any domain name may be assigned to these entities.

A restricted domain is one of these : **gov net edu ac com co int mil gouv** or any other name related to government or public company use. Contact domain@nic.cg if you want to create such a domain. Note however that it will be assigned only if sponsored by an official authority. We also discourage generic names such as bank nom art ... or a geographic notion as it also misleads people.

An undesirable name is defined as being vulgar, misleading people or inappropriate. It is also applicable for domain registration of wellknown brands/trademarks registered by third parties without the consent of the owner of the brands/trademark. The domain will be deleted immediately at the owner's request.

The domain name must have a minimum of three characters. Applications for one or two characters domain may be considered, with a possible surcharge if this domain is considered as Premium, with prior arrangement with domain@nic.cg

There is no notion of property as far as a domain name is concerned. It is rather to be seen as a sub-delegation, and the sub-delegated entity is supposed to manage it in compliance with the RFC's and with the usual rules applicable to such a sub-delegation. Reselling of the domain is a matter that NIC does not handle. It is an agreement between the seller and the buyer, and we only provide tools for changing admin/tech contact whois..

NIC will do its best so that second-level domains are run in a fair way. NIC may delete a domain name without compensation, should the domain be run in an inappropriate manner or be restricted or undesirable.

The invoicing is per e-mail only. NIC sends yearly invoices to the billing contact e-mail address at the anniversary date of the domain creation. There is no reminder sent afterwards. It is your responsibility to maintain the record accurate and your mail server open so that the e-mailed invoice reaches the right person. Note that our e-mails are in HTML formats and can include forms. An unpaid domain is deleted after two weeks and made available for new sub-delegation. Any payment without clear communication will be held in a separate account and domain will not be created/renewed. NIC will not try to trace back the payment origin, and without proper identification from the payer, this amount will stay unassigned to any domain. The deletion of the domain will take place at its expiry date and NIC won't be liable for any refund. It is the registrant's responsibility to notify NIC about the assignment of the payment, and once this payment has been reassigned, domain will be restored until its next renewal date. During the time the domain is deleted, NIC owes no compensation. The domain can be made available to the public. . Being in breach with this policy gives NIC the possibility to jeopardize all other domains that the user registered. NIC has the right to rectify any information in the whois database that he finds incorrect, irrelevant or misleading. NIC can also delete or suspend any domain that the registrant does not keep according to our policy, without compensation. Whois must be kept accurate and your mail server must be configured so that our mails are not classified as spam.

You agree that our entire liability, and your exclusive remedy, with respect to any provided NIC service(s) and/or for any breach and assigns is solely limited to the amount of 50 Euros. Some states do not allow the exclusion or limitation of liability for consequential or incidental damages; if it is the case, you are not allowed to use the NIC services. Should you use our services however without informing us about this, the service will be deemed to have been rendered in our country.

As rendered service for domain creation, NIC installs the requested domain in the database of the DNS server 213.193.157.30 and the NS records will be pointed to the DNS servers you specify on the form. This is the only service rendered. It does not include a sale of the domain name as there is no notion of property on a domain. Future changes of pointers are free of charge (max 3 per year). NIC will do its best effort to keep this pointer, the delegation and the DNS running, but shall by no means bear any responsibility for any disruption of service as it may occur from time to time on the internet or disruption of delegation. For each DNS server you specify as authoritative, you must have a DNS server up and running which is compliant with current RFC's and which is responding to domain name requests for your domain. We can delete a domain that does not resolve properly on your servers.

Resellers are normally not eligible for rebates.

By using a registration form or using a domain, the user agrees to comply with all the present and future policies of NIC. Litigation will only be solved through a legal procedure in a tribunal of our country. No foreign court has jurisdiction. Arbitral solution may however be accepted at NIC sole discretion via an established Intellectual Property Arbitrator, but the preferred default procedure is through a tribunal of our country, and should NIC decide to send the matter through a tribunal of our country, there will be no alternative.

NIC - Network Information Center
Last modification date : 30-NOV-2004

PRINCIPLES AND GUIDELINES FOR THE DELEGATION AND ADMINISTRATION OF COUNTRY CODE TOP LEVEL DOMAINS

Presented by the Governmental Advisory Committee

1. PREAMBLE

1.1. The purpose of this document is to set out a general framework of principles and guidelines for the relationship between national governments, the Registry of the country code associated with that country, and the Internet Corporation for Assigned Names and Numbers (ICANN). However, the situation varies significantly between countries. This framework is intended to help establish, not constrain or dictate, the development of the three-way relationship. Governments, country code Top Level Domain (ccTLD) Registries and ICANN share the responsibility for ensuring a Domain Name System that is stable, secure, open, and easily accessible.

1.2. The main principle is the principle of subsidiarity. ccTLD policy should be set locally, unless it can be shown that the issue has global impact and needs to be resolved in an international framework. Most of the ccTLD policy issues are local in nature and should therefore be addressed by the local Internet Community, according to national law.

1.3. These principles are intended as a guide to the relationships between Governments, their ccTLD and ICANN. They are not intended to be binding and need both Governments and Registries voluntarily to agree to apply them within their legal framework. If either the Government or the Registry decide not to adopt the principles, this cannot be held against the Registry, and the Registry still has a valid existence.

1.4. The Internet has evolved from a tool primarily reserved for computer and networking research, to a global medium for commerce, education, and communication since ccTLDs were first established and, in particular, since RFC 1591 was issued. Advances in the global information infrastructure, especially the Internet, are of crucial importance for national and global economic growth. Top Level Domains (i.e. domains in the top level of the global domain name system) play a significant role in this respect. ccTLDs have acquired an increasing part in the domain names market and are seen by many as part of the Internet identities of their country or geopolitical territory.

