

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GARY KREMEN, ET AL.,) C-98-20718-JW
) C-06-2554-JW
PLAINTIFFS,)
) OCTOBER 23, 2006
V.)
)
OCEAN FUND)
INTERNATIONAL, LTD., ET) PAGES 1-52
AL.,)
)
DEFENDANTS.)
)
AND RELATED CASE.)

COPY

THE PROCEEDINGS WERE HELD BEFORE
THE HONORABLE UNITED STATES DISTRICT
JUDGE JAMES WARE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: KRONENBERGER HANLEY
BY: KARL S. KRONENBERGER
TERRI R. HANLEY
220 MONTGOMERY STREET
SUITE 1920
SAN FRANCISCO, CALIFORNIA 94104

IDELL & SEITEL
BY: RICHARD J. IDELL
465 CALIFORNIA STREET
SUITE 300
SAN FRANCISCO, CALIFORNIA 94104

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

A P P E A R A N C E S: (CONT'D)

FOR THE PLAINTIFFS: DILLON GERARDI
BY: TIMOTHY P. DILLON
4660 LA JOLLA VILLAGE DRIVE
SUITE 775
SAN DIEGO, CALIFORNIA 92122

FOR THE DEFENDANTS: MANATT, PHELPS & PHILLIPS
BY: STEPHEN M. RYAN
CHAD HUMMEL
JACK S. YEH
700 12TH STREET, N.W.
SUITE 1100
WASHINGTON, D.C. 20005

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1 SAN JOSE, CALIFORNIA OCTOBER 23, 2006

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE.

4 FOLLOWING PROCEEDINGS WERE HELD:)

00:00:00 5 THE CLERK: CALLING CASE NUMBER C-06-2554,
00:00:05 6 GARY KREMEN VERSUS AMERICAN REGISTRY FOR INTERNET
00:00:10 7 NUMBERS.

00:00:29 8 MR. RYAN: STEVE RYAN FROM THE MANATT LAW
00:00:32 9 FIRM ACCOMPANIED BY MR. HUMMEL AND MR. YEH ON
00:00:35 10 BEHALF OF DEFENDANT ARIN WHO IS THE MOVANT ON THE
00:00:38 11 MOTION TO, TO CHANGE THE 2001 ORDER.

00:00:42 12 THE COURT: GOOD MORNING.

00:00:43 13 MR. HUMMEL: GOOD MORNING, YOUR HONOR.

0 44 14 MR. YEH: GOOD MORNING, YOUR HONOR.

00:00:47 15 MR. KRONENBERGER: GOOD MORNING, YOUR HONOR.
00:00:49 16 KARL KRONENBERGER FOR GARY KREMEN AND ACCOMPANIED
00:00:52 17 BY MY COLLEAGUE TERRI HANLEY AND MR. IDELL, AND I'M
00:00:59 18 SORRY, AND MR. TIM DILLON.

00:01:01 19 THE COURT: VERY WELL. VERY WELL.

00:01:05 20 MR. RYAN, THIS IS YOUR CLIENT'S MOTION TO DISMISS.

00:01:08 21 MR. RYAN: YOUR HONOR, THERE ARE TWO
00:01:10 22 MOTIONS BEFORE THE COURT THIS MORNING. MR. HUMMEL
00:01:15 23 WILL BE ARGUING THE MOTION TO DISMISS.

00:01:17 24 WHAT I WOULD LIKE TO ADDRESS IS THE 2001
00:01:20 25 ORDER BECAUSE WE BELIEVE MANY OF THE ISSUES WILL

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FALL OUT IF YOU ADDRESS THAT ISSUE FIRST.

THE COURT: VERY WELL.

MR. RYAN: LET ME SAY WHY WE ARE SEEKING TO CHANGE THAT ORDER? FIRST OF ALL, IT WAS OBTAINED IN AN EX PARTE FASHION WHEN THERE WAS ABSOLUTELY NO EMERGENCY REASON TO DO SO.

DURING THE COURSE OF THE REPRESENTATIONS THAT WERE MADE TO THE COURT, THERE WERE, THERE WERE --

THE COURT: GO AHEAD.

MR. RYAN: THE AMERICAN REGISTRY OF INTERNET NUMBERS IS ESSENTIALLY THE REGISTRY WHERE ONE HAS TO GO TO OBTAIN IP ADDRESSES IN LARGE QUANTITIES. YOU CAN ALSO OBTAIN THEM FROM AN ISP.

SO, FOR EXAMPLE, SBC WOULD BE ABLE TO GIVE YOU NUMBERS AS WELL. BUT WITH REGARD TO THESE NET BLOCKS WE ISSUED THEM APPROPRIATELY TO MR. COHEN. WE HAD NOTHING TO DO WITH MR. KREMEN'S LAWSUIT.

WHEN THE COURT'S ORDER WAS ISSUED IT WAS PREMISED I BELIEVE BASED ON REPRESENTATIONS THAT MR. KREMEN MADE THAT WERE INCORRECT OR FALSE.

ONE OF THOSE REPRESENTATIONS IS THAT MR. KREMEN SAID IN HIS AFFIDAVIT, COHEN IS A SUPPORTER OF ARIN THAT MAKES VOLUNTARILY DONATIONS

00:02:40 1 TO ARIN. THAT'S SIMPLY NOT TRUE. EVERYBODY IS
00:02:43 2 REQUIRED TO SIGN A SERVICE AGREEMENT IF YOU WANT TO
00:02:45 3 GET ISSUED THE IP ORDERS AND THEY HAVE TO BE DONE
00:02:48 4 THAT WAY.

00:02:48 5 SO THE COURT EITHER RECEIVED
00:02:50 6 REPRESENTATIONS FROM MR. KREMEN THAT WERE EITHER
00:02:53 7 FALSE OR UNINTENTIONALLY MISLEADING.

00:02:55 8 IN ADDITION THE WAY WE WORK WITH THESE
00:02:58 9 RESOURCES, YOUR HONOR, WE ISSUE THEM PROPERLY TO
00:03:00 10 PEOPLE WHEN THEY SIGN AN AGREEMENT TO US.

00:03:02 11 WHEN THEY'RE DONE WITH THEM OR THE COURT
00:03:05 12 ORDERS US TO, TO CHANGE THAT, WE HAVE TO REVOKE
00:03:08 13 THEM FROM THE ONE PARTY AND THEN REISSUE THEM TO
00:03:11 14 THE NEXT PARTY. THEY AREN'T JUST TRANSFERRED FROM
00:03:14 15 ONE PARTY TO ANOTHER.

00:03:15 16 SO WHEN THE COURT IS BEING ASKED BY
00:03:17 17 MR. KREMEN IN AN EX PARTE WAY WAS ASKED TO REGISTER
00:03:21 18 THE RESOURCES TO MR. KREMEN, THAT'S NOT HOW WE DO
00:03:24 19 BUSINESS. IN ESSENCE WE GIVE THEM TO SOMEONE, WE
00:03:27 20 HAVE TO REVOKE THEM AND THEN REISSUE THEM.

00:03:29 21 THROUGHOUT THIS PROCESS WE HAVE BEEN
00:03:32 22 FULLY WILLING, EVEN THOUGH THE ORDER WAS DONE EX
00:03:35 23 PARTE, TO GIVE HIM THE RESOURCES.

00:03:37 24 HE HAS BEEN UNWILLING AND ABSOLUTELY
00:03:40 25 UNYIELDING IN HIS INTENTION NOT TO SIGN ANY OF THE

00:03:43 1 NECESSARY PAPERWORK THAT THE DEPARTMENT OF DEFENSE,
00:03:47 2 THE U.S. DEPARTMENT OF JUSTICE, ANY ISP LIKE
00:03:52 3 VERIZON OR SBC, ANY INDIVIDUAL, EVERYONE SINCE 1998
00:03:58 4 WHO HAS WANTED RESOURCES HAS BEEN ASKED TO SIGN AN
00:04:01 5 AGREEMENT SAYING THAT THEY WILL USE THE RESOURCES
00:04:03 6 PROPERLY, THAT THEY'LL PAY FOR THE SERVICES ON A
00:04:06 7 REGULAR BASIS AND IF THEY'RE MISUSED IT GIVES THE
00:04:10 8 COMMUNITY THE RIGHT TO RESOURCES. HE'S ABSOLUTELY
00:04:14 9 REFUSED. SO THE REASON THAT THE RESOURCES HAVE NOT
00:04:16 10 BEEN TRANSFERRED TO HIM IS SOLELY HIS OWN DOING.

00:04:21 11 WITH REGARD TO WHY THE COURT SHOULD
00:04:23 12 CHANGE THE ORDER IT'S IN ESSENCE A MISREADING OF
00:04:26 13 YOUR ORDER IN 2001 THAT HE DID NOT HAVE TO COMPLY
00:04:29 14 WITH ANY OF THE ACTIVITIES THAT A NORMAL APPLICANT
00:04:32 15 OR REGISTRANT WOULD DO.

00:04:33 16 WE BELIEVE THAT THE ONLY APPROPRIATE WAY
00:04:35 17 TO DEAL WITH THIS IS TO NOT GIVE HIM GREATER RIGHTS
00:04:38 18 THAN ANYONE ELSE IN THE INTERNET COMMUNITY. WHAT
00:04:41 19 HE'S ASKING FOR IS THAT WE TRANSFER THESE RIGHTS TO
00:04:44 20 HIM WITHOUT ANY SERVICE AGREEMENT, WITHOUT ANY DUTY
00:04:46 21 FOR HIM TO PAY IN THE FUTURE AND WITH HIS ABILITY
00:04:50 22 TO MISUSE THE RESOURCES IF HE CHOSE WITHOUT US
00:04:53 23 HAVING A CONTRACTUALLY BASED RIGHT IN THE SERVICE
00:04:55 24 AGREEMENT TO DEAL WITH THAT.

