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10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF LOS ANGELES

13 KARL AUERBACH, an individual,) Case No.: BS 074771
14)
14 Petitioner,)
15)
15 v.)
16) SECOND DECLARATION OF
16 INTERNET CORPORATION FOR) PETITIONER KARL AUERBACH
17)
17 ASSIGNED NAMES AND NUMBERS, a)
18) DATE: July 29, 2002
18 California Nonprofit Public Benefit) TIME:
19) JUDGE:
19 Corporation,)
20)
20 Respondent)
21)

22 I, KARL AUERBACH, hereby declare:

23 1. I am the Petitioner in this Action. Except as otherwise specifically indicated, I
24 state all facts herein of my own first hand personal knowledge, and if called as a witness, I could
25 and would competently testify thereto.

1 2. I am a member of the Board of Directors of Respondent INTERNET
2 CORPORATION FOR ASSIGNED NAMES AND NUMBERS ("ICANN"). My term as an
3 ICANN Director commenced immediately after ICANN's annual meeting in November 2000,
4 and will continue through ICANN's annual meeting this year, presently scheduled for October
5 31, 2002 in Shanghai. In an open and public online election held in 2000, I was elected to be the
6 At Large Director for the North America region, garnering more votes than the six other
7 candidates for that seat.

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9 3. At its two most recent public board meetings, on March 14, 2002 in Accra, Ghana
10 and on June 28 in Bucharest, Romania, ICANN took a sequence of steps that eliminated the
11 public seats on ICANN's Board of Directors and dispensed with future public elections on any
12 matter within ICANN.

13 4. Attached hereto as Exhibit 31¹ and incorporated herein by this reference is a true
14 and correct copy of my recent testimony before the Subcommittee on Science, Technology, and
15 Space of the U.S. Senate Committee on Commerce, Science and Transportation. In that
16 testimony I outlined my vision for reform of ICANN.

17 5. I personally attended the Senate hearing and heard virtually every witness,
18 including ICANN's President and CEO, Stuart Lynn, attest to the need to dramatically reform
19 ICANN. While the various plans differed widely, I was not alone in calling for increased
20 accountability, and openness, and public participation within ICANN. Joining with me were the
21 U.S. General Accounting Office and several others (see Request for Judicial Notice Exh. A &
22 B). Several members of Congress have also recently written a letter to the Department of
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24 _____
25 ¹ In order to avoid confusion, I have sequentially numbered all of the Exhibits *See also*, Objection to
Evidence ¶7. in my two Declarations. Since the first Declaration contains Exhibits 1-30, the
second one starts with Exhibit 31.

1 Commerce raising similar concerns. (see Request for Judicial Notice Exhibit C). The testimony
2 of all of the witnesses is publicly available at the Senate website:

3 <<http://commerce.senate.gov/hearings/hearings0202.htm>>

4 6. I campaigned for and was elected to my current position as an ICANN director on
5 the basis of my sincere belief that ICANN must change. I have no hidden agenda to “harm”
6 ICANN; I have always had *public* agenda to reform ICANN so that it better serves the public
7 interest.

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9 7. ICANN states that the timing of the filing of this lawsuit, the business day after
10 the ICANN Accra Board meeting when it became clear that ICANN would not be conducting
11 another public election for Board members, is ""evidence" that my goal is to "injure" ICANN.
12 ICANN Opening Brief at page 11:7-17. ICANN is wrong to suggest that the timing had any
13 significance. The decision to commence this action was made well before the Accra meeting,
14 and a draft of the Petition was circulated by counsel before the votes to which ICANN refers.
15 However, we weren't quite ready to file before the Accra meeting, so a decision was made to
16 wait until Mr. Lynn, Mr. Touton and most of the rest of ICANN's staff and board returned from
17 Ghana, rather than filing when we knew they were out of the country.

18 8. Mr. Touton and Mr. Lynn characterize my voting record as one of being the sole
19 dissenter "on a large number of matters" and "often." (Touton Declaration ¶7, Lynn Declaration
20 ¶33). They supported these broad allegations with information about only a single Board
21 meeting, where the voting was significantly more complex than their statements indicate and
22 where my interpretation of the vote tally differs from the ones they present. It is difficult at this
23 time to derive unambiguous vote counts; the transcript of the meeting is somewhat muddy and
24 no minutes have yet been presented to the Board for correction or approval. Although I do not
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1 believe my voting record is relevant to a decision about whether and how I should be allowed to
2 exercise my statutory right to access ICANN corporate records, I have reviewed my voting
3 record during the entire course of my tenure on the Board of Directors and the actual numbers
4 are quite different from ICANN's highly selective sample. There have been 18 board meetings
5 so far during my tenure and I have missed only three. On the basis of all votes at all ICANN
6 board meetings that I attended, I have voted with the majority ("yes") vote 60% of the time;
7 against the majority ("no") 32% of the time and have abstained 8% of the time. Attached hereto
8 as Exhibit 32 is a true and correct copy of my summary of my votes taken from my own
9 contemporaneous records.

11 9. ICANN wrongly characterizes an interview I did long before I was elected to the
12 ICANN Board (and indeed before ICANN had even decided to hold elections) as one that was
13 done *after* my election. On page 20 of their Opening Brief ICANN asserts:

14 "In an interview with Auerbach published **just after Auerbach was selected** in October
15 2000 Auerbach stated:

16 ICANN is governance with a vengeance. The worst form of
17 governance. Arbitrary, capricious, imposed without any input from
18 those who have to pay the taxes and suffer its regulations. It is an
19 oligarchy. It is a business-run oligarchy. It is a secret society. Do
20 I support ICANN? I support the concept. Do I support ICANN as
21 it is? No, I think it should be dismembered, right down to the
22 ground.

23

24 I'm now just downright angry that [ICANN] continues to exist.

25 Touton Decl., Ex. 3 (cyber.law article).² The article itself indicates that it was published on
February 28, 2000 (page 28), nearly nine months prior to my joining the ICANN Board. In fact,

² It also appears that ICANN's Separate Statement incorrectly indicates that the last sentence of this quote was part of a separate, later *Salon* article which is attached as Touton, Exhibit 4. .

1 it was not until more than a week later, on March 10, 2000 at ICANN's public meeting in Cairo
2 that ICANN even decided to create board seats to be filled by public election and to hold such
3 elections. It was not until some time after that that I became a candidate and it was not until
4 November of that year that I actually was seated on the Board.

5 10. Although ICANN refers repeatedly to their "invitations" and "requests" that I sign
6 the "acknowledgement" of their procedures and subsequent conditions on my access to corporate
7 records, the undisputed result of my refusal to sign has been to deny me all access to the records.
8 As a result of ICANN's acts I have been less informed about ICANN than I could have been and
9 that my ability to make informed decisions as a Board member has suffered.

10
11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct, and that I executed this Declaration in Santa Cruz, California on
13 July __, 2002.

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17 _____
18 KARL AUERBACH
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