1.5. The initial selection for the management of ccTLDs was by "selecting a designated manager for a domain that was able to do an equitable, just, honest, and

competent job". This was a mutual recognition of rights and duties and this should remain the fundamental basis for any future selection of ccTLD Registries. There is currently a variety of legacy ccTLD situations with different legal or contractual frameworks.

1.6. It is recalled that the Governmental Advisory Committee (GAC) to ICANN has previously adopted the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest. The WSIS Declaration of December 2003 states that "*policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.*" This is in the context that, "*Governments, as well as private sector, civil society and the United Nations and other international organizations have an important role and responsibility in the development of the Information Society and, as appropriate, in decision-making processes. Building a people-centred Information Society is a joint effort which requires cooperation and partnership among all stakeholders.*"

1.7. It is recalled that the WSIS Plan of action of December 2003 invites "*Governments to manage or supervise, as appropriate, their respective country code top-level domain name*". Any such involvement should be based on appropriate national laws and policies. It is recommended that governments should work with their local Internet community in deciding on how to work with the ccTLD Registry.

2. OBJECTIVE OF THIS DOCUMENT

2.1. This document updates the principles set out in February 2000. It takes account of experience and best practice for the delegation and administration of ccTLDs. It is intended as a framework which the different parties can use to help define the way they work together. How these principles and guidelines may be used depends on local/national laws and traditions. They may contribute to clarifying the bilateral relationship between these parties. They could also contribute to the development of:

- a communication between the relevant government or public authority and ICANN about their respective roles;
- a communication between the relevant government or public authority and the ccTLD Registry where this is deemed appropriate by the government and Registry concerned or provided for by national laws; and
- an appropriate communication between ICANN and the ccTLD Registry.

2.2. From a GAC perspective, the first two of these types of communications are of primary importance, since governments are directly involved. The third type often involves two private parties and is of interest to governments to the extent it affects public policy interests.

3. DEFINITIONS

For the purposes of this document, the following definitions apply:

3.1 "Communication" might include a law, regulation, agreement, document, contract, memorandum of understanding or any other form of relationship as appropriate.

3.2 'Country code top level domain' or 'ccTLD' means a domain in the top level of the global domain name system assigned according to a two-letter code based on the ISO 3166-1 standard 'Codes for the Representation of Names of Countries and Their Subdivisions.'

3.3 'Delegation' means the procedures that need to be taken by ICANN/IANA for the inclusion of a ccTLD in the DNS root upon receipt of an authoritative request.

3.4 'Re-delegation' means the change of the person or body responsible for the administration of a ccTLD Registry effected by ICANN/IANA upon receipt of an authoritative request.

3.5 'Authoritative request' for the purposes of this document is the request for the delegation or re-delegation concerning a ccTLD Registry addressed to ICANN/IANA by the appropriate body, according to national law, showing that the request is correctly made, authoritative and is in line with applicable law or, in the absence of such law, RFC 1591.

3.6 'ccTLD Registry' means the entity (whether an organisation, enterprise or individual) responsible for managing and administering a ccTLD.

3.7 'Designation' means decision by the relevant government or public authority or any other body foreseen by the national law of the country concerned on the person or body that will be the manager of the relevant ccTLD Registry according to national law.

3.8 'Relevant government or public authority' means the national government or public authority of a distinct economy as recognised in international fora, as those terms are used in the ICANN bylaws and the GAC Operating Principles, associated with the country code.

3.9 'Local Internet community' means the local community in the country associated with the country code, and includes the national government. This definition is specific to the purposes identified in this document and not broader.

4. ROLE OF GOVERNMENT OR PUBLIC AUTHORITY

4.1 Principles

4.1.1. Ultimate public policy authority over the relevant ccTLD rests with the relevant government or public authority; how this authority is exercised is determined by applicable law.

4.1.2. Every country or distinct economy with a government or public authority recognised in accordance with article 3.8 above should be able to ask for its appropriate country code to be represented as a ccTLD in the DNS and to designate the Registry for the ccTLD concerned.

4.2 Guidelines

4.2.1. The relevant government or public authority is strongly encouraged to ensure that the ccTLD is being administered in the public interest, within the framework of its national public policy and relevant laws and regulations.

4.2.2. The relevant government or public authority should be able to ensure that domain name registration in the ccTLD by Registrars benefits from effective and fair conditions of competition, at appropriate levels and scale of activity.

4.2.3. To give effect to their public policy interests, governments or public authorities may wish to base any communication with ccTLD Registries on the terms outlined in Clause 9.

4.2.4. In making a designation or acceptance for a ccTLD Registry, the government or public authority should take into consideration the importance of long-term stability in the administration and management of the ccTLD and in the DNS. In most cases, such stability may be best served through the designation of an organisation or an enterprise rather than a specific individual.

5. ROLE OF ccTLD REGISTRY

5.1 Principles

5.1.1. The ccTLD Registry is a trustee for the delegated ccTLD, and has a duty to serve the local Internet community as well as the global Internet community. Some governments or public authorities may require their agreement before any sub-contracting or sub-licensing of the delegation. Where this agreement is given, the government or public authority should notify ICANN.