00:04:59 25 THE RESOURCES THAT WERE ISSUED, THERE'S

00:05:01 1 ABOUT 12,000 IP NUMBERS THAT ARE OUT AT AN ISP THAT
00:05:06 2 MAY WELL BE CONTROLLED BY MR. COHEN, BUT THERE ARE
00:05:09 3 THIRD PARTIES THAT ARE OBTAINING SERVICES FROM THAT
00:05:12 4 ISP.

00:05:13 5 WE HAVE SAID ALL ALONG THAT CHANGING THE
00:05:16 6 REGISTRATION AND PERHAPS SHUTTING THAT DOWN MAY NOT
00:05:18 7 BE THE APPROPRIATE WAY AND WE WANTED TO MAKE SURE
00:05:21 8 THAT THE COURT IS AWARE THAT THERE IS A POSSIBILITY
00:05:23 9 OF THREE PARTY HARM THAT PEOPLE COULD SUE ARIN, FOR
00:05:26 10 EXAMPLE, BECAUSE THE COURT DIDN'T ORDER THE, THE
00:05:29 11 RESOURCES REVOKED. IT'S NOT CLEAR THAT WE HAVE THE
00:05:32 12 RIGHT TO REVOKE BASED ON THE COURT'S ORDER.

00:05:35 13 WE WOULD LIKE THE COURT'S ORDER TO BE
00:05:36 14 AMENDED TO SHOW THAT WE HAVE THE RIGHT TO REVOKE
00:05:39 15 THOSE RESOURCES WHICH WE BELIEVE IS CONSISTENT WITH
00:05:42 16 THE INTENT OF YOUR ORDER BUT WASN'T SPELLED OUT AND
00:05:44 17 IN PART BECAUSE WE WEREN'T A PARTY.

00:05:46 18 ARIN POTENTIALLY, BY THE WAY, COULD BE
00:05:50 19 HARMED IN EFFECT BY, BY THE INABILITY OF OURSELVES
00:05:54 20 TO, TO MAINTAIN THE UNIQUENESS OF THOSE IP NUMBERS.

00:05:59 21 SO, FOR EXAMPLE, IF WE WERE TO REGISTER
00:06:01 22 THEM AS THE COURT ORDER SAID TO MR. KREMEN, HE
00:06:04 23 COULD BE BEGIN USING THOSE NUMBERS WHILE SOMEONE
00:06:06 24 ELSE IS USING THOSE NUMBERS. THAT'S EXACTLY WHAT
00:06:09 25 OUR JOB IS TO PREVENT. IT'S TO GRANT UNIQUE,

00:06:13 1 UNIQUE NUMBERS TO EACH PARTY FOR THE PERIOD THAT
00:06:16 2 THEY'RE ENTITLED TO USE THEM.

00:06:18 3 WHEN THEY'RE NOT ENTITLED TO USE THEM WE
00:06:21 4 BRING THEM BACK AND PUT THEM BACK IN THE TREASURY
00:06:24 5 AND RE-ISSUE THEM TO THE NEXT PARTY.

00:06:27 6 THE COURT: WHAT DO YOU DO IF THERE'S A
00:06:28 7 CONFLICT?

00:06:29 8 MR. RYAN: THERE'S NO CONFLICT FROM OUR
00:06:31 9 PROCESS. WE ARE THE "WHO IS" DIRECTORY. WHEN WE
00:06:34 10 PUBLISH SOMETHING, THIS IS THE AUTHORITATIVE LIST
00:06:37 11 OF WHO HAS THE RIGHT TO THOSE RESOURCES.

00:06:39 12 THE COURT: THE PEOPLE, THE THIRD PARTIES
00:06:41 13 YOU'RE NOW TELLING ME ABOUT, HOW DID THEY COME
00:06:44 14 TO -- THROUGH WHOM DID THEY OBTAIN RIGHTS?

00:06:47 15 MR. RYAN: SO WHEN WE ISSUED THE ORIGINAL
00:06:49 16 RESOURCES TO COHEN OR TO A COHEN ASSOCIATED ENTITY,
00:06:53 17 THEY THEN WOULD USE THOSE RESOURCES TO PROVIDE AN
00:06:56 18 INDIVIDUAL, SAY A STUDENT, OR, OR A BUSINESS WITH
00:07:00 19 THOSE, WITH THOSE NUMBERS TO DO BUSINESS WITH THEIR
00:07:03 20 ISP.

00:07:04 21 THE COURT: YOU'RE GIVING ME THAT AS A
00:07:07 22 HYPOTHETICAL BUT CAN YOU TRACE THROUGH NOW TO KNOW
00:07:10 23 EXACTLY WHO THE THIRD PARTIES ARE?

00:07:13 24 MR. RYAN: NO, WE DO NOT HAVE SUFFICIENT
00:07:14 25 RECORDS TO KNOW WHO THOSE THIRD PARTIES ARE. WE

00:07:17 1 SIMPLY BELIEVE. AND WE KNOW MR. KREMEN HAS BEEN IN
00:07:20 2 TOUCH WITH THOSE PEOPLE THAT CONTROL THE ISP FAR
00:07:23 3 MORE THAN WE HAVE BUT THE ISP HAS MADE
00:07:25 4 REPRESENTATIONS TO US THAT THEY ARE THIRD PARTIES
00:07:28 5 SO THEY WOULD BE HARMED. WE DON'T CARE SO AS LONG
00:07:31 6 AS THE COURT ORDERS US TO REVOKE THAT.

00:07:33 7 WE WANTED TO POINT OUT THE EQUITIES THAT
00:07:35 8 THERE ARE THIRD PARTIES INVOLVED BUT WE DON'T
00:07:37 9 REALLY WANT TO STAND BETWEEN MR. KREMEN AND
00:07:40 10 MR. COHEN. WE NEVER WANTED TO BE THERE.

00:07:42 11 WE WANT TO GIVE THOSE RESOURCES, AS THE
00:07:45 12 COURT WANTED US TO, TO HIM, BUT ONLY AFTER, AFTER
00:07:48 13 HE SIGNS AN AGREEMENT THAT SAYS HE'LL USE THEM
00:07:51 14 PROPERLY AND HE'LL BE GOVERNED BY THE RULES OF THE
00:07:54 15 COMMUNITY IN THE SAME WAY AS EVERYONE ELSE.

00:07:56 16 THE COURT: VERY WELL. LET ME INTERRUPT
00:07:58 17 WHATEVER COMMENTS YOU'RE GOING TO MAKE AND HEAR
00:08:00 18 FROM YOUR OPPONENT.

00:08:05 19 MR. IDELL: GOOD MORNING, YOUR HONOR. I
00:08:13 20 WANT TO START THIS DISCUSSION OFF BY APPROACHING IT
00:08:16 21 IN A MUCH SIMPLER WAY. YOU KNOW, YOUR HONOR, IN
00:08:20 22 THE FIVE YEARS OR SO THAT WE HAVE COME BEFORE YOU
00:08:24 23 ON A NUMBER OF DIFFERENT PROPERTY ISSUES, THE ISSUE
00:08:27 24 HAS ALWAYS BEEN THE SAME, THERE'S A JUDGMENT
00:08:31 25 PROVIDES FOR A CONSTRUCTIVE TRUST OVER PROPERTY

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THAT COHEN HAD. THIS ORDER IS NO DIFFERENT THAN ANY OF THOSE.

IT'S NOT COMPLICATED. IT'S VERY SIMPLE. IT'S UNDISPUTED THAT, THAT COHEN, SANDMAN, PACNET, THE LATTER COMPANY BEING ONE THAT IT TOOK US A WHILE TO FIGURE OUT HOW WE COULD PROVE THE ALTER EGO STATUS BUT NOW HAS BEEN SHOWN THESE ARE ALL COMPANIES THAT OBTAINED THESE RESOURCES FROM ARIN.

INTERESTINGLY, YOUR HONOR, THE STATEMENT HAS BEEN MADE IN THE REPLY THAT KREMEN FOR THE FIRST TIME IS COMING FORWARD AND SAYING HE'LL STEP IN THE SHOES OF MR. COHEN. THAT'S NOT AT ALL TRUE. WE HAVE BEEN SAYING THAT SINCE DAY ONE. WE SAID THAT THE FIRST DAY WE CAME IN HERE ON SEPTEMBER 17TH AND ASKED YOUR HONOR TO MAKE AN ORDER THAT THEY REREGISTER THESE. THAT'S ALL WE EVER ASKED FOR.

WE FILED OUR OPPOSITION TO THIS MOTION AFTER, AFTER NOT ONE BUT TWO SUBPOENAS HAVE BEEN ISSUED ON ARIN.

IN, IN NEITHER OF THE PRODUCTIONS THEY NEVER PRODUCED IN RESPONSE TO THOSE SUBPOENAS THESE CONTRACTS WHICH THEY GAVE US TWO DAYS AFTER WE FILED OUR OPPOSITION. AND NOW THEY -- AND IT'S VERY CURIOUS THAT THEY DIDN'T PRODUCE THOSE

00:09:49 1 CONTRACTS BUT, BUT IT'S PERHAPS ANSWERED IN THE
00:09:52 2 FACT THAT THOSE CONTRACTS DON'T EVEN DESIGNATE WHAT
00:09:56 3 RESOURCES THEY APPLY TO.

00:09:58 4 BUT NOW WE KNOW THIS CONTRACT BECAUSE
00:10:00 5 THEY HAVE GIVEN THEM TO US AND THEY SAY THAT THESE
00:10:02 6 ARE CONTRACTS THAT APPLY IN SOME WAY. THEY SAY WE
00:10:06 7 CAN FIGURE OUT, IF YOU LOOK AT MR. -- IF I'M
00:10:10 8 PRONOUNCING HIS NAME CORRECTLY -- MR. ZLAK'S
00:10:13 9 DECLARATION HE SAYS WE CAN FIGURE OUT WHICH
00:10:15 10 RESOURCES WERE COVERED BY THIS CONTRACT. I CAN'T
00:10:18 11 FIGURE IT OUT. NO ONE ELSE FROM THIS LEGAL TEAM
00:10:21 12 CAN FIGURE IT OUT. IT'S NOT EVEN CLEAR FROM THE
00:10:24 13 DECLARATION.

