

1 Jeffrey A. LeVee (State Bar No. 125863)  
Eric P. Enson (State Bar No. 204447)  
2 Kelly M. Ozurovich (State Bar No. 307563)  
JONES DAY  
3 555 South Flower Street  
Fiftieth Floor  
4 Los Angeles, CA 90071.2300  
Telephone: +1.213.489.3939  
5 Facsimile: +1.213.243.2539  
Email: jlevec@JonesDay.com  
6

7 Attorneys for Defendant  
INTERNET CORPORATION FOR ASSIGNED  
8 NAMES AND NUMBERS

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**  
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12 FEGISTRY, LLC, RADIX DOMAIN  
13 SOLUTIONS PTE. LTD., and DOMAIN  
VENTURE PARTNERS PCC LIMITED,

14 Plaintiffs,

15 v.

16 INTERNET CORPORATION FOR  
17 ASSIGNED NAMES AND NUMBERS,

18 Defendant.  
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**CASE NO. 20STCV42881**

Assigned to Hon. Craig D. Karlan

**DEFENDANT ICANN'S REQUEST  
FOR JUDICIAL NOTICE IN  
SUPPORT OF ITS DEMURRER  
AGAINST PLAINTIFFS'  
COMPLAINT**

[Filed concurrently with ICANN's Notice  
of Demurrer and Demurrer]

Date: T.B.D.  
Time: T.B.D.  
Dept: N

Complaint Filed: November 9, 2020

1 Defendant, the Internet Corporation for Assigned Names and Numbers (“ICANN”),  
2 hereby requests that the Court take judicial notice pursuant to California Evidence Code sections  
3 452 and 453 of the following documents in support of ICANN’s Demurrer against the Complaint  
4 filed by Plaintiffs Fegistry, LLC, Radix Domain Solutions PTE. LTD., and Doman Venture  
5 Partners PCC Limited (“Plaintiffs”), most of which were cited in, but not attached to, Plaintiffs’  
6 Complaint:

7 1. ICANN Bylaws, as amended November 28, 2019, a link to which is cited in the  
8 Complaint at paragraph 14, footnote 3, and a true and correct copy of which is attached hereto as  
9 **Exhibit 1.**

10 2. Applicant Guidebook, as of June 4, 2012, a link to which is cited in the Complaint  
11 at paragraph 12, footnotes 1 and 2, and a true and correct copy of which is attached hereto as  
12 **Exhibit 2.**

13 3. Emergency Panelist Decision on Request for Interim Measures of Protection,  
14 issued on August 7, 2020, ICDR Case No. 01-19-004-0808, a link to which is cited in the  
15 Complaint at paragraph 41, footnote 8, and a true and correct copy of which is attached hereto as  
16 **Exhibit 3.**

17 4. Plaintiffs’ IRP Request, submitted on December 16, 2019, ICDR Case No. 01-19-  
18 004-0808, a link to which is cited in the Complaint at paragraph 32, footnote 6, and a true and  
19 correct copy of which is attached hereto as **Exhibit 4.**

20 5. ICANN Bylaws, as amended March 16, 2012, a true and correct copy of which is  
21 attached hereto as **Exhibit 5.**

## 22 ARGUMENT

23 In ruling on a demurrer, the court may properly consider matters that may be judicially  
24 noticed. *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006) (citing *Joslin v. H.A.S. Ins. Brokerage*,  
25 184 Cal. App. 3d 369, 374, (1986); *see* Cal. Civ. Proc. Code § 430.30(a)). A court can take  
26 judicial notice of records of “(1) any court of this state or (2) any court of record of the United  
27 States or of any state of the United States,” which includes records from arbitration proceedings.  
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1 Cal. Evid. Code § 452(d); *Greenspan v. LADT, LLC*, 191 Cal. App. 4th 486, 525 (2010) (finding  
2 that court properly took judicial notice of arbitration award) (citing Cal. Evid. Code § 452(d)); *see*  
3 *also Trabuco Highlands Cmty. Ass’n v. Head*, 96 Cal. App. 4th 1183, 1186 n.4 (2002) (taking  
4 judicial notice of arbitration briefs). Courts can also take judicial notice of “[f]acts and  
5 propositions that are not reasonably subject to dispute and are capable of immediate and accurate  
6 determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code §  
7 452(h).

8 The Court must take judicial notice of items falling within the permissive categories of  
9 Section 452, if the requesting party (1) gives adequate notice to the adverse party; and  
10 (2) includes sufficient information to enable the court to take judicial notice. Cal. Evid. Code  
11 § 453.

12 To start, Exhibits 1 through 4 were each referenced in Plaintiffs’ Complaint, and Plaintiffs  
13 even cited to the URLs. Plaintiffs, however, failed to attach them as individual exhibits.  
14 Therefore, Exhibits 1 through 4 should be treated as incorporated into the complaint, even if not  
15 subject to judicial notice. *See, e.g., Svenson v. Google, Inc.*, 65 F. Supp. 3d 717, 722–23 (N.D.  
16 Cal. 2014) (“Plaintiff’s failure to attach the agreements as exhibits to the complaint, and her  
17 decision instead to include hyperlinks in the text of the complaint . . . needlessly multiplied and  
18 confused the proceedings.”).