5.1.2. In performing their functions ccTLD Registries are subject to applicable law.

5.1.3. Any claim of intellectual property right in the two-letter code in itself shall not impede a change of Registry.

5.2 Guidelines

5.2.1. Any intellectual property rights that the ccTLD Registry may have acquired as the result of delegation or which any entity may have acquired as a result of the management, administration or marketing of the ccTLD shall be taken into account and dealt with in accordance with applicable law in the case of a re-delegation. Such rights should not be exercised in a way that unnecessarily impedes re-delegation of a ccTLD Registry decided according to national law or under the circumstances described under clause 7 below.

5.2.2. The ccTLD Registry should work cooperatively with the relevant government or public authority of the country or territory for which the ccTLD has been established, within the legal framework, and in line with appropriate public policy objectives of the government of the country or distinct economy concerned.

5.2.3. The ccTLD Registry, and the Registry's administrative contact, should be resident or incorporated in the territory and/or jurisdiction of the relevant government or public authority unless formally decided otherwise by the relevant government or public authority. In any event the ccTLD should operate in a way that is consistent with the laws and public policy of the relevant government or public authority.

5.2.4. The ccTLD Registries have the opportunity to participate in the ICANN Policy Development Processes through the Country Code Names Supporting Organisation (ccNSO). The GAC encourages the ongoing extension of the ccNSO's membership.

5.2.5. In any sub-contracting of the technical operations of the ccTLD Registry or administrative and management functions of the ccTLD, the sub-contract should state that the delegation itself is not reassigned to the sub-contractor. Any re-assignment would have to be in accordance with the provisions of Clause 7.

6. ROLE OF ICANN

Principle

6.1 ICANN's mission with respect to ccTLD Registries is to co-ordinate the Internet's systems of top-level domain unique identifiers, and to ensure their stable and secure operation, in particular: the allocation and assignment of the sets of unique Internet identifiers; the operation and evolution of the root name server system; and the policy development related to these technical functions as defined in the ICANN Bylaws.

7. PRINCIPLES RELATING TO DELEGATIONS AND RE-DELEGATIONS

7.1. Principle

Delegation and re-delegation is a national issue and should be resolved nationally and in accordance with national laws, taking into account the views of all local stakeholders and the rights of the existing ccTLD Registry. Once a final formal decision has been reached, ICANN should act promptly to initiate the process of delegation or re-delegation in line with authoritative instructions showing the basis for the decision.

7.2. Guidelines

7.2.1. Where the Registry operating the country code TLD does not have a formal communication with its national government and its core functions are operated under a different jurisdiction, any action to re-delegate needs to take account of the legal framework in the country where the Registry is based. In the event of a re-delegation, registrants in the ccTLD should be afforded continued name resolution or, if necessary, a mutually agreed period in which to transfer to another TLD.

7.2.2. In the case of a disputed re-delegation request where the relevant country code TLD Registry is based in another country and where there is not a contract specifying which national law should apply, the government and ccTLD should seek to find a mutually acceptable solution. Where there is evidence that local stakeholders and the Internet community support the government proposal for re-delegation, but where there is no legal basis for imposing the re-delegation, ICANN may contribute to identifying alternative solutions to resolve the problem.

7.2.3. It is strongly recommended that, in the case of new delegations or re-delegations, particularly where a Registry is based out of country, national governments and Registry managers should agree on the legal framework and specific contract conditions to be used to judge any subsequent disputes or re-delegation requests.

8. GUIDELINES FOR A COMMUNICATION BETWEEN THE RELEVANT GOVERNMENT OR PUBLIC AUTHORITY AND ICANN

8.1. In cases in which there is a communication between the relevant government or public authority and ICANN/IANA, it should include the nominated, designated point of contact for communications with the relevant government or public authority.

8.2. In the absence of a communication, or where there are reasons for doubt, ICANN/IANA should consult with the diplomatic authorities or the Governmental Advisory Committee members for the government or distinct economy concerned on the competent authority and appropriate point of contact with their administration for communications.

8.3. Recognising ICANN's responsibilities to achieve consensus in the creation of any new generic TLDs, ICANN should avoid, in the creation of new generic TLDs, well known and famous country, territory or place names; well known and famous country, territory or regional language or people descriptions; or ISO 639 Codes for representation of languages unless in agreement with the relevant governments or public authorities.

9. GUIDELINES FOR A COMMUNICATION BETWEEN THE RELEVANT GOVERNMENT OR PUBLIC AUTHORITY AND THE ccTLD REGISTRY

9.1 Depending on the needs in individual national circumstances, it may be appropriate for the relevant government or public authority to establish a communication with its newly designated Registry. Any such communication could include the following provisions:

9.1.1 Term, performance clauses, applicable law, opportunity for review and process for revocation.

9.1.2 A commitment by the Registry to operate the ccTLD in the interest of the relevant local Internet community and the global Internet community.

9.1.3 Confirmation that the ccTLD is operated in trust in the public interest and that any claim of intellectual property rights in the two-letter code in itself shall not impede any possible future change of Registry.

9.1.4 Conditions to ensure the transfer of all relevant DNS data to the new Registry, if, for any reason, a reassignment of delegation to a new Registry is necessary, taking all interests into account.

9.1.5 References to ensure the safety and integrity of the Registry databases.

9.1.6 Conditions for the efficient and effective resolution of disputes arising from domain name registration.

10. COMMUNICATION BETWEEN ICANN AND THE ccTLD REGISTRY

10.1 Principle

A Registry should not sub-contract part or all of the technical operations of the ccTLD Registry affecting the global stability of the DNS without ensuring that the sub-contractor has the appropriate technical capability, and informing ICANN accordingly.