00:10:24 14 THE COURT: LET'S GO BACK TO YOUR
00:10:26 15 STATEMENT ABOUT THAT THERE IS A CONFLICT, AS I
00:10:29 16 HEARD IT, BETWEEN THE POSITION OF ARIN AND THE
00:10:35 17 PLAINTIFF HERE OR, OR WITH RESPECT TO, WITH RESPECT
00:10:37 18 TO WHETHER OR NOT YOU HAD, YOU HAD INDICATED YOUR
00:10:40 19 WILLINGNESS TO SIGN WHATEVER THEY TENDERED TO YOU
00:10:43 20 TO SIGN FOR PURPOSES OF, OF TRANSFER. HOW DO I
00:10:48 21 RESOLVE THAT CONFLICT? IS THERE SOME DOCUMENT THAT
00:10:51 22 I CAN LOOK AT THAT WILL TELL ME WHETHER THE OFFER
00:10:53 23 WAS MADE AND REJECTED OR WHETHER IT WAS ACCEPTED?

00:10:56 24 MR. IDELL: YOUR HONOR, THAT'S A
00:10:57 25 DIFFERENT ISSUE. WHAT I SAID WAS --

00:10:59 1 THE COURT: THAT'S THE ISSUE I'M ASKING
00:11:00 2 ABOUT. THAT'S THE ISSUE I WANT TO KNOW ABOUT. IS
00:11:03 3 THERE A PLACE THAT I CAN LOOK TO FIND THE ANSWER TO
00:11:05 4 THAT?

00:11:06 5 MR. IDELL: TO FIND THE ANSWER AS TO
00:11:09 6 WHETHER OR NOT MR. KREMEN WOULD SIGN AN AGREEMENT;
00:11:12 7 IS THAT THE QUESTION?

00:11:13 8 THE COURT: SIGN WHATEVER AND INDICATED
00:11:15 9 IT NEEDED TO HAVE SIGNED IN ORDER TO, TO TRANSFER
00:11:21 10 TO MR. KREMEN WHAT, WHAT WAS ON ITS BOOKS BELONGING
00:11:24 11 TO MR. COHEN.

00:11:27 12 MR. IDELL: THEY HAD NEVER PRESENTED US
00:11:33 13 WITH ANY DOCUMENT WHICH THEY SAID THAT IF YOU SIGN
00:11:35 14 THIS DOCUMENT THEN, THEN YOU WILL BE IN THE SHOES
00:11:39 15 OF MR. COHEN.

00:11:44 16 HOWEVER, YOUR HONOR, THEY WOULD NEED TO
00:11:47 17 DO THAT BECAUSE IF THEY HAD VALID CONTRACTS WITH
00:11:50 18 MR. COHEN AND PACNET AND THESE OTHER COMPANIES THEN
00:11:55 19 BY REGISTERING THESE BLOCKED NUMBERS AND ASN
00:11:59 20 NUMBERS IN MR. KREMEN'S NAME, MR. KREMEN IS BOUND
00:12:02 21 BY WHATEVER CONTRACT COHEN IS BOUND BY.

00:12:05 22 THE COURT: AND HOW DOES ONE REGISTER?

00:12:07 23 MR. IDELL: THEY HAVE THE ABILITY, YOUR
00:12:09 24 HONOR, TO CHANGE THE RECORD OF WHO, OF WHO CONTROLS
00:12:14 25 THESE NET BLOCK NUMBERS AND AS NUMBERS. THEY DO

00:12:18 1 THAT THROUGH AN ELECTRONIC PROCESS. IT'S VERY
00:12:21 2 SIMILAR TO WHAT HAPPENS IN THE DOMAIN NAME CONTEXT
00:12:24 3 IN TERMS OF MAKING AN ELECTRONIC ENTRY.

00:12:27 4 MR. RYAN STATED TO YOU IN HIS BRIEF
00:12:30 5 PRESENTATION THAT THEY HAVE TO TAKE THE RESOURCES
00:12:33 6 BACK AND REISSUE THEM. IT SOUNDS LIKE THEY'RE
00:12:38 7 DOING SOMETHING BUT THEY'RE NOT. ALL THEY'RE DOING
00:12:40 8 IS FLIPPING A SWITCH, AN ELECTRONIC SWITCH,
00:12:44 9 CHANGING A NAME FROM JONES TO SMITH. THAT'S ALL IT
00:12:47 10 IS.

00:12:47 11 MY POINT, YOUR HONOR, IS THAT THEY, THEY
00:12:51 12 HAVE BEEN IN AN EVOLVING PROCESS. THEY HAVE THIS
00:12:56 13 LONG HISTORY OF HOW THEY GOT THEIR POWERS, TO THE
00:12:59 14 EXTENT THAT THEY HAVE ANY, WHICH IS ANOTHER ISSUE
00:13:01 15 THAT WE CAN GET INTO INVOLVING THE OTHER MOTION.

00:13:05 16 BUT THERE'S A LONG HISTORY AS TO HOW THEY
00:13:08 17 GOT THEIR POWERS AND HOW THEY DEVELOPED THEIR
00:13:11 18 SYSTEMS AND ALONG THE WAY THERE WERE CERTAIN
00:13:13 19 RESOURCES THAT WERE ISSUED BEFORE THEY EVER CAME
00:13:15 20 INTO THE PICTURE WHICH ARE NOT REGULATED BY THESE
00:13:18 21 CONTRACTS. THAT'S THE SO CALLED LEGACY RESOURCES
00:13:21 22 WHICH APPARENTLY MR. COHEN HAS SOME OF THOSE.
00:13:24 23 THOSE ARE THE ONES THAT THEY SAY WE DON'T CONTROL.
00:13:27 24 THOSE ARE WITH UUNET.

00:13:30 25 BUT AS TO THE ONES THEY DO CONTROL

00:13:33 1 THEY'VE NOW COME FORWARD AND SAID, YES, THEY ARE
00:13:35 2 CONTRACTS AND WHAT WE'RE SAYING IS THAT WE DON'T
00:13:37 3 HAVE TO SIGN ANYTHING, WE DON'T HAVE TO SIGN
00:13:39 4 ANYTHING NEW. WE JUST HAVE TO STEP INTO THE SHOES
00:13:42 5 THAT COHEN HAD BUT WE WANT TO BE BOUND BY WHATEVER
00:13:45 6 COHEN WAS BOUND BY AND THEN THEY HAVE TO COME TO US
00:13:48 7 AND SAY HERE'S WHAT COHEN IS BOUND BY.

00:13:51 8 THAT'S NOT COMPLICATED AND IT DOESN'T
00:13:54 9 MODIFY THE ORDER AND, IN FACT, IT MIGHT INVOKE A
00:13:59 10 CLARIFICATION THAT IN REREGISTERING KREMEN STEPS
00:14:03 11 INTO THE SHOES BUT THAT'S THE WHOLE NATURE OF
00:14:04 12 CONSTRUCTIVE TRUST. YOU WOULDN'T HAVE TO DO
00:14:06 13 ANYTHING MORE THAN THAT. THAT WOULD SOLVE THE
00:14:08 14 ISSUE.

00:14:09 15 THE COURT: I'M NOT SURE ON WHOSE SIDE
00:14:13 16 THIS CUTS BUT MY FIRST CONCERN IS THAT THIS IS A
00:14:15 17 PROBLEM WHICH EXISTED FOR AS LONG AS IT DID WITHOUT
00:14:17 18 COMING BACK HERE AND ALERTING ME TO IT.

00:14:20 19 I DON'T KEEP AS CLOSE A WATCH ON, ON MY
00:14:24 20 ORDERS AS, AS I WOULD WISH TO BECAUSE, BECAUSE IT'S
00:14:30 21 A BUSY COURT.

00:14:31 22 I DO RECALL HAVING, HAVING A SERIES OF,
00:14:34 23 OF PROPOSED ORDERS PRESENTED TO ME WITH RESPECT TO
00:14:37 24 MR. COHEN'S ACTIVITIES AND BEING WILLING, UNDER THE
00:14:40 25 CIRCUMSTANCES, TO, TO SIGN ORDERS REQUIRING VARIOUS

00:14:45 1 OF HIS ASSETS TO BE SURRENDERED TO, TO MR. KREMEN.
00:14:51 2 AND, AND BECAUSE OFTEN THERE IS NO OPPOSITION.

00:14:54 3 SO IF THIS HAD BEEN PRESENTED TO ME AS A
00:14:59 4 PROBLEM EARLY ON, IT WOULD HAVE GIVEN ME AN
00:15:03 5 OPPORTUNITY TO COMMENT ON IT.

00:15:04 6 HEARING WHAT I'M HEARING NOW, I GUESS I
00:15:09 7 NEED TO HEAR MORE FROM BOTH SIDES AS TO WHAT IT IS
00:15:16 8 YOU NEED THE COURT TO DO.

00:15:17 9 I DO NOT WANT THE REGISTRAR HERE, ARIN,
00:15:23 10 TO DO ANYTHING OTHER THAN TO COMPLY WITH, WITH
00:15:26 11 WHATEVER THE LAW REQUIRES TO MAKE THE TRANSFER.

00:15:28 12 IT'S, IT'S BEEN THROUGH THIS CASE THAT I
00:15:33 13 HAVE BEEN EDUCATED A LITTLE BIT ABOUT THE NATURE OF
00:15:39 14 DOMAIN NAMES AND EVEN THIS IS EARLIER FOR THE COURT
00:15:50 15 I HAVE BEEN. IF THIS IS A DEED TO PROPERTY AND
00:15:54 16 SOMEONE HAS SOMEHOW MISCONVEYED A DEED OR ORDERING
00:16:01 17 THE PROPERTY BE TRANSFERRED, THERE'S A DOCUMENTARY
00:16:04 18 PROCESS THAT HAS TO FOLLOW THAT. I WAS NOT
00:16:07 19 INTENDING BY MY ORDER TO, TO EXCUSE EITHER SIDE
00:16:10 20 FROM HAVING TO GO THROUGH WHATEVER PROCESS IS
00:16:13 21 REQUIRED TO MAKE A PROPER TRANSFER.

