

00:43:39 1 SOMETHING STARTED IN 2001, SO IF THAT IS THE BASIS  
00:43:42 2 OF THE CLAIM, WHATEVER HAPPENED IN 2001, YOU'RE  
00:43:46 3 TARDY.

00:43:46 4 MR. KRONENBERGER: THE MOST IMPORTANT  
00:43:48 5 ISSUE, YOUR HONOR, THE MOST IMPORTANT POINT IN TIME  
00:43:50 6 IS THE SERVICE OF THE ORDER WHICH, WHICH, WHICH  
00:43:52 7 IT'S EITHER LATE 2003, OR AS MR. PZLAK SAYS ON 2003  
00:43:58 8 OF HIS DECLARATION, THE FIRST TWO WEEKS OF 2004.

00:44:01 9 WHAT HAPPENED BETWEEN THE ISSUANCE OF THE  
00:44:04 10 ORDER AND ANY OTHER DATE THAT IS DIFFERENT.

00:44:09 11 MR. KRONENBERGER: THERE WAS A  
00:44:10 12 STIPULATION BETWEEN PACNET AND MR. KREMEN NOT TO  
00:44:12 13 ENFORCE THE ORDER BECAUSE THEY WERE WORKING OUT  
00:44:14 14 ISSUES REGARDING THEIR DISPUTE AND, AND ON -- AND  
00:44:17 15 THERE'S A LETTER WHICH IS EXHIBIT L, I BELIEVE,  
00:44:20 16 TO --

00:44:21 17 THE COURT: HOW DOES THAT AFFECT ARIN?

00:44:27 18 MR. KRONENBERGER: IN A WAY IT DOESN'T.  
00:44:28 19 YOU MAKE A GOOD POINT BUT THE REASON WHY IT WAS NOT  
00:44:31 20 SERVED UPON ARIN IS BECAUSE, IS BECAUSE PACNET WAS  
00:44:35 21 ON THE REGISTRATION OF THE NET BLOCKS AND, AND  
00:44:38 22 MR. KREMEN HAD A DISPUTE WITH PACNET AND THERE WAS  
00:44:41 23 A STIPULATION NOT TO ENFORCE THIS ORDER WHILE THEY  
00:44:45 24 WORKED OUT THEIR DISPUTE. THEY DON'T WORK OUT  
00:44:47 25 THEIR DISPUTE AND THEN ON EXHIBIT L YOU HAVE A

00:44:50 1 LETTER FROM MR. IDELL TO THE ATTORNEY FOR PACNET  
00:44:52 2 SAYING THAT WE'RE GOING TO PROCEED TO ENFORCE.  
00:44:54 3 THIS WAS NOVEMBER 6TH, 2003, A MONTH LATER THE  
00:44:58 4 ORDER WAS SERVED SO DECEMBER 2003, WHEREAS  
00:45:01 5 MR. PZLAK SAYS JANUARY OF 2004, REGARDLESS, IT'S  
00:45:05 6 WITHIN THE STATUTE OF LIMITATIONS AND THAT'S  
00:45:07 7 RELEVANT FOR UPON CONVERSION.

00:45:08 8 THE COURT: IT BEING WHAT?

00:45:10 9 MR. KRONENBERGER: THE SERVICE WHERE AN  
00:45:12 10 ABSOLUTE DUTY.

00:45:13 11 THE COURT: THE SERVICE DOESN'T, THE  
00:45:14 12 SERVICE DOESN'T AFFECT STATUTE OF LIMITATIONS.  
00:45:17 13 IT'S THE FILING OF THE COMPLAINT. SERVICE IS JUST  
00:45:19 14 A PROCESS BY WHICH NOTICE IS GIVEN OF A COMPLAINT.  
00:45:22 15 I HAVE TO JUDGE THE TOLLING OF THE STATUTE OF THE  
00:45:24 16 FILING OF THE COMPLAINT, DON'T I?

00:45:26 17 MR. KRONENBERGER: YES, YOUR HONOR. THE  
00:45:28 18 IMPORTANT THING IS THAT, IS THAT EACH TIME THE  
00:45:30 19 PLAINTIFF IS INJURED OR EACH TIME THE PLAINTIFF'S  
00:45:32 20 INTEREST IS INVADED THERE'S CONTINUING HARM AND THE  
00:45:35 21 HARM IS, IS AND THE STATUTE OF LIMITATIONS IS  
00:45:39 22 CONTINUALLY RESTARTED WITH THIS CONTINUING HARM.

00:45:42 23 THE COURT: THERE IS SUCH A THING, AS I  
00:45:43 24 WOULD RECOGNIZE, AND COURTS HAVE RECOGNIZED, AS, AS  
00:45:52 25 THAT A HARM THAT TAKES PLACE STARTING THE STATUTE

00:45:54 1 OF THE LIMITATIONS AND SO YOU'RE ABLE TO ATTACK ON  
00:46:00 2 SOMETHING NEW, THAT MIGHT EXTEND THE STATUTE OF  
00:46:04 3 LIMITATIONS BUT IF THE HARM IS, IS, IS THE HOLDING  
00:46:07 4 OF SOMETHING THAT REALLY BELONG TO THE OTHER AND  
00:46:10 5 FOR THAT ENTIRE PERIOD OF TIME IT CONTINUES TO BE  
00:46:13 6 HELD, WHAT IS YOUR ARGUMENT THAT THAT ALLOWS YOU,  
00:46:18 7 YOU TO HAVE AN ENDLESS STATUTE OF LIMITATIONS?