10.2 Guidelines

10.2.1. The communication between ICANN and the Registry should as a minimum contain ICANN's commitment to:

10.2.1.1 Maintain, or cause to be maintained, a stable, secure, authoritative and publicly available database of relevant information for each ccTLD (see below);

10.2.1.2 Ensure that authoritative and accurate root zone information is generated in a timely manner from such database and contribute to the root servers' operating in stable and secure manner. Also, ensure that changes to the root zone database are made on the basis of reliable authentication procedures confirming the authority and identity of the requesting party;

10.2.1.3 Maintain, or cause to be maintained, authoritative records and an audit trail regarding ccTLD delegations and records related to these delegations; and

10.2.1.4 Inform the Registry in a timely manner of any changes to ICANN's contact information.

10.2.2 The communication between ICANN and the Registry should contain the Registry's commitment to:

10.2.2.1. Cause to be operated and maintained in a stable and secure manner the authoritative primary and secondary name servers for the ccTLD, adequate to resolve names within the ccTLD for users throughout the Internet, and any sub-domains over which they retain administrative authority;

10.2.2.2. Inform ICANN in a timely manner of any changes to the ccTLD's contact information held by ICANN;

10.2.2.3. Set out clear conditions and parameters for any payment by the ccTLD. ♦

Mar del Plata, 5 April 2005



New Agreement Means Greater Independence in Managing the Internet's System of Unique Identifiers

29 September 2006

The Internet Corporation for Assigned Names and Numbers (ICANN) today signed a new agreement with the United States Department of Commerce (DOC) that is a dramatic step forward for full management of the Internet's system of centrally coordinated identifiers through the multi-stakeholder model of consultation that ICANN represents.

"ICANN has secured an agreement that recognizes it as being responsible for the management of the Internet's system of unique identifiers on an ongoing basis. It means ICANN is more autonomous," Dr Paul Twomey, President and CEO of ICANN said.

Previous to this agreement there was a Memorandum of Understanding between the DOC and ICANN that was highly prescriptive. The MOU expires on 30 September 2006.

"The United States Department of Commerce has clearly signaled that multi-stakeholder management of the Internet's system of unique identifiers is the way ahead and ICANN is the obvious organization to take that responsibility," Dr Twomey stated.

The major gains in this new agreement are:

- ICANN will no longer have its work prescribed for it. How it works and what it works on is up to ICANN and its community to devise;
- ICANN is not required to report every 6 months as it has been under the MOU. It will now provide an annual report that will be targeted to the whole Internet community;
- There is no requirement to report regularly to the DOC. The DOC will simply meet with senior ICANN staff from time to time.

"The ICANN model of multi-stakeholder consultation is working and this agreement endorses it. Our community makes it work and we are constantly evolving and improving through their advice and support," Dr Twomey said. "This is a great achievement for the ICANN community. Our community is made up of very committed, highly skilled individuals most of whom are volunteers and take their responsibilities very seriously. This result is a tribute to their efforts," he added.

Documents Describing the Agreement and Background Information

- [Joint Project Agreement](#) - The executed agreement between the U.S. Department of Commerce and ICANN
- [Affirmation of Responsibilities](#) (Board Resolution) - Adopted by the ICANN Board of Directors, the description of ICANN duties under the new agreement
- [Preliminary Report](#) - Special Meeting of the Board (25 September 2006)
- [Related Documents and Community Comments](#) - A draft table linking ICANN's duties under the new agreement to ICANN foundational documents and recent community input into negotiations between the Department of Commerce and ICANN

About ICANN:

ICANN is a non-profit organization responsible for coordinating the Internet's systems of unique identifiers, including the systems of domain names and numeric addresses that are used to reach computers on the Internet*. ICANN's mission is to ensure the stable and secure operation of these unique identifier systems, which are vital to the Internet's operation. In addition, ICANN coordinates policy development related to these technical functions through its effective bottom-up consensus model.

(* This includes responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root zone management for the root server system)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ICM REGISTRY, LLC,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
COMMERCE and
UNITED STATES DEPARTMENT OF
STATE,

Defendants.

Civil Action No. 06-0949 (JR)

**ANSWER AND AFFIRMATIVE DEFENSES OF UNITED STATES DEPARTMENT OF
COMMERCE AND UNITED STATES DEPARTMENT OF STATE**

Defendants, the United States Department of Commerce and the United States Department of State (collectively, the "Defendants"), hereby answer plaintiff's Complaint for Injunctive Relief for Violation of the Freedom of Information Act ("Complaint") in this matter as follows:

First Defense

The Court lacks jurisdiction over Plaintiff's second FOIA request filed with Commerce (CRRIF No. 06-127, which is attached as Appendix C to the Complaint) because Plaintiff failed to exhaust its administrative remedies with respect to it.

Second Defense

The court lacks subject-matter jurisdiction over the complaint to the extent that the complaint seeks relief beyond that authorized by the FOIA.

Third Defense

Plaintiff is not entitled to compel the production of records exempt from disclosure pursuant to one or more of the exemptions in the FOIA, 5 USC § 552.

Fourth Defense

In response to the numbered paragraphs of the Complaint, Defendants respond as follows:

GENERAL ALLEGATIONS

1. The Department of Commerce admits that plaintiff sent the Department of Commerce FOIA requests on October 18, 2005, attached as Appendix B to the Complaint, and on December 2, 2005, attached as Appendix C to the Complaint. The Department of State admits that plaintiff sent the Department of State the FOIA request attached as Appendix A and the "appeal" letter attached as Appendix D. The remainder of Paragraph 1 consists of plaintiff's characterization of this civil action, to which no response is required.