00:16:15 22 AND I WAS NOT INTENDING TO EXCUSE
00:16:18 23 MR. KREMEN FROM SIGNING WHATEVER, WHATEVER DOCUMENT
00:16:22 24 IS REQUIRED BY THE REGISTRAR TO HAVE THESE NAMES
00:16:26 25 AND TO COMPLY WITH THE LAW IF THAT'S WHAT EVERYBODY

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ELSE DID. I WAS NOT TRYING TO EXEMPT HIM FROM THAT.

NOTHING IN MY ORDER CONTAINS ANY KIND OF EXEMPTION AND THE DETAIL OF MY ORDER IS MERELY A REFLECTION OF WHAT I WAS ASKED FOR WITHOUT OPPOSITION AND SO IF THERE HAD BEEN OPPOSITION EXPLAINING TO ME HOW TO SHAPE THE ORDER, I MIGHT HAVE SHAPED IT DIFFERENTLY.

SO WHAT I SEE THE JOB BEFORE THE COURT TODAY IS TO FIGURE OUT HOW TO DO THIS IN A WAY THAT ACCOMPLISHES MY MAIN GOAL, NAMELY, TO HAVE MY ORDER OBEYED; AND YOUR MAIN GOAL, WHICH IS TO GET THE ASSET TRANSFER TO YOUR CLIENT; AND ARIN'S MAIN GOAL, WHICH IS TO HAVE IT TRANSFERRED IN A FASHION WHICH ALLOWS IT TO CARRY OUT ITS MANDATE TO HAVE IT ISSUED UNDER CERTAIN RULES AND REGULATIONS.

ALL OF THOSE I DON'T BELIEVE ARE IN ANY WAY IRRECONCILABLE. AND SO WE CAN PULL ALL OF THIS TOGETHER.

SO WHAT I NEED TO HEAR IS WHAT LANGUAGE YOU ALL WOULD, WOULD SUGGEST TO ME WHICH, WHICH CARRY THAT FORWARD AND IF YOU HEAR LANGUAGE FROM THEM OR THEY HEAR LANGUAGE FROM YOU THAT IS INCONSISTENT WITH THAT, TELL ME WHAT IT IS AND I CAN RESOLVE THAT CONFLICT. SO TAKE IT THAT WAY AND

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SEE WHERE WE COME OUT.

MR. IDELL: AND THAT'S EXACTLY HOW WE ARE APPROACHING IT, YOUR HONOR. OUR SUGGESTION WOULD BE SIMPLE. OUR SUGGESTION WOULD BE THAT THE LANGUAGE WOULD BE THAT MR. KREMEN WOULD FOLLOW AND BE BOUND BY WHATEVER CONTRACTS EXISTED WITH COHEN AND HIS ENTITIES WITH RESPECT TO, TO THE NET BLOCK NUMBERS AND AS NUMBERS THAT ARE AT ISSUE.

THE COURT: FOLLOW AND BE BOUND BY. SO YOU'RE QUESTIONING THAT HE NOT SIGN ANY DOCUMENT?

MR. IDELL: WOULDN'T BE REQUIRED, YOUR HONOR. NOT ONLY THAT, YOUR HONOR, WE COULDN'T RESOLVE THAT TODAY.

THE COURT: HOW DO I KNOW HE'S BOUND BY IT?

MR. IDELL: WELL, YOUR HONOR, THEY'RE THE ONES THAT ISSUED THE CONTRACTS AND IF YOU LOOK AT MR. ZLAK'S DECLARATION THERE ARE FIVE NUMBERS --

THE COURT: HOW WOULD I KNOW THAT MR. KREMEN IS BOUND BY THE CONTRACT?

MR. IDELL: WELL, YOUR HONOR, HOW WOULD YOU KNOW THAT HE'S BOUND BY THE CONTRACT? MR. COHEN AND/OR HIS ENTITY SIGNED THE CONTRACTS.

THE COURT: HOW DO I KNOW THAT MR. KREMEN IS BOUND BY IT?

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MR. IDELL: BECAUSE HE WOULD BE TAKING THIS REGISTRATION SUBJECT TO THE ORDER WHICH WOULD SAY SO.

THE COURT: HOW DO I KNOW THAT HE -- IF I CALL HIM IN AND I SAY YOU HAVE TO FOLLOW THIS ORDER, WHAT DO I HAVE TO PROVE THAT?

MR. IDELL: IF I MAY BY EXAMPLE, YOUR HONOR GAVE AN ORDER AFTER TRIAL THAT MR. KREMEN BE ENTITLED TO THE PROPERTY IN SAN DIEGO. THE PROPERTY IN SAN DIEGO CARRIES WITH IT COVENANTS AND RESTRICTIONS, IT CARRIES WITH IT A HOMEOWNER'S ASSOCIATION THAT YOU HAVE TO BE BOUND BY THE RULES. ALL OF THAT FOLLOWS THE FORM. YOU GET THE PROPERTY AND THEN THERE ARE RULES AND REGULATIONS THAT FOLLOW ITS USE.

THE SAME IS TRUE OF THE PROPERTY THAT YOU SIGNED OVER WITH REGARD TO THE FACILITY IN SAN DIEGO. YOU SAID MR. KREMEN IS ENTITLED TO THE PROPERTY, THERE WAS A LEASE IN PLACE, THERE WERE RULES AND REGULATIONS AND IT FOLLOWS THE FORM.

THE SAME THING IS TRUE WITH ALL OF THESE DOMAINS THAT WERE SIGNED OVER.

THE COURT: WELL, BUT, ALL RIGHT. SO IT'S LIKE A COVENANT THAT RUNS WITH THE LAND SO HE'S BOUND BY WHATEVER ARE THE CURRENT

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RESTRICTIONS.

MR. IDELL: NOT THE CURRENT RESTRICTIONS.
WHATEVER MR. COHEN WAS BOUND BY.

THE COURT: IF IT RUNS WITH THE LAND, AS
THE HOMEOWNER ASSOCIATION CHANGES THE RULES, IT
APPLIES TO EVERYONE. IF THE HOMEOWNERS ASSOCIATION
SAYS WE NOW CHANGED THE RULES AND YOU CAN'T HAVE
EIGHT-FOOT FENCES AND SOMEONE TAKES THE PROPERTY,
CAN THEY HAVE A SIX-FOOT FENCE OR ARE THEY
RESTRICTED TO EIGHT?

MR. IDELL: THE ANSWER IS AT THE TIME
THAT COHEN GOT IT FROM ARIN, IF THE AGREEMENT
PROVIDES THAT THEY CAN CHANGE THE RULES, THEN THEY
CAN CHANGE THE RULES. IF IT DOESN'T SAY THAT THEN
THEY CAN'T.

THE COURT: ALL RIGHT. SO WHAT IS YOUR
OBJECTION TO HIS SIGNING? I DON'T UNDERSTAND THE
OBJECTION.

MR. IDELL: BECAUSE WHAT THEY PRESENTED
TO MR. COHEN, WITHOUT GOING INTO THE LENGTHY
PROCESS OF NEGOTIATION AND THERE IS AN ISSUE AS TO
WHY IT TOOK THEM SO LONG TO COME INTO THIS COURT.
BUT AT THE LENGTHY PROCESS THEY NEVER REPRESENTED
MR. KREMEN UNTIL THE REPLY TO THESE PROCEEDINGS
WHICH CAME AFTER OUR OPPOSITION AND SUPPLEMENTAL

00:20:50 1 OPPOSITION, THEY NEVER ONCE CAME FORWARD AND SAID,
00:20:54 2 SAID HERE ARE THE CONTRACTS THAT COHEN HAS, YOU'RE
00:20:56 3 BOUND BY THIS.

00:20:57 4 THE COURT: SO THE ONLY REASON THEY
00:20:59 5 DIDN'T SIGN IS THAT BECAUSE HE DIDN'T COME FORWARD
00:21:01 6 WITH WHAT THEY --

00:21:04 7 MR. IDELL: THEY'RE ASKING HIM TO SIGN
00:21:06 8 WHAT THE CURRENT AGREEMENT IS.

00:21:08 9 THE COURT: THE REASON TO SIGN IS IT'S
00:21:11 10 CURRENT. YOU'RE WILLING TO SIGN SOMETHING BUT NOT
00:21:13 11 THAT.

00:21:13 12 MR. IDELL: HE'S WILLING TO SIGN AN
00:21:15 13 ACKNOWLEDGEMENT THAT THIS IS THE COHEN CONTRACT,
00:21:17 14 AND ONCE THEY PROVE TO US THAT, THAT THEY, IN FACT,
00:21:21 15 HAVE A CONTRACT WITH COHEN AND IT APPLIES TO THESE
00:21:24 16 ASN NUMBERS WHAT I STARTED TO SAY A FEW MOMENTS
00:21:27 17 AGO, YOUR HONOR, IS THAT WE CAN'T FIGURE OUT TODAY,
00:21:29 18 ABSENT SOME SHOWING BY THE OTHER SIDE, THAT, IN
00:21:32 19 FACT, THESE CONTRACTS THAT THEY HAVE APPLY TO THESE
00:21:36 20 RESOURCES BECAUSE YOU CAN'T TRACE THEM. THEY DON'T
00:21:38 21 SAY ON THEM, THIS IS THE CONTRACT FOR THIS, FOR
00:21:41 22 THIS NET BLOCK NUMBER OR THIS IS THE CONTRACT FOR
00:21:43 23 THIS AS NUMBER.

00:21:45 24 THE COURT: AND WHAT IS THE HARM TO
00:21:46 25 MR. KREMEN IF THEY HAVE TO SIGN THE CURRENT

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RESTRICTION?

