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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**

17 **KARL AUERBACH,**
18 **Petitioner,**
19 **v.**
20 **INTERNET CORPORATION FOR**
21 **ASSIGNED NAMES AND NUMBERS,**
22 **Respondent.**

Case No. BS 074771

PETITIONER KARL AUERBACH'S
OBJECTIONS TO EVIDENCE IN
SUPPORT OF ICANN'S MOTION FOR
SUMMARY JUDGMENT

[THE HONORABLE DZINTRA JANAVS]

Date: July 29, 2002
Time: 9:30 a.m.
Dept: 85

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Petitioner KARL AUERBACH ("Auerbach") submits his Objections to Evidence submitted by Respondent ICANN.

1 **Declaration of Stuart Lynn**

2 ICANN's Evidence:

- 3 1. Lynn Declaration, ¶ 24
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- 7 2. Lynn Declaration ¶ 26; Exhibit 18, "in
- 8 complete accordance with California law."
- 9 3. Lynn Declaration, ¶ 27; Exhibit 19
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- 19 4. Lynn Declaration, ¶¶ 29-32; Exhibits
- 20 20-21.
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- 27 5. Lynn Declaration ¶ 29 "requested to
- 28 inspect the same ICANN corporate records that 2 Mr. Davidson's request was only for "financial

Objections:

1. Hearsay (Evidence Code §1200) as to the fact of the Audit Committee meeting and decision.
2. Asserts legal conclusion (Evidence Code §800)
3. Hearsay (Evidence Code § 1200); Lack of foundation, incompetent (Evidence Code §400-403).
- ICANN appears to be attempting to present Mr. Crocker as an expert. If that is the case Auerbach objects based upon lack of foundation that Mr. Crocker has any expertise in "conflicts" between directors of non-profits and the corporation's staff (Evidence Code § 802-3).
4. Irrelevant (Evid. Code § 210, 350). Mr. Davidson's decisions about accepting limitations and conditions on his right to access corporate records does not tend "to prove or disprove any disputed fact that is of consequence to the determination of the action."
5. Lack of foundation (Evidence Code 402).

1 Mr. Auerbach had requested to inspect."

records"; Mr. Auerbach sought significant additional materials. See Lynn Exhibit 9.

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3 6. Lynn Declaration, ¶32

6. Hearsay (Evidence Code §1200, 1523) to the extent it is presented to prove that Mr. Davidson had no concerns.

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6 7. Lynn Declaration ¶¶ 33-36

7. Irrelevant (Evidence Code §210, 350). Mr. Auerbach's voting record as a Board member and ICANN's unsupported beliefs about the timing of the lawsuit do not tend to prove or disprove any disputed fact that is of consequence to the determination of the action."

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14 8. Lynn Declaration ¶33

8. Lack of foundation (Evidence Code 402, 403). Mr. Lynn has presented no evidence to support his factual averment about how "often" Mr. Auerbach is a lone dissenter. See Auerbach 2nd Declaration, Exhibit __.

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21 **Declaration of Louis Touton.**

22 **ICANN's Evidence:**

Objections:

23 9. Touton Decl., ¶ 4, sentences 1 & 2

9. Irrelevant (Evidence Code §210, 350). The process of Mr. Auerbach's election to the ICANN Board do not tend to "prove or disprove any disputed fact that is of consequence to the determination of the action." In addition lack of foundation

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(Evidence Code §§ 402, 403) for Mr. Touton's assertions about the number of votes for Mr. Auerbach and the number of Internet users at the time of the election.

10. Touton Decl., ¶ 7 10. Irrelevant (Evidence Code §210, 350). Mr. Auerbach's voting record on the ICANN Board does not tend to "prove or disprove any disputed fact that is of consequence to the determination of the action."

11. Touton Decl., ¶7, sentence 1 11. Lack of foundation (Evidence Code §402, 403). Mr. Touton's presentation of a document created out of a single board meeting does not provide a proper foundation for his assertion about Mr. Auerbach's voting record "on a large number of matters." See also Auerbach Declaration

12. Touton Decl., ¶ 18 12. Hearsay (Evidence Code § 1200); Lack of foundation, incompetent (Evidence Code §400-403) Mr. Touton has given no rationale for why he can properly introduce an e-mail from an unrelated third party as evidence in this case.

Irrelevant (Evidence Code §§210, 350). Whether Mr. Auerbach could "go public with private corporate information" is plainly not at issue in this case. It does not tend to "prove or disprove any disputed fact that is of

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consequence to the determination of the action."

Finally, ICANN appears to be attempting to present Mr. Levy as an expert in California corporations law. If that is the case Auerbach objects based upon lack of foundation that Mr. Levy has any expertise in California corporations law or is even a licensed attorney in the state of California. (Evidence Code § 802-3).

13. Touton Declaration ¶¶ 19-21.

13. Irrelevant. (Evidence Code §§210, 350). As in Mr. Lynn's Declaration, Mr. Davidson's decision to limit and condition his right to inspect ICANN corporate records under law does not tend to "prove or disprove any disputed fact that is of consequence to the determination of the action."

Moreover, as the request itself makes clear, and contrary to Mr. Touton's assertions, Mr. Davidson did not seek the same records that Mr. Auerbach did. See Auerbach Reply to ICANN'S Separate Statement 18.

14. Touton Decl., ¶¶ 23.

14. Irrelevant. (Evidence Code §§210, 350). Mr. Auerbach's statements about the elimination of public elected members of the ICANN Board of Directors does not tend to "prove or disprove any disputed fact that is of

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15. Touton Decl., ¶¶ 24

consequence to the determination of the action."

15. Irrelevant. (Evidence Code §§210, 350). Mr. Auerbach's public statements about this lawsuit do not tend to "prove or disprove any disputed fact that is of consequence to the determination of the action."

Vinton Cerf Declaration

ICANN'S Evidence:

Objections:

16. Cert Decl., ¶ 3.

16. Irrelevant. (Evidence Code §§210, 350). Mr. Gilmore's private e-mail to Mr. Cerf discussing the funding of this lawsuit does not tend to "prove or disprove any disputed fact that is of consequence to the determination of the action."

In addition, since Mr. Gilmore is not a party to this action, this is plainly hearsay. (Evidence Code § 1200).

Dated: _____, 2002

Respectfully submitted,
ELECTRONIC FRONTIER FOUNDATION

By: _____
Cindy A. Cohn

Attorneys for Petitioner
KARL AUERBACH