2. Defendants aver that the first sentence of paragraph 2 constitutes plaintiff's characterization of its FOIA requests, this civil action and its prayer for relief, to which no response is required. Defendants respectfully refer the Court to those requests, which are attached to the Complaint, and are the best evidence of their contents. The allegations contained in the remainder of paragraph 2 are denied.

JURISDICTION AND VENUE

3. This paragraph contains plaintiff's allegation of jurisdiction which is a legal conclusion for which no response is required.

4. This paragraph contains plaintiff's allegation of venue which is a legal conclusion

for which no response is required.

THE PARTIES

5. The Defendants lack sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations contained in paragraph 5 of the Complaint, and thus denies them, except that they aver that ICM Registry is the plaintiff in this case and that, upon information and belief, ICM is an applicant to the Internet Corporation for Assigned Names and Numbers ("ICANN") for a new ".xxx" sponsored top-level domain ("sTLD").

6. The Defendants admit the allegations in paragraph 6.

7. The Defendants lack knowledge sufficient to admit or deny the allegation that the Department of State is in "possession and control over records described herein that have been and are sought by plaintiff." The Department of State avers that its search for records responsive to plaintiff's request is still in progress. The Defendants admit the remainder of paragraph 7.

BACKGROUND

8. The Department of Commerce avers that the first three sentences in paragraph 8 are Plaintiff's characterizations of a non-party's status and functions, to which no response is required. The remaining assertions in paragraph 8 are denied. The Department of Commerce also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 8, and so denies. The Department of State also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action

under the FOIA.

9. The Department of Commerce avers that the assertions in paragraph 9 are plaintiff's characterizations of legal agreements, to which no response is required. The Department of Commerce also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 9, and so denies. The Department of State also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

10. The Department of Commerce admits that it has no regulatory authority over ICANN. The assertions contained in the remainder of paragraph 10 are denied. The Department of Commerce also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 10, and so denies. The Department of State also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

11-16. The Departments of Commerce and State lack sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraphs 11 through 16, and so deny. The Defendants also aver that the allegations in these paragraphs are irrelevant to plaintiff's alleged cause of action under the FOIA.

17. The Department of Commerce admits that NTIA submitted a letter dated August 11, 2005, from Michael Gallagher, then Assistant Secretary for Communications and Information, to Dr. Vinton Cerf, Chairman of the Board, ICANN. The Department of Commerce respectfully refers the Court to that letter which is the best evidence of its contents (which is attached to the Complaint as Appendix E, Exhibit 21). The remainder of Plaintiff's assertions in paragraph 17 constitute its characterization of contents of the letter, to which no response is required, but insofar as a response is required, the assertions are denied. The Department of Commerce also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 17, and so denies. The Department of State also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

18. The Departments of Commerce and State lack sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 18, and so deny. The Defendants also aver that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

19. The Department of Commerce admits that ICANN did not approve the contract to operate the .xxx sTLD at its August 16, 2005, meeting. The remaining assertions in the first sentence of paragraph 19 are denied. The Department of Commerce also avers that the allegations in the first sentence of this paragraph are irrelevant to plaintiff's alleged cause of

action under the FOIA. As to the second sentence of paragraph 19, the Department of Commerce lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations, and thus denies them. The Department of Commerce also avers that the allegations in the second sentence of this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA. The Department of Commerce admits the assertions in the final sentence of paragraph 19, but avers that these assertions are irrelevant to plaintiff's alleged cause of action under the FOIA.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 19, and so denies. The Department of State avers that the allegations in this paragraphs are irrelevant to plaintiff's alleged cause of action under the FOIA.

20. The Department of Commerce admits that ICM submitted one request dated October 18, 2005, under the FOIA to the Department of Commerce's Freedom of Information Officer requesting certain records. The Department of Commerce respectfully refers the Court to that request (attached as Appendix B to the Complaint) for a description of the documents Plaintiff sought from the Department of Commerce, and how Plaintiff asked that the Department of Commerce account for any records withheld. Under 15 C.F.R. § 4.5(a), (part of Commerce's FOIA regulations at 15 C.F.R. Part 4, Subpart A), lead responsibility for responding to Plaintiff's request was assigned to the Department of Commerce's National Telecommunications Information Administration (NTIA). Plaintiff's request was also tasked to the Department of Commerce's Immediate Office of the Secretary to determine whether it possessed any responsive records. Admits that the Department of Commerce designated ICM's FOIA request as CRRIF

No. 06-068, but not 06-608 as Plaintiff also states in paragraph 20.

The Department of State admits that it received a copy of the FOIA request from plaintiff dated October 18, 2005 and attached as Appendix A to the complaint. The Department of State further admits that this FOIA request has been assigned case number 200504606. The Department of State avers that the FOIA request speaks for itself and respectfully refers the Court to Appendix A in response to plaintiff's characterization of this FOIA request. The Department of State lacks knowledge sufficient to admit or deny the allegations of paragraph 20 relating to the Department of Commerce.

21. The Department of Commerce admits that ICM submitted a second FOIA request, dated December 2, 2005, to Commerce's Freedom of Information Officer requesting certain records. The Department of Commerce respectfully refers the Court to that request (a copy of which is attached as Appendix C to the Complaint) which is the best evidence of its content, including how Plaintiff asked that the Department of Commerce account for any records withheld. Under 15 C.F.R. § 4.5(a), lead responsibility for responding to Plaintiff's request was assigned to NTIA. Admits that the Department of Commerce designated ICM's FOIA request as CRRIF No. 06-127.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 21, and so denies.