MR. IDELL: BECAUSE HE WOULD BE AGREEING TO MORE THAN COHEN AGREED TO AND THAT WOULD NOT BE CONSISTENT WITH THE JUDGMENT OF CONSTRUCTIVE TRUST. HE SHOULDN'T BE REQUIRED TO HAVE LIMITATIONS THAT WERE NOT IMPOSED BY COHEN.

THE COURT: AND IS THAT THE ONLY REASON?

MR. IDELL: THAT'S THE REASON, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU.

LET ME GO BACK OVER HERE, AND I KNOW I'M SHORT OF TIME OR OUT OF TIME.

WHAT IS IT YOU WANT THE COURT TO DO THAT WOULD PROTECT YOUR CLIENT.

MR. RYAN: ABSOLUTELY. FIRST OF ALL, WE HAVE GIVEN YOU A FORM OF ORDER THAT I WOULD LIKE YOU TO REVIEW TODAY. WE WOULD LIKE YOU TO SIGN THE FORM OF ORDER TO MODIFY THE ORDER.

THE COURT: PASS IT UP.

MR. RYAN: THANK YOU VERY MUCH. THIS IS IDENTICAL TO THE ONE WITH OUR ORIGINAL PLEADING.

SECOND, I'M GOING TO HAND UP TO THE COURT AN EXACT DUPLICATE OF THE RSA THAT WAS SIGNED BY MR. COHEN FOR THE FIRST PIECE OF PROPERTY. NOW, THE RSA'S CHANGE OVER TIME JUST LIKE SOFTWARE

00:22:46 1 LICENSES DO. WE DON'T CARE WHICH ONE HE SIGNS. HE
00:22:49 2 CAN SIGN THE ONE THAT WAS THE FIRST ONE THAT COHEN
00:22:52 3 AND HIS ASSOCIATE SIGNED. THEY CAN SIGN THE SECOND
00:22:55 4 VERSION THAT WAS EXTANT ON SOME OF THE LATER GIVEN
00:23:02 5 IP SOURCES OR THEY CAN SIGN TODAY. I, FRANKLY,
00:23:05 6 DON'T CARE.

00:23:05 7 THE COURT: WHY DON'T YOU CARE?

00:23:07 8 MR. RYAN: I DON'T CARE BECAUSE WHILE
00:23:09 9 THE, WHILE THE, THE RSA HAS EVOLVED, THIS HAS BEEN
00:23:14 10 TOTALLY OF THEIR MAKING THAT THEY WON'T SIGN
00:23:16 11 ANYTHING. THEY WON'T SIGN ANY PAPERWORK.

00:23:18 12 THE COURT: YOU'VE GOT ME NOW.

00:23:20 13 MR. RYAN: I UNDERSTAND.

00:23:21 14 THE COURT: WHY DON'T YOU CARE?

00:23:21 15 MR. RYAN: I DO ACTUALLY.

00:23:22 16 THE COURT: IS IT SIGNIFICANT BETWEEN
00:23:25 17 THESE?

00:23:25 18 MR. RYAN: NO, IT IS SIGNIFICANT. AS THE
00:23:27 19 INTERNET COMMUNITY CHANGES, RSA 9, WHICH IS OUR
00:23:31 20 CURRENT VERSION, WOULD GOVERN ANYONE WHO CAME TO US
00:23:34 21 TODAY AND WE HAVE PROVIDED THE COURT WITH A COPY OF
00:23:36 22 RSA 9.

00:23:38 23 WE, WE REALLY JUST WANT TO RESOLVE THE
00:23:41 24 ISSUE. IT WOULD BE MORE APPROPRIATE GIVEN THAT
00:23:43 25 THEY'RE GETTING THE RESOURCES TODAY TO SIGN RSA 9.

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THE COURT: DO YOU HAVE REGISTRANTS NOW WHO ARE AT VARIOUS STAGES OF PROTECTION OR RESTRICTION?

MR. RYAN: WE HAVE 11,500 DIFFERENT ENTITIES THAT HAVE GOTTEN RESOURCES OVER TIME THAT ARE GOVERNED HISTORICALLY BY THE DIFFERENT AGREEMENTS.

THE COURT: SO THEY'RE USED TO THAT?

MR. RYAN: THEY'RE USED TO THAT.

THE COURT: SO WHAT DO YOU DO, LOOK UP EACH ONE?

MR. RYAN: THAT'S RIGHT, THAT'S RIGHT. AND SO IN TRUTH, YOUR HONOR, AGAIN, I'M TRYING TO PROVE TO THE COURT THAT THE FLEXIBLE PARTY HERE, THE PARTY THAT IS SEEKING RESOLUTION IS US, WHETHER IT'S RSA 2, 3, OR 9, I DON'T CARE. IN FACT, I HAVE A BLANK ONE SIGNED BY MY CFO RIGHT HERE IN COURT. MR. KREMEN IS IN COURT. HE CAN SIGN IT RIGHT NOW, AND I CAN LEAVE THE COURTROOM TODAY AND GO HOME AND TRANSFER THESE RECOURSES.

NOW, THE OTHER COROLLARY THAT WE DO WANT YOU TO ORDER THE REVOCATION OF THOSE RESOURCES.

THE COURT: I HEARD THAT.

MR. RYAN: ALL RIGHT. NOW, WITH REGARD TO THE LEGACY PORTION, THAT PORTION THAT WAS

00:24:46 1 GRANTED THERE WAS A MAN NAMED JOHN POSTELLE WHO
00:24:50 2 INVENTED THE INTERNET AND HE HAD A NOTEBOOK ON HIS
00:24:53 3 DESK AND AT THE BEGINNING OF THE INTERNET HE WROTE
00:24:57 4 DOWN SOME OF THOSE THINGS, MR. KREMEN GOT SOME OF
00:24:59 5 THAT SPACE, SO DID UUNET AND PART OF WHAT WE ASK TO
00:25:04 6 BE TRANSFERRED IS THE UUNET AND THIS ORDER SAYS WE
00:25:09 7 CAN'T DO THAT AND IN THE SAME WAY I CAN'T TAKE BACK
00:25:13 8 FROM MR. KREMEN HIS LEGACY ADDRESS SPACE, I
00:25:16 9 SIMILARLY HAVE NO CONTRACTUAL SERVICE AGREEMENT
00:25:19 10 AUTHORITY TO TAKE BACK THAT SMALL PORTION THAT
00:25:22 11 UUNET HAS. THEY CAN PURSUE UUNET FOR THAT.

00:25:27 12 NOW, THE LAST PORTION IN THE ORDER IS THE
00:25:29 13 ONE ASN THAT HAS BEEN TRANSFERRED IT WAS IN MEXICO.
00:25:33 14 WE TRANSFERRED IT IN 2002. THAT WAS PERFECTLY
00:25:36 15 APPROPRIATE BECAUSE IT WAS ONLY IN DECEMBER OF
00:25:38 16 2003, NOT WHEN THE COURT ISSUED ITS ORIGINAL ORDER
00:25:43 17 THAT THEY SOUGHT TO ENFORCE AGAINST US, THAT THEY
00:25:46 18 SOUGHT TO HAVE THAT ORDER, AND I HAVE THE DOCUMENT
00:25:49 19 RIGHT HERE TO SHOW THAT.

00:25:50 20 IT IS A LETTER SENT BY MR. IDELL. IT'S
00:25:53 21 DATED NOVEMBER 2003 AND IT SAYS THAT THEY'RE GOING
00:25:56 22 TO SEEK TO ENFORCE YOUR 2001 ORDER.

00:25:59 23 SO IN 2002, WE TRANSFERRED THINGS TO
00:26:02 24 MEXICO. THAT WAS PERFECTLY APPROPRIATE.

00:26:04 25 NOW, THERE'S TWO THINGS WE CAN DO. WE

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ARE AGAIN THE PARTY THAT WANTS TO RESOLVE THINGS.
I'LL GIVE THEM A NEW ASN, A NUMBER THAT IS A UNIQUE IDENTIFIER. IT WON'T BE THE ONE THAT COHEN HAD OR I'LL ASK MY BROTHER IN LATIN AMERICA TO SEE IF THEY WILL RETURN IT VOLUNTARILY TO THE COURT WHICH I CAN DO, BUT I CAN'T ORDER PZLAK TO DO ANYTHING. WE SPUN THAT OFF.

NOW, I AM OUTRAGED THAT MY BROTHER WOULD STAND HERE AND TELL THIS COURT THAT IT WAS ONLY IN OUR REPLY PAPERS THAT WE, WE DESCRIBE THIS PROCESS.

I'M GOING TO READ TO THE COURT WHAT IS EXHIBIT C.

THE COURT: DON'T READ IT. TELL ME AND I'LL BELIEVE YOU AND I'LL LOOK AT IT.

MR. RYAN: LOOK AT EXHIBIT C TO MR. ZLAK'S AFFIDAVIT AND I CAN HAND UP A COPY BECAUSE I HAVE ANOTHER COPY HERE, AND IT WILL HELP THE COURT.

THE COURT: I'VE GOT ENOUGH PAPER. LET ME FIND IT. IT'S AN E-MAIL.

MR. RYAN: IT'S AN E-MAIL. IF YOU LOOK AT THAT E-MAIL ON JANUARY 30TH, 2004, THIS IS APPROXIMATELY 30 DAYS AFTER, AFTER MR. KREMEN FINALLY DECIDED HE WANTED TO ENFORCE THE COURT'S 2001 ORDER. IF YOU READ THAT E-MAIL, THE ONLY

00:27:14 1 IMPORT OF WHAT WE'RE SAYING IS THAT WE ASKED HIM TO
00:27:17 2 FILL OUT THE PAPERWORK, AND, IN FACT, YOUR HONOR.

00:27:20 3 THE COURT: WHERE IS THAT LANGUAGE?