00:46:18 8 MR. KRONENBERGER: YOUR HONOR, THERE'S  
00:46:19 9 SPECIFIC CASE LAW THAT ADDRESSES IT AND WE WEREN'T  
00:46:21 10 ABLE TO PUT THIS IN OUR DOCUMENTS BECAUSE IT WAS  
00:46:23 11 ONLY BROUGHT UP IN THE REPLY OF ARIN. THEY BROUGHT  
00:46:26 12 UP A DOCTRINE DEALING WITH THE QUOTE, "LAST OVERT  
00:46:30 13 ACT" AND THAT FOCUSES ON NEW AND INDEPENDENT ACTS  
00:46:33 14 THAT OCCUR AFTER AN INITIAL AGREEMENT THAT, THAT  
00:46:38 15 THAT HAD HARMED FOR THE PURPOSE OF, OF CONTINUING  
00:46:40 16 HARM IN THE STATUTE OF LIMITATIONS.

00:46:43 17 SPECIFICALLY THE COLUMBIA STEEL CASE, 111  
00:46:47 18 F.3D. 1427, IT GOES INTO THIS DISCUSSION WHERE  
00:46:53 19 ACTIVE ENFORCEMENT OF A POLICY, JUST LIKE WE HAD IN  
00:46:57 20 ARIN, ACTIVE ENFORCEMENT OF A POLICY IS A NEW AND  
00:47:00 21 INDEPENDENT ACT FOR STATUTE OF LIMITATIONS AND THIS  
00:47:03 22 WAS AN 18-YEAR AGREEMENT IN THE COLUMBIA STEEL  
00:47:06 23 CASE, 18 YEARS BUT THE COURT JUST FOCUSED ON  
00:47:09 24 14 YEARS PRIOR TO THE FILING OF THE COMPLAINT. THE  
00:47:11 25 ACTIVE ENFORCEMENT OF THE POLICY WITHIN THAT

00:47:14 1 FOUR YEARS WAS CONTINUING HARM WITHIN THE STATUTE  
00:47:16 2 OF LIMITATIONS.

00:47:17 3 SO THIS IS, THIS LINE OF CASE LAW  
00:47:21 4 STARTING WITH COLUMBIA STEEL, HENNIGAN, 787 F.2D  
00:47:25 5 1289 IS ANOTHER CASE AND IT DEALS WITH THE  
00:47:29 6 AGREEMENT TO DIVERT CUSTOMERS OVER A LONG PERIOD OF  
00:47:32 7 TIME JUST PRIOR TO THE FILING OF THE CASE WE'RE  
00:47:35 8 ANALYZED.

00:47:35 9 THE COURT: I'LL LOOK AT THAT. THAT IS A  
00:47:38 10 CASE SIMILAR TO THIS WHERE THE DEFENDANT REFUSED TO  
00:47:42 11 DO SOMETHING AT THE VERY BEGINNING OF THE RUNNING  
00:47:44 12 OF THE STATUTE, CONTINUED TO REFUSE TO DO WHATEVER  
00:47:47 13 IT WAS SUBJECT TO CONDITIONS, LET'S TAKE THAT OFF,  
00:47:50 14 JUST REFUSE TO TRANSFER, AND, AND THE COURT ALLOWED  
00:47:53 15 AN 18-YEAR STATUTE OF LIMITATIONS?

00:47:56 16 MR. KRONENBERGER: IN ESSENCE, YES.

00:47:58 17 THE COURT: I'LL TAKE A LOOK AT THAT. IT  
00:48:00 18 JUST SEEMS TO ME THAT WHAT THAT MEANS IS, IS THAT  
00:48:04 19 WHEN YOU PUT SOMEONE ON NOTICE THAT THEY'RE HOLDING  
00:48:06 20 SOMETHING, THERE IS NO STATUTE OF LIMITATIONS AND I  
00:48:09 21 JUST HAVEN'T SEEN ENOUGH CASE LAW TO CONVINC ME OF  
00:48:11 22 THAT, ESPECIALLY AN ANTITRUST CASE.

00:48:16 23 MR. KRONENBERGER: THAT WAS AN ANTITRUST  
00:48:18 24 CASE?

00:48:18 25 THE COURT: SO THAT'S WHAT I NEED TO LOOK

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AT.

MR. KRONENBERGER: YOUR HONOR, THERE ARE TWO OTHER CASES THAT DEAL WITH ACTIVE ENFORCEMENT OF ILLEGAL AGREEMENTS, AIRLINE WELD, 742 F.2D 1194, AND AURORA ENTERPRISES 688 --

THE COURT: AND IN WHAT SENSE IS THIS CASE INVOLVE -- THEY SAY IN LAW SCHOOL ALWAYS STOP AND GET THE QUESTION BUT YOU DON'T ALWAYS OBEY THAT STUFF ANYWAY SO.