22. The Department of Commerce lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 22, and so denies.

The Department of State admits that Appendix D, Exhibit 2 and Appendix H are copies

of correspondence that the Department of State sent to plaintiff in response to its FOIA request and "appeal" letter. The Department of State avers that its search for records responsive to plaintiff's request is still in progress, and denies the remainder of paragraph 22.

23. The Department of Commerce admits that NTIA initially responded to Plaintiff's request 06-068 (not 06-608 as Plaintiff states in paragraph 23) by letter dated November 18, 2005, which transmitted certain documents and "withheld certain documents in whole or in part under 5 U.S.C. § 552(b)(5) as predecisional or privileged." Admits that certain of the transmitted documents included redacted portions, which in some cases included entire pages, and that the redacted portions included notations that 5 U.S.C. § 552(b)(5) was the basis for redaction. Admits that Plaintiff filed an administrative appeal with the Department of Commerce of the initial partial denial by NTIA. The remainder of Plaintiff's assertions in paragraph 23 constitute its characterization of actions taken by the parties in this case, to which no response is required, but insofar as a response is required, the assertions are denied.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 23, and so denies.

24. The Department of Commerce admits that the only explanation NTIA provided Plaintiff for withholding records pursuant to its FOIA response were contained in the FOIA response and in notations on the released documents themselves, as described in paragraph 23 above. Plaintiff's assertions regarding its ability to determine the nature of material withheld based on the context of the redactions are conclusions as to which no response is required, but insofar as a response is required, the assertions are denied.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 24, and so denies.

25. The Department of Commerce admits that by letters dated December 19 and 21, 2005, NTIA sent Plaintiff supplemental responses to Commerce FOIA request 06-068 which provided additional responsive records, and that the letters were sent pursuant to NTIA's statement in its November 18, 2005, initial response it had:

identified certain documents from other agencies which may be responsive to your request and is in the process of coordinating with those agencies to accord them proper treatment under FOIA.

The Department of Commerce admits that the supplemental responses included documents with notations indicating that portions of the documents were withheld in part or in full based on 5 U.S.C. § 552(b)(5).

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 25, and so denies.

26. The Department of Commerce admits that Plaintiff filed an administrative appeal with Commerce of NTIA's November 18, 2005, initial response to request 06-068, and that NTIA's December 19 and 21, 2005, supplemental responses were later incorporated into the appeal. As for the remainder of Plaintiff's assertions in paragraph 26, the Department of Commerce respectfully refers the Court to the appeal, which is attached as Appendix D, Exhibit 5 to the Complaint, for the content of Plaintiff's statements about the records released as the appeal is the best evidence of its contents. Plaintiff's assertions are conclusions and inferences about the released records, to which no response is required, but insofar as a response is required,

the assertions are denied.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 26, and so denies.

27. The Department of Commerce avers that Plaintiff's assertions in paragraph 27 are characterizations of statements it made in its appeal with respect to CRRIF 06-068, to which no response is required, but insofar as a response is required, the assertions are denied. The Department of Commerce respectfully refers the Court to the appeal (attached as Appendix D, Exhibit 5 to the Complaint) for the content of Plaintiff's assertions described in paragraph 27, as the appeal is the best evidence of its contents.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 27, and so denies.

28. The Department of Commerce avers that Plaintiff's assertions in paragraph 28 are characterizations of statements it made in its appeal with respect to CRRIF 06-068, to which no response is required, but insofar as a response is required, the assertions are denied. The Department of Commerce respectfully refers the Court to the appeal (attached as Appendix D, Exhibit 5 to the Complaint) for the content of Plaintiff's assertions described in paragraph 28, and to the e-mail Plaintiff references in paragraph 28 for its content (the e-mail is attached as Appendix E, Exhibit 5 to the Complaint), as the appeal and e-mail are the best evidence of their contents.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 28, and so denies.

29. The Department of Commerce respectfully refers the Court to the August 16, 2005, e-mail referenced by Plaintiff for its content, which is attached as Appendix E, Exhibit 25 to the Complaint. The remainder of Plaintiff's assertions in paragraph 29 are inferences and conclusions, to which no response is required, but insofar as a response is required, the assertions are denied.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 29, and so denies.

30. The Department of Commerce respectfully refers the Court to the August 5, 2005, e-mail referenced by Plaintiff (attached as Appendix E, Exhibit 26 to the Complaint) for its content. The Department of Commerce notes that the quoted document was authored by Evan Goitein, a legislative assistant for Congressman John T. Doolittle, not the Department of Commerce. Plaintiff's assertions in the remainder of paragraph 30 are characterizations of statements it made in its appeal with respect to CRRIF 06-068, and conclusions it drew from the appeal, to which no response is required, but insofar as a response is required, the assertions are denied. The Department of Commerce refers the Court to the appeal for the content of ICM's assertions described in paragraph 30.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 30, and so denies.

31. The Department of Commerce admits that it has not yet rendered a decision on ICM's appeal with respect to the Department of Commerce request 06-068. Admits that Counsel for ICM sent Commerce a letter discussing the appeal, and that Commerce sent Counsel for ICM

a letter discussing the appeal. The Department of Commerce refers the Court to those letters which are the best evidence of their contents and are attached to the Complaint as Appendices J and K. Admits that the Department of Commerce attorney handling the appeal of CRRIF 06-068 received telephone calls from Counsel for ICM regarding the appeal and that the Department of Commerce attorney spoke to Counsel for ICM by telephone about the timing of a response to the appeal.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 31, and so denies.