00:27:22 4 MR. RYAN: THIS IS MR. IDELL'S LANGUAGE.
00:27:26 5 AS WE DISCUSSED IN WASHINGTON, WE AGREED TO RESOLVE
00:27:29 6 THE MATTER AND ENFORCEMENT OF THE ORDER BY
00:27:32 7 ASSIGNMENT OF THE NET BLOCKS TO GARY, ARIN WANTED
00:27:35 8 IN THE SECOND PARAGRAPH, ARIN WANTED GARY TO FILL
00:27:39 9 OUT THE USUAL PAPERWORK BEFORE THE ACTUAL
00:27:41 10 ASSIGNMENT. IT WAS UNDERSTOOD THAT MR. JIMMERSON
00:27:45 11 AND YOU, IF NECESSARY, WOULD ASSIST GARY THROUGH
00:27:48 12 THAT PROCESS.

00:27:49 13 I CAN TELL YOUR HONOR, I WILL REPRESENT
00:27:50 14 TO THE COURT THAT I HAD MY STAFF PREPARE THE PAPERS
00:27:54 15 FOR THEM SO THAT THEY COULD JUST SIGN THEM.

00:27:56 16 SO SINCE 2004 ALL OF THE, ALL OF THE
00:28:01 17 ENERGY AND WASTE HAS BEEN GENERATED BECAUSE GARY
00:28:05 18 KREMEN WANTED DIFFERENT RIGHTS THAN EVERYBODY ELSE
00:28:08 19 IN THE INTERNET. HE WANTED DIFFERENT RIGHTS THAN
00:28:11 20 MR. COHEN HAD, HE WANTED DIFFERENT RIGHTS THAN THE
00:28:14 21 DEPARTMENT OF DEFENSE, AND WE WERE UNWILLING TO
00:28:16 22 GRANT THAT.

00:28:18 23 THE COURT: ALL RIGHT. I'M OUT ON TIME
00:28:20 24 ON THIS WHOLE MATTER SO I MOVE TO HAVE IT
00:28:22 25 SUBMITTED.

00:28:23 1 I'LL TAKE A LOOK AT YOUR PROPOSED ORDER.
00:28:26 2 IT, AS I SAID, IT DOES APPEAR TO ME THAT, THAT MY
00:28:29 3 GOAL WAS SIMPLY TO, TO PUT MR. KREMEN IN OWNERSHIP
00:28:34 4 OF THIS BLOCK OF RESOURCES AS A WAY OF, OF, OF
00:28:42 5 SATISFYING A JUDGMENT.

00:28:43 6 IT APPEARS TO ME TO TIE TO WHAT WAS TAKEN
00:28:46 7 FROM HIM THAT MR. COHEN HAD DEVELOPED OVER TIME
00:28:51 8 UNLAWFULLY, AND BUT I WAS NOT TRYING TO EXEMPT HIM
00:28:55 9 FROM NORMAL REGISTRATION REQUIREMENTS SIGNING
00:28:58 10 WHATEVER AGREEMENTS WOULD BE REQUIRED. THEY WERE
00:29:03 11 TO MAINTAIN THE RESOURCE AND IT WAS MY INTENT TO
00:29:09 12 HAVE HIM TAKE THE RIGHTS AND BUT ONLY UNDER THE
00:29:15 13 USUAL AND NORMAL CIRCUMSTANCES AND I'LL TRY IMPOSE
00:29:18 14 AN ORDER WHICH, WHICH TAKES, TAKES THAT INTO
00:29:21 15 CONSIDERATION.

00:29:22 16 MR. IDELL: MAY I BE HEARD BRIEFLY, YOUR
00:29:24 17 HONOR?

00:29:24 18 THE COURT: BRIEFLY.

00:29:32 19 MR. IDELL: YOUR HONOR, WHAT I SAID WAS,
00:29:34 20 AND I DON'T SEE HOW MR. RYAN CAN DISAGREE WITH
00:29:37 21 THIS, WE NEVER FOUND OUT UNTIL AFTER THIS OUR
00:29:40 22 OPPOSITION TO THE MOTION THAT THE CONTRACTS WERE
00:29:42 23 FILED.

00:29:43 24 AND THE E-MAIL COUNSEL REFERRED YOU TO
00:29:45 25 SAYS NOTHING ABOUT CONTRACTS AND ALL OF THE

00:29:47 1 E-MAILS, AND THERE'S MANY OF THEM IN THERE, THOSE
00:29:50 2 WERE ALL SETTLEMENT DISCUSSIONS THAT PROBABLY
00:29:52 3 SHOULDN'T BE BEFORE THIS COURT BUT SUFFICE IT TO
00:29:54 4 SAY THAT THEY DIDN'T DISCLOSE TO US THAT THEY
00:29:57 5 DIDN'T CONTROL THE UUNET BLOCK, THEY DIDN'T
00:30:00 6 DISCLOSE TO US THAT THEY HAD GIVEN AWAY TO THEIR
00:30:02 7 LATIN AMERICAN BROTHER ONE OF THE BLOCKS, THAT THEY
00:30:05 8 ONLY HAD THREE BLOCKS.

00:30:07 9 THEY HANDED MR. KREMEN PAPERWORK WHICH
00:30:09 10 WAS THEIR CURRENT PAPERWORK AND MR. KREMEN STARTED
00:30:12 11 FILLING IT OUT AND SAYING, WAIT A MINUTE, I'M NOT
00:30:14 12 APPLYING FOR THIS. I DON'T HAVE TO APPROVE THAT
00:30:17 13 I'M DOING THIS. I DON'T HAVE TO DO THIS. ALL I'M
00:30:20 14 GETTING IS WHAT COHEN HAD. AND WHEN WE TOLD THEM
00:30:23 15 THAT, THEY NEVER SAID, WELL, COHEN SIGNED A
00:30:25 16 CONTRACT, HERE IT IS. INSTEAD THEY DID NOTHING.

00:30:29 17 AND, AND, YOUR HONOR, WE HAVEN'T
00:30:31 18 DISCUSSED THE, THE VARIOUS, THE VARIOUS PROCEDURAL
00:30:34 19 BLOCKS TO THEIR, TO THEIR RELIEF. WE HAVE BRIEFED
00:30:37 20 THAT ALL EXTENSIVELY. I THINK THEY'RE OUT OF THE
00:30:40 21 BOX ON ANY OF THE GROUNDS OF RULE 60 AND, AND I'M
00:30:43 22 HAPPY TO SUBMIT IT, YOUR HONOR, BUT I WANTED TO
00:30:46 23 MAKE SURE THAT WHILE THEY SAY WE'RE THE PARTY
00:30:50 24 TRYING TO SOLVE THIS ALL MR. KREMEN HAS SAID SINCE
00:30:54 25 THE HEARING IS EXACTLY WHAT YOUR HONOR SAID: I

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WANT TO STEP INTO THE SHOES AND DO WHAT HE DID,
NOTHING MORE, NOTHING LESS.

THE COURT: WELL, I'M SURE YOU'LL AGREE
WITH THE COURT THAT I HAVE MADE THIS COURT AND, AND
AVAILABLE TO YOU FOR ANY DISPUTE. IF I HAD KNOWN
ABOUT IT EARLIER, IF THIS HAD BEEN STARTED IN 2004,
IF I HAD KNOWN ABOUT IT IN 2004, IT WOULD HAVE BEEN
RESOLVED IN 2004.

NOW THAT I KNOW ABOUT IT, I'LL TRY AND
GIVE YOU A RESOLUTION THAT IS CONSISTENT WITH MY
ATTITUDE ABOUT THIS.

MR. IDELL: THANK YOU, YOUR HONOR.

THE COURT: NOW -- SO LET'S MOVE TO THE,
TO THE SECOND OF THE MOTIONS WHICH IS THE MOTION
TO, TO DISMISS.

MR. HUMMEL: GOOD MORNING, YOUR HONOR.
CHAD HUMMEL ON BEHALF OF ARIN THE DEFENDANT IN THIS
CASE AND THE MOVING PARTY.

YOUR HONOR HAS ALREADY HIT ON A NUMBER OF
THE THEMES THAT WE RAISED IN THE MOTION TO DISMISS.
THIS WAS A COMPLAINT THAT WAS BROUGHT THAT RELATES
ENTIRELY TO THIS COURT'S SEPTEMBER 17TH, 2001
ORDER.

THE COMPLAINT RECITES CLAIMS OR PURPORTS
TO RECITE CLAIMS UNDER SECTION 1 OF THE SHERMAN

00:32:05 1 ACT, SECTION 2 OF THE SHERMAN ACT, CALIFORNIA'S
00:32:08 2 CARTRIGHT ACT, WHICH IS THE CALIFORNIA STATE AND
00:32:11 3 ANTITRUST STATUTE THAT, OF COURSE, TRACKS ONLY THE
00:32:14 4 SECTION 1 CLAIM AND THERE'S NO RIGHT TO UNILATERAL
00:32:20 5 MONOPOLIZATION CLAIM UNDER THE CARTRIGHT ACT. IT
00:32:23 6 HAS TO BE CONCERTED ACTIVITY, CONVERSION AND BREACH
00:32:27 7 OF FIDUCIARY DUTY.

00:32:29 8 ALL OF THOSE CAUSES OF ACTION ARISE OUT
00:32:31 9 OF BASICALLY THE FOLLOWING CONDUCT NONE OF WHICH IS
00:32:35 10 SUFFICIENT TO JUSTIFY THAT THE LAWSUIT CONTINUES
00:32:37 11 PAST TODAY.

00:32:38 12 THE CONDUCT THAT THEY ALLEGE IN THE
00:32:40 13 COMPLAINT IS, ONE, THAT ARIN WAS CREATED BY THE
00:32:42 14 GOVERNMENT; IT WAS CREATED TO ALLOCATE RESOURCES
00:32:47 15 AND NOT PROPERTY BY THE WAY AND WE CAN GET INTO
00:32:49 16 THAT IF YOU'RE INTERESTED.