19 In any event, the exhibits are also independently subject to judicial notice. First,  
20 ICANN’s Bylaws and the provisions therein (Exhibit 1) are judicially noticeable because they are  
21 “not reasonably subject to dispute and are capable of immediate and accurate determination by  
22 resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code § 452(h). The Bylaws  
23 are readily available on ICANN’s website, as Plaintiffs are aware given that they cited to the  
24 appropriate URL in the Complaint. Plaintiffs cite to various provisions of the Bylaws in their  
25 Complaint, (*see, e.g.,* Compl. ¶¶ 14, 15, 17, 25, 27–30, 44) and therefore cannot dispute the  
26 accuracy of the Bylaws. Moreover, a corporation’s bylaws are generally judicially noticeable.  
27 *See El-Attar v. Hollywood Presbyterian Med. Ctr.*, 56 Cal. 4th 976, 989 (2013) (taking judicial  
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1 notice of the hospital’s model bylaws); *Masters v. San Bernadino Cnty Employees Ret. Ass’n*, 32  
2 Cal. App. 4th 30, 35 n.1 (1995) (taking judicial notice of the defendant’s Bylaws).

3           Second, the Applicant Guidebook and the provisions therein (Exhibit 2) are proper for  
4 judicial notice because they also are “not reasonably subject to dispute and are capable of  
5 immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”  
6 Cal. Evid. Code § 452(h). Like the Bylaws, the Applicant Guidebook is also publicly available  
7 on ICANN’s website, and Plaintiffs both cite to the Applicant Guidebook and discuss certain  
8 Guidebook provisions in the Complaint. (*See, e.g.*, Compl. ¶¶ 12, 92.) Again, Plaintiffs do not  
9 and cannot dispute the accuracy of the Applicant Guidebook on which their Complaint is  
10 predicated.

11           Third, the Emergency Panelist’s decision on Plaintiffs’ request for interim measures of  
12 protection (Exhibit 3) is judicially noticeable under Section 452(d) because it comprises a record  
13 from another court. As Plaintiffs allege in the Complaint, Plaintiffs instituted ICANN’s  
14 Independent Review Process (“IRP”), which is administered by the International Centre for  
15 Dispute Resolution (“ICDR”) and akin to an arbitration. (*See, e.g.*, Compl. ¶¶ 32, 38.) During  
16 the course of the IRP, Plaintiffs submitted a request for interim measures of protection, and an  
17 ICDR-appointed Emergency Panelist considered and reached a decision on the request. The  
18 Emergency Panelist’s decision, is therefore similar to an arbitration award, and is judicially  
19 noticeable on that basis. *See* Cal. Evid. Code § 452(d); *Greenspan*, 191 Cal. App. 4th at 525.

20           The Emergency Panelist’s decision, and the fact that the decision addressed the same  
21 issues that Plaintiffs raise in this lawsuit, is also judicially noticeable because they are capable of  
22 immediate and accurate determination by resort to sources of reasonably indisputable accuracy.  
23 Cal. Evid. Code § 452(h). Plaintiffs cite to the Emergency Panelist’s decision and provide the  
24 URL where this decision can be found on ICANN’s website, (Compl. ¶ 41) further demonstrating  
25 that this decision is not reasonably subject to dispute. To be clear, ICANN is not asking the Court  
26 to take judicial notice of the factual findings by the Emergency Panelist; instead, ICANN merely  
27 requests that the Court take judicial notice that the Emergency Panelist’s decision exists, and that,  
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1 as demonstrated in the decision, the Emergency Panelist decided the same issues that Plaintiffs  
2 are currently raising in this Court.

3 Fourth, Plaintiffs' IRP Request in the pending IRP, and the fact contained therein that  
4 Plaintiffs submitted their applications for the .HOTEL generic top-level domain ("gTLD") in  
5 2012, are judicially noticeable. Plaintiffs' IRP Request is akin to an arbitration brief of which  
6 courts have taken judicial notice. *Trabuco Highlands Cmty. Ass'n*, 96 Cal. App. 4th at 1186 n.4  
7 (2002). Additionally, the fact that Plaintiffs submitted an IRP Request, and that Plaintiffs  
8 submitted their .HOTEL applications in 2012 are not reasonably subject to dispute, and are  
9 capable of immediate and accurate determination. In fact, in Plaintiffs' IRP Request, Plaintiffs  
10 acknowledge that .HOTEL "had seven applicants in 2012." Ex. 4, at p. 5.

11 Finally, ICANN's Bylaws from 2012 are judicially noticeable because they are "not  
12 reasonably subject to dispute and are capable of immediate and accurate determination by resort  
13 to sources of reasonably indisputable accuracy." Cal. Evid. Code § 452(h). Like the current  
14 Bylaws, the 2012 Bylaws are readily available on ICANN's website. And again, a corporation's  
15 bylaws are generally judicially noticeable. *See El-Attar v. Hollywood Presbyterian Med. Ctr.*, 56  
16 Cal. 4th 976, 989 (2013) (taking judicial notice of the hospital's model bylaws); *Masters v. San*  
17 *Bernadino Cnty Employees Ret. Ass'n*, 32 Cal. App. 4th 30, 35 n.1 (1995) (taking judicial notice  
18 of the defendant's Bylaws).

### 19 CONCLUSION

20 For the forgoing reasons, ICANN respectfully requests that the Court take judicial notice  
21 of Exhibits 1 through 5 to this Request for Judicial Notice.

22 Dated: January 22, 2021

Jones Day

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25 By:           /s/ Eric P. Enson            
Eric P. Enson

26 Attorneys for Defendant  
27 INTERNET CORPORATION FOR  
28 ASSIGNED NAMES AND NUMBERS