32. The Department of Commerce admits that by letter dated January 19, 2006, NTIA responded to Plaintiff's request 06-127, and that it transmitted responsive records and withheld portions of certain records, as described more fully in NTIA's letter attached as Appendix F, Exhibit 2 to the Complaint. Admits that Plaintiff filed an administrative appeal of NTIA's initial determination. The Department of Commerce refers the Court to that appeal, which is included as Appendix F to the Complaint, for the grounds of the appeal. Denies that Plaintiff's administrative appeal of Commerce request 06-127 has never been resolved. By letter dated March 2, 2006 (a copy of which is attached hereto as Exhibit 1), the Department of Commerce informed Plaintiff that the appeal would not be considered because it was untimely. To the extent that any further response is required, the Department of Commerce states that paragraph 32 contains Plaintiff's characterizations of its request 06-127 and of NTIA's response letter, to which no response is required. To the extent that any response is required, the Department of Commerce denies any such assertions.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 32, and so denies.

33. The Department of Commerce denies that it has unlawfully redacted and withheld documents in response to Plaintiff's requests. As to first four sentences of paragraph 33, the Department of Commerce avers that the allegations are irrelevant to plaintiff's alleged cause of action under the FOIA. As to the remaining assertions in paragraph 33, the Department of Commerce lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations, and thus denies them.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 33, and so denies. The Department of State avers that the allegations in paragraph 33 are irrelevant to plaintiff's alleged cause of action under the FOIA.

34. The Department of Commerce denies the allegations in paragraph 34. The Department of Commerce also avers that the allegations in this paragraph are irrelevant to plaintiff's alleged cause of action under the FOIA.

The Department of State lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations in paragraph 34, and so denies. The Department of State avers that the allegations in paragraph 34 are irrelevant to plaintiff's alleged cause of action under the FOIA.

35. The Department of Commerce admits that it provided some records sought in ICM's request, and that it withheld others in part or in full based on applicable exemptions of the

FOIA. Admits that Plaintiff filed an administrative appeal of NTIA's initial determination, and that the Department of Commerce has not yet responded to Plaintiff's appeal. The remainder of Plaintiff's assertions in paragraph 35 are conclusions of law, to which no response is required, but insofar as a response is required, the assertions are denied.

The Department of State denies the allegations in paragraph 35 relating to the Department of State, and lacks sufficient knowledge or information to form a belief as to the truth of Plaintiff's allegations relating to the Department of Commerce, and so denies.

FIRST CLAIM FOR RELIEF

Paragraphs 36 to 43 of the complaint are directed solely at Defendant Department of State, which responds as follows:

36. Defendants incorporate their responses to paragraphs 1 through 35 as if fully set forth herein.

37. The Department of State admits that it received a copy of the FOIA request from plaintiff dated October 18, 2005 and attached as Appendix A to the complaint. The Department of State further admits that this FOIA request has been assigned case number 200504606. The Department of State avers that the FOIA request speaks for itself and respectfully refers the Court to Appendix A in response to plaintiff's characterization of this FOIA request. The Department of State denies the remainder of paragraph 37.

38. The Department of State denies the allegations in paragraph 38.

39. The Department of State denies the allegations in paragraph 39.

40. The Department of State avers that the allegation in paragraph 40 states a legal

conclusion to which no response is required.

41. The Department of State denies the allegation in paragraph 41.
42. The Department of State denies the allegation in paragraph 42.
43. The Department of State denies the allegation in paragraph 43.

SECOND CLAIM FOR RELIEF

Paragraphs 44 to 53 of the complaint are directed solely at Defendant Department of Commerce, which responds as follows:

44. Defendants incorporate their responses to paragraphs 1 through 35 as if fully set forth herein.

45. The Department of Commerce admits that by letter dated October 18, 2005, ICM filed a request designated as CRRIF FOIA 06-068 with the Department of Commerce. The Department of Commerce respectfully refers the Court to Plaintiff's request (attached as Exhibit B to the Complaint) for a description of the documents sought.

46. The Department of Commerce admits that it provided ICM certain records sought in its request, and that it withheld others in part or in full based on applicable exemptions of the FOIA. _____

47. The Department of Commerce admits that ICM has a statutory right to request documents under the FOIA, and that requested documents must be released unless they fall under specified exemptions of the FOIA. Denies that there is no legal basis for the Department of Commerce's redaction of records it disclosed or its withholding of records.

48. The Department of Commerce denies the allegations in paragraph 48.

49. The Department of Commerce admits that it has not yet filed a response to ICM's administrative appeal filed on December 2, 2005. The remainder of Plaintiff's allegations in paragraph 49 consist of legal conclusions, to which no response is required, but insofar as a response is required, the assertions are denied.

50. The Department of Commerce avers that the allegations in paragraph 50 consist of legal conclusions, to which no response is required, but insofar as a response is required, the assertions are denied.

51. The Department of Commerce avers that the allegations in paragraph 51 consist of legal conclusions, to which no response is required, but insofar as a response is required, the assertions are denied.

52. The Department of Commerce avers that the allegations in paragraph 52 consist of legal conclusions, to which no response is required, but insofar as a response is required, the assertions are denied.