00:32:50 17 THE COURT: WELL, I DON'T KNOW. I MAY BE
00:32:52 18 BOUND BY THE CIRCUIT ON THAT.

00:32:54 19 MR. HUMMEL: THERE'S A BIG DIFFERENCE
00:32:56 20 BETWEEN DOMAIN NAMES AND IP RESOURCES AND MR. RYAN
00:32:59 21 CAN TALK TO YOU, AS HE DID WITH ME ALL MORNING
00:33:02 22 BEFORE WE CAME TO COURT, ABOUT THE DIFFERENCES AND
00:33:04 23 THEY'RE IMPORTANT BUT IT'S DIFFERENT THAN A DOMAIN
00:33:07 24 NAME SUFFICE IT TO SAY THAT.

00:33:08 25 THE COURT: IS THERE A CASE HOLDING THAT

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THAT'S A PROPERTY RIGHT?

MR. HUMMEL: NO, NOT OF THE IP TYPE THAT ARIN DISTRIBUTES, NO. BUT WE WERE CREATED, WE ESTABLISHED PREREQUISITES FOR FOLKS AND COMPANIES THAT REQUESTED THESE IP RESOURCES. WE CREATED A REGISTRATION SERVICES AGREEMENT, VARIOUS FORMS OF WHICH YOUR HONOR HAS CONSIDERED AND TALKED ABOUT THIS MORNING. THOSE CONTAIN SOME SPECIFIC RIGHTS THAT ARIN RETAINS SUCH AS TO INSIST ON CERTAIN INFORMATION DISCLOSURE, THE PAYMENT OF FEES, AND WHAT THEY CALL GRAB BACK PROVISIONS, IN OTHER WORDS, IF THEY VIOLATE THE TERMS AND CONDITIONS IN WHICH THEY WERE ALLOCATED THE IP RESOURCES ARIN OBTAIN THE RIGHT TO TAKE THEM BACK.

THE REST OF THE CONDUCT IS THAT THERE WAS AN ORDER ISSUED, YOUR HONOR ISSUED IT IN SEPTEMBER OF 2001, SERVICE OF THAT ORDER, BY THE WAY, WAS AFFECTED IN DECEMBER OF '03. FROM DECEMBER '03 ON THE PARTIES NEGOTIATED OVER THE COMPLIANCE WITH THE ORDER AND THE TERMS OF SUCH COMPLIANCE, SOME OF WHICH, SOME OF WHICH MR. RYAN GOT INTO INCLUDING WITH THE E-MAIL.

AND IT'S UNDISPUTED THAT ARIN HAS ALWAYS, ALWAYS ORDERED TO TRANSFER THESE IP RESOURCES, OR IP RESOURCES GENERALLY, GENERALLY THAT WOULD BE THE

00:34:28 1 FUNCTIONAL EQUIVALENCE IF, IF, IF MR. KREMEN,
00:34:31 2 KREMEN SIGNED THE CURRENT RSA AND OTHERWISE
00:34:34 3 COMPLIED WITH ARIN'S GUIDELINES. THAT'S THE
00:34:37 4 CONDUCT. THAT'S THE CONDUCT.

00:34:41 5 SECTION 1 OF THE SHERMAN ACT AS YOUR
00:34:45 6 HONOR KNOWS ONLY PROHIBITS RESTRAINTS OF TRADE AND
00:34:53 7 COMBINATIONS OR CONSPIRACIES THAT UNREASONABLY
00:34:55 8 RESTRAIN TRADE.

00:34:57 9 LET'S TALK ABOUT THE SECTION 1 CLAIM FOR
00:34:59 10 A MINUTE. IT IS, NUMBER ONE, BARRED BY STATUTE.
00:35:02 11 IT WAS A FOUR-YEAR STATUTE OF LIMITATIONS. THE
00:35:05 12 CONDUCT THAT IS REALLY, REALLY BEING COMPLAINED
00:35:07 13 ABOUT BY MR. KREMEN OCCURRED THE DATE THE ORDER WAS
00:35:11 14 SIGNED. HE COULD HAVE GONE TO ARIN THAT DAY AND
00:35:14 15 INSISTED UPON THE TRANSFER SUBJECT TO THE TERMS AND
00:35:17 16 CONDITIONS. IT'S MORE THAN FOUR YEARS BEFORE THE
00:35:19 17 FILING OF THE COMPLAINT. IT'S TIME BARRED.

00:35:24 18 NUMBER TWO, TO THE EXTENT HE'S
00:35:25 19 COMPLAINING ABOUT THE NEGOTIATIONS RELATING TO
00:35:28 20 COMPLIANCE WITH THE ORDER, THAT'S UNDER THE
00:35:30 21 NORR-PENINGTON DOCTRINE AND WE CITED THE CASES THAT
00:35:33 22 TALK ABOUT SETTLEMENT NEGOTIATIONS OR OFFERS TO
00:35:35 23 COMPLY IN CONNECTION WITH ENFORCEMENT OF A COURT
00:35:38 24 ORDER.

00:35:39 25 NUMBER THREE, THERE'S NO COMBINATION OR

00:35:41 1 CONSPIRACY THAT SURVIVES THE COPPERWELL TEST. THE
00:35:44 2 BEST THEY CAN DO IS SAY THEY ARE OFFICERS AND
00:35:47 3 DIRECTORS OF ARIN; THAT IF CONSPIRED WITH THE
00:35:51 4 ENTITY ITSELF AND IF YOUR HONOR KNOWS UNDER THE
00:35:53 5 COPPERWELL DOCTRINE THAT DOESN'T CONSTITUTE A
00:35:56 6 SECTION 1 COMBINATION OR CONSPIRACY.

00:35:58 7 NUMBER FOUR, THERE'S NO HARM TO
00:36:00 8 COMPETITION ALLEGED ANYWHERE IN THE COMPLAINT OTHER
00:36:02 9 THAN THE CONCLUSORY LANGUAGE. MERELY HAVING AN
00:36:06 10 INFORMATION DISCLOSURE REQUIREMENT, MERELY
00:36:09 11 REQUIRING THAT PAYMENT OF FEES AND MERELY REQUIRING
00:36:12 12 THE SIGNING OF A REGISTRATION SERVICES AGREEMENT IS
00:36:15 13 NOT, IS NOT CONDUCT THAT HARMS COMPETITION IN
00:36:18 14 GENERAL, AND FOR THAT, YOUR HONOR, I WOULD REFER
00:36:20 15 YOU TO THE GREGORY CASE IN THE TENTH CIRCUIT WHICH
00:36:23 16 IS VERY ANALOGOUS TO THIS CASE UNDER THE SECTION 1
00:36:26 17 OF THE SHERMAN ACT.

00:36:28 18 IN SHORT, THIS SECTION 1 CLAIM FAILS ON A
00:36:31 19 NUMBER OF GROUNDS, STATUTE, NORR-PENINGTON
00:36:33 20 IMMUNITY, COPPERWELL AND THERE'S NO ALLEGATION
00:36:36 21 WHATSOEVER WITHIN THE RELEVANT MARKET THAT THEY
00:36:39 22 DESCRIBE.

00:36:39 23 LET ME MOVE ONTO THE SECTION 2 CLAIM IF I
00:36:42 24 MIGHT. MONOPOLIZATION UNDER THE SHERMAN ACT
00:36:49 25 REQUIRES THAT THE ACQUISITION OR MAINTENANCE OF

00:36:51 1 MONOPOLY POWER, THAT IS THE ABILITY TO CONTROL
00:37:54 2 PRICE AND EXCLUDE COMPETITION THROUGH PREDATORY OR
00:37:00 3 EXCLUSIONARY CONDUCT. AGAIN, WHAT IS THE CONDUCT
00:37:02 4 HERE? THE CONDUCT IS MERELY HAVING LEGITIMATE
00:37:06 5 SPECIFIC PREREQUISITES TO OBTAINING THESE IP
00:37:10 6 RESOURCES AS A MATTER OF LAW THAT'S NOT
00:37:12 7 EXCLUSIONARY OR PREDATORY CONDUCT.

00:37:15 8 MORE IMPORTANTLY, HOWEVER, YOUR HONOR,
00:37:17 9 THERE'S NO CAUSAL RELATIONSHIP BETWEEN HAVING AN
00:37:20 10 INFORMATION DISCLOSURE REQUIREMENT AND THE PAYMENT
00:37:22 11 OF FEES REQUIREMENT OR, OR THE SIGNING OF A
00:37:25 12 REGISTRATION SERVICES AGREEMENT IN THE CONTRACTUAL
00:37:29 13 PROVISIONS WITH HOW ARIN ACHIEVED ITS POSITION IN
00:37:32 14 THE MARKET. THERE'S NO CAUSAL RELATIONSHIP BETWEEN
00:37:34 15 THE TWO. IT DIDN'T GRANT IT THAT AUTHORITY, NOR
00:37:37 16 DOES IT ALLOW IT TO MAINTAIN THAT AUTHORITY.
00:37:39 17 THERE'S NO CAUSAL CONNECTION.

00:37:40 18 AND AGAIN, FOR THE SAME REASON THAT THE
00:37:42 19 SECTION 1 CLAIM FAILS ON STATUTORY GROUNDS,
00:37:45 20 STATUTORY LIMITATIONS GROUNDS AND, AND THE, THE
00:37:48 21 ENTIRE FAILURE OF, OF MR. KREMEN TO ALLEGE ANY HARM
00:37:52 22 TO COMPETITION, THE SECTION 2 CLAIM FAILS AS WELL.

00:37:55 23 YOUR HONOR, AS TO THE CONVERSION CLAIM I
00:38:00 24 THINK THAT'S BEEN ADEQUATELY BRIEFED. THERE'S NO
00:38:03 25 CONVERSION UNDER CALIFORNIA LAW AND UNDER THE

00:38:06 1 FEDERAL CASES THAT INTERPRET CALIFORNIA LAW IF
00:38:07 2 THERE HASN'T BEEN NOTICE AND AN OPPORTUNITY TO BE
00:38:09 3 HEARD IN CONNECTION WITH, WITH, IN CONNECTION WITH
00:38:13 4 A COURT ORDER.