53. The Department of Commerce denies the allegations in paragraph 53.

THIRD CLAIM FOR RELIEF

Paragraphs 54 to 63 of the complaint are directed solely at Defendant Department of Commerce, which responds as follows:

54. Defendants incorporate their responses to paragraphs 1 through 35 as if fully set forth herein.

55. The Department of Commerce admits that by letter dated December 2, 2005, ICM filed CRRIF FOIA 06-127 with Commerce. The Department of Commerce respectfully refers the Court to Plaintiff's request (attached as Exhibit C to the Complaint) for a description of the documents sought.

56. The Department of Commerce admits that it provided some records sought in ICM's request, and that it withheld others in part or in full based on applicable exemptions of the FOIA. The remainder of Plaintiff's assertions constitute its characterization of Commerce's response to Plaintiff's request, to which no response is required, but insofar as a response is required, the assertions are denied.

57. The Department of Commerce admits that ICM has a statutory right to request documents under the FOIA, and that requested documents must be released unless they fall under specified exemptions of the FOIA. Denies that there is no legal basis for the Department of Commerce's redaction of records it disclosed or its withholding of certain records.

58. The Department of Commerce denies the allegation in paragraph 58.

59. The Department of Commerce denies the allegation in paragraph 59, but avers that by letter dated March 2, 2006 (a copy of which is attached hereto as Exhibit 1), Commerce informed Plaintiff that its appeal would not be considered because it was untimely.

60. The Department of Commerce avers that Plaintiff's allegations in paragraph 60 consist of legal conclusions, to which no response is required, but insofar as a response is required, the assertions are denied.

61. The Department of Commerce denies the allegation in paragraph 61.

62. The Department of Commerce denies the allegation in paragraph 62.

63. The Department of Commerce denies the allegation in paragraph 63.

RELIEF

The remainder of the Complaint consists of Plaintiff's prayer for relief to which no response is required from the Department of State or the Department of Commerce. To the extent a response is required, the Department of State and Department of Commerce each deny that Plaintiff is entitled to the relief it seeks from their respective agencies. The Department of State and Department of Commerce hereby specifically deny all allegations of the Complaint not expressly admitted in this Answer.

WHEREFORE, the Department of State and Department of Commerce request that the Court enter a judgment:

- a. Dismissing the Complaint against each defendant with prejudice;
- b. Awarding each defendant such other relief as the Court deems just, equitable and proper.

Respectfully submitted,

KENNETH L. WAINSTEIN, D.C. Bar # 451058
United States Attorney

RUDOLPH CONTRERAS, D.C. Bar # 434122
Assistant United States Attorney

MARIAN L. BORUM, D.C. BAR # 435409
Assistant United States Attorney
555 Fourth Street, N.W. - Civil Division
Washington, D.C. 20530
(202) 514-6531
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2006, the foregoing was served upon counsel for plaintiff via the Court's ECF e-mail. I further certify that the signed original of this motion shall be retained in the official case file.

MARIAN L. BORUM, D.C. Bar # 435409
Assistant United States Attorney

1 **PROOF OF SERVICE**

2 I, Jacquelynn G. Perske, declare as follows:

3 I am employed in the County of Los Angeles, State of California. I am over the
4 age of eighteen years and am not a party to this action. My business address is Sullivan &
5 Cromwell LLP, 1888 Century Park East, Suite 2100, Los Angeles, California, 90067.

6 I served the following document:

7 **DECLARATION OF EDWARD
8 E. JOHNSON**

9 on October 10, 2006, on all parties in this action by placing true copies of the above document
10 enclosed in a sealed envelope addressed as follows:

11 **Via Hand Delivery**

12 Jeffrey A. LeVee
13 Sean W. Jaquez
14 Samantha S. Eisner
15 JONES DAY
16 555 South Flower Street, Fiftieth Floor
17 Los Angeles, California 90071-2300
18 Counsel for Defendants Internet Corporation for Assigned
19 Names and Numbers and Internet Assigned Numbers Authority

20 **Via U.S. Mail**

21 The People's Republic of the Congo
22 Regie National Des Travaux Publics et de la Construction
23 B.P. 2073
24 Brazzaville
25 Republique Populaire du Congo

26 The Congolese Redemption Fund
27 Regie National Des Travaux Publics et de la Construction
28 B.P. 2073
Brazzaville
Republique Populaire du Congo

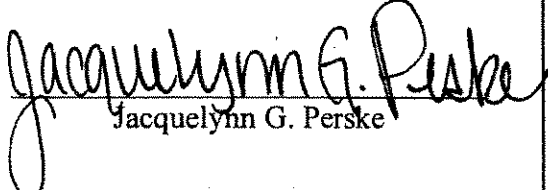
For copies served by Hand Delivery, I am familiar with the office practice of
Sullivan & Cromwell LLP, which practice is that when correspondence is deposited with the
Sullivan & Cromwell LLP personnel responsible for delivering correspondence to the

1 appropriate courier service, such correspondence is delivered to the appropriate courier service
2 that same day in the course of business.

3 For copies served by U.S. Mail, I placed such envelope with postage thereon fully
4 prepaid for the deposit in the United States in accordance with the office practice of Sullivan &
5 Cromwell LLP for collecting and processing correspondence for mailing, which practice is that
6 when correspondence is deposited with the Sullivan & Cromwell LLP personnel responsible for
7 delivering correspondence to the United States Postal Service, such correspondence is delivered
8 to the United States Postal Service that same day in the course of business.

9 I declare under penalty of perjury under the laws of the United States that the
10 foregoing is true and correct.

11 Executed on October 10, 2006, at Los Angeles, California.

12
13 
14 Jacquelyn G. Perske
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