00:38:14 5 FINALLY UNDER THE BREACH OF FIDUCIARY
00:38:17 6 DUTY CLAIM, WHICH IS ALSO TIME BARRED AS WELL AS
00:38:19 7 THE CONVERSION CLAIM, THE BREACH OF FIDUCIARY DUTY
00:38:23 8 CLAIM FAILS SIMPLY BECAUSE THERE'S NO FIDUCIARY
00:38:27 9 RELATIONSHIP BETWEEN ARIN AND AN APPLICANT FOR IP
00:38:30 10 RESOURCES PERIOD. THERE'S NO FACTS ALLEGED THAT
00:38:35 11 WOULD SUPPORT THE EXISTENCE OF A DUTY UNDER
00:38:38 12 CALIFORNIA LAW AND THAT SHOULD FAIL.

00:38:39 13 THE COURT: COULD YOU SAY MORE UNDER
00:38:41 14 STATUTORY ANALYSIS. WHEN DOES THE STATUTE BEGIN TO
00:38:46 15 RUN?

00:38:47 16 MR. HUMMEL: AT THE TIME THE COURT
00:38:48 17 ENTERED THE ORDER.

00:38:49 18 THE COURT: WHY?

00:38:50 19 MR. HUMMEL: BECAUSE THE COMPLAINT ITSELF
00:38:52 20 ALLEGATION IN STICKING TO THE FOUR CORNERS OF THE
00:38:55 21 COMPLAINT, THAT THAT'S THE TIME THAT THE HARM
00:38:56 22 OCCURRED THROUGH NONCOMPLIANCE.

00:38:58 23 THE COURT: WELL, BUT IF, IF MY ORDER IS
00:39:02 24 NOT SELF-EXECUTING IF, IF THEY CHOOSE TO, CHOOSE TO
00:39:12 25 DELAY SERVING THE ORDER AND IT'S AT THAT POINT THAT

00:39:14 1 NO OBJECTION IS MADE TO THE TARDY SERVICE AND SORT
00:39:17 2 OF TARDY SERVICE IS WAIVED, AND THEN AT THAT POINT
00:39:20 3 IN 2003, YOU'RE TELLING ME DECEMBER 2003, THEY'RE
00:39:25 4 THEN TOLD WE'RE NOT GOING TO COMPLY WITH IT, WHY
00:39:28 5 DOESN'T THAT START THE RUNNING OF THE STATUTE OF
00:39:30 6 LIMITATIONS?

00:39:31 7 MR. HUMMEL: NUMBER ONE, YOU HAVE TO
00:39:33 8 STICK TO THE ALLEGATIONS OF THE COMPLAINT AND THEY
00:39:35 9 ALLEGE IN NUMEROUS PLACES THAT WE CITE IN OUR BRIEF
00:39:38 10 THAT THE HARM OCCURRED AT THE MOMENT THE ORDER WAS
00:39:40 11 ISSUED.

00:39:41 12 NUMBER TWO, REGARDLESS, AND I CAN
00:39:44 13 ACTUALLY FIND THE PRECISE CITES IN THE COMPLAINT TO
00:39:47 14 WHERE THAT --

00:39:48 15 THE COURT: WELL, YOU'RE RIGHT IN TERMS
00:39:49 16 OF A MOTION TO DISMISS I NEED TO TAKE THOSE
00:39:52 17 ALLEGATIONS AS TRUE.

00:39:55 18 IS THAT A FACT OR IS THAT A LEGAL
00:39:57 19 CONCLUSION THOUGH?

00:39:59 20 MR. HUMMEL: IT'S BOTH. I THINK IT'S
00:40:01 21 BOTH.

00:40:01 22 THE FACT IS THAT WHEN YOUR HONOR ISSUED
00:40:04 23 THE ORDER, YOU INTENDED TO, TO EFFECTUATE
00:40:08 24 ESSENTIALLY PUTTING MR. KREMEN IN THE SHOES OF
00:40:11 25 MR. COHEN WITH ALL OF THE RIGHTS AND ALL OF THE

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OBLIGATIONS THAT MR. COHEN HAD.

WHEN THAT DIDN'T HAPPEN, THAT IS THE TIME THAT THE STATUTE OF LIMITATIONS BEGAN TO RUN, AND, FRANKLY, YOUR HONOR, THEY SHOULDN'T BE ABLE TO MANIPULATE THE STATUTE BY DELAYING SERVICE.

WHAT HAPPENED WAS THAT WE WEREN'T FORMALLY SERVED BUT WE RECEIVED NOTICE OF THE ORDER ALMOST IMMEDIATELY UPON ISSUANCE AND THESE NEGOTIATIONS AND THESE CONVERSATIONS INVOLVING MR. RYAN BEGAN.

THE COURT: LET ME HEAR FROM YOUR OPPONENT.

MR. KRONENBERGER: CARL KRONENBERGER FOR GARY KREMEN. YOUR HONOR, WITH YOUR PERMISSION, I WOULD LIKE TO ADDRESS THE STATUTE OF LIMITATIONS ISSUES, FIDUCIARY DUTY AND UNFAIR COMPETITION ISSUE AND THEN HAVE MY COLLEAGUE TERRY HANLEY ADDRESS THE ANTITRUST ISSUES EXCEPT AS THEY RELATE TO STATUTE OF LIMITATIONS.

THE COURT: I'M NOT SURE I'LL HAVE TIME FOR ALL OF THAT BUT WHY DON'T YOU GET STARTED.

MR. KRONENBERGER: YOUR HONOR, I'D LIKE TO ADDRESS A COMMENT THAT THE DEFENDANT HAS MADE REGARDING, REGARDING THE ANTITRUST CASE IN GENERAL AND THAT IS THAT IT HAS ARISEN OUT OF THE 2001

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ORDER. THAT IS SIMPLY NOT THE CASE.

THE 2001 ORDER THEIR DISPUTE WITH IT RELATES TO, TO THE ARIN POLICIES AND WHETHER OR NOT THEY'RE CONTRACTS AND THIS GETS INTO WHAT MR. IDELL WAS DISCUSSING ON WHETHER OR NOT THERE ARE ANY CONTRACTS AND WHAT MR. KREMEN SHOULD BE OBLIGATED TO.

THERE IS A SERIOUS QUESTION OF FACT WHETHER ANY CONTRACTS EXIST THAT RELATE TO ANY OF THE NET BLOCKS AT ISSUE IN THIS CASE.

WE DID NOT FIND OUT ABOUT ANY CONTRACTS AT ALL UNTIL THE MORNING AFTER WE FILED OUR OPPOSITION. ONCE WE GOT THESE CONTRACTS, THEY'RE UNCLEAR ON WHETHER OR NOT THEY RELATE TO THE NET BLOCKS AT ISSUE. THEY MAY NOT BE ANY CONTRACTS AT ALL THAT RELATE TO THESE. IN FACT, THE OCEAN FUND COMPANY, AN ALTER EGO OF COHEN, IT IS -- IT OWNS THE ASN NUMBER, HOWEVER, THERE'S NO CONTRACT THAT THEY PRESENTED.

AND, AND THE BACKGROUND HERE, YOUR HONOR, IS ARIN IS SORT OF IN A LONG HISTORY OF THE LOCATION OF IP ADDRESSES. THERE ARE MANY ADDRESSES, OTHERS THAT OWN THEIR OWN IP ADDRESSES AND ARIN HAS NO AUTHORITY WHATSOEVER OVER THOSE.

WE SIMPLY DO NOT KNOW WHETHER THESE

00:42:35 1 BLOCKS ARE ARIN BLOCKS OR PRE-ARIN BLOCKS BECAUSE
00:42:38 2 THEY ONLY CAME INTO EXISTENCE IN 1998.

00:42:41 3 YOUR HONOR, I'D LIKE TO JUMP INTO THE
00:42:43 4 STATUTE OF LIMITATIONS ISSUE BECAUSE WE DON'T HAVE
00:42:46 5 ENOUGH TIME HERE UNLESS YOU HAVE QUESTIONS.

00:42:47 6 THE COURT: WELL, YOU KNOW, I'M CONFUSED
00:42:49 7 ABOUT THIS WHOLE THING BECAUSE I NORMALLY, I KNOW
00:42:52 8 NOW AS A RESULT OF THESE PROCEEDINGS THAT A
00:42:55 9 NONPROFIT ORGANIZATION SUCH AS ARIN CAN BE SUED FOR
00:42:59 10 ANTITRUST BUT THIS IS NOT THE NORMAL CIRCUMSTANCE
00:43:02 11 THAT I CONFRONT IN THIS COURT AND I HAVE HAD
00:43:05 12 SEVERAL MAJOR ANTITRUST CASES WHERE THAT, WHERE
00:43:08 13 THAT LAW IS IN THE BALANCE.

00:43:10 14 THIS IS A CIRCUMSTANCE WHICH IS TOTALLY
00:43:13 15 ESCAPING ME AS TO HOW WHAT THEY DID, EVEN IF THEY,
00:43:16 16 THEY DID EVERYTHING THE COMPLAINT SAID AMOUNTS TO A
00:43:19 17 VIOLATION BUT LET'S STICK WITH THE STATUTE OF
00:43:22 18 LIMITATIONS.

00:43:22 19 IF I'M, IF I'M PROPERLY POINTING YOU IN
00:43:25 20 THE RIGHT DIRECTION, I'M TOLD THAT THE COMPLAINT
00:43:27 21 SAYS THAT THE HARM OCCURRED IN 2001. IS THAT WHAT
00:43:30 22 THE COMPLAINT SAYS?

00:43:32 23 MR. KRONENBERGER: NO, YOUR HONOR, THE
00:43:33 24 COMPLAINT ALLEGES CONTINUOUS HARM STARTING IN 2001.

00:43:37 25 THE COURT: ALL RIGHT. LET'S SAY