IN WHAT SENSE DOES THIS CASE INVOLVE ACTIVE ENFORCEMENT OF A LEGAL AGREEMENT?

MR. KRONENBERGER: THIS ENTIRE LINE OF CASES.

THE COURT: THIS CASE.

MR. KRONENBERGER: THE ARIN CASE, THE AGREEMENT IS THE ARIN POLICY WHICH IS THE HEART OF THE ANTITRUST MATTER. IT'S THE ARIN POLICY OF REQUIRING THIS, THIS -- A GREAT AMOUNT OF INFORMATION BEING COLLECTED FROM PEOPLE WHO NEED IP ADDRESS BLOCKS AND THEN, AND THEN BEING ABLE TO SELECTIVELY AND UNDER THE PURE AND ABSOLUTE DISCRETION OF ARIN DECIDE WHO GETS ADDRESS BLOCKS AND WHO DOESN'T AND THE --

THE COURT: DOES THAT HAPPEN HERE?

MR. KRONENBERGER: YES, YOUR HONOR.

00:49:29 1 THERE'S A HUGE BUSINESS FOR SMALL BUSINESSES: THEY  
00:49:36 2 GET THE COMPANY AND THERE'S NO PROBLEM AT ALL BUT  
00:49:39 3 SMALL BUSINESSES THEY WANT TO GET NET BLOCKS AND  
00:49:41 4 OBTAIN NET BLOCKS TO RUN THEIR BUSINESS AND IT'S A  
00:49:45 5 HUGE PROBLEM. THERE ARE HUGE DELAYS AND THE DELAYS  
00:49:47 6 ARE PUT IN PLACE BECAUSE THERE'S AN INCENTIVE FOR  
00:49:52 7 LARGE COMPANIES TO PROHIBIT SMALLER PLAYERS TO GET  
00:49:55 8 INTO THE MARKET BECAUSE SMALL COMPANIES LEASE IN  
00:49:59 9 TURN IP BLOCKS FROM THE BIGGER COMPANIES. IF THEY  
00:50:01 10 CAN'T GET THEM FROM ARIN. SO THERE'S AN INCENTIVE  
00:50:04 11 FOR LARGE TELECOMMUNICATION COMPANIES WHO CONTROL  
00:50:08 12 ARIN AND THE BOARD OF DIRECTORS AND BOARD OF  
00:50:10 13 ADVISORS, THERE'S AN INTEREST OF THOSE ADVISORS IN  
00:50:14 14 PROHIBITING PLAYERS FROM ENTERING THE MARKET LIKE  
00:50:16 15 MR. KREMEN.

00:50:18 16 SO AS YOU SEE, YOUR HONOR, WE'RE NOT  
00:50:20 17 DEALING JUST WITH THE SEPTEMBER 2001 ORDER.

00:50:23 18 THE COURT: NOW, LET ME ASK THIS, IF I  
00:50:25 19 FIND CONSISTENT WITH MY EARLIER DISCUSSION THAT  
00:50:27 20 IT'S LEGITIMATE FOR ARIN TO HAVE REQUIRED  
00:50:30 21 MR. KREMEN TO SIGN WHATEVER RESTRICTIONS IT IMPOSED  
00:50:37 22 UPON REGISTRANTS, WHETHER THEY BE WHAT MR. COHEN  
00:50:39 23 HAD IN HIS POSSESSION OR AS REVISED LATER, IS THERE  
00:50:42 24 ANYTHING TO YOUR ANTITRUST CLAIM?

00:50:47 25 MR. KRONENBERGER: THE ANTITRUST CLAIM IS

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NOT AFFECTED IN ANY WAY.

THE COURT: ALL RIGHT. SO IT'S MERE  
EXISTENCE AND REQUIREMENT THAT YOU SIGN ANYTHING  
THAT IS AT THE HEART OF YOUR ANTITRUST CLAIM?

MR. KRONENBERGER: THAT'S RIGHT, AND THE  
SPECIFICS IN THEIR --

THE COURT: I STICK MY NECK OUT. DO YOU  
HAVE ANY CASE AUTHORITY TO FIND OUT THAT ARIN'S  
PRACTICED EXISTENCE IN WHAT IT REQUIRED PEOPLE TO  
DO VIOLATED THE ANTITRUST LAW?

MR. KRONENBERGER: IT'S CLEARLY  
DISCRIMINATORY.

THE COURT: DO YOU HAVE ANY CASE  
AUTHORITY?

MR. KRONENBERGER: ACTUALLY I WOULD LIKE  
PERMISSION.

THE COURT: ANYONE BRING ME CASE  
AUTHORITY THAT I CAN READ SOME OTHER JUDGE WHAT  
YOU'RE ASKING ME TO DO.

MR. HANLEY: GOOD MORNING. TERRI HANLEY  
FOR PLAINTIFF GARY KREMEN. I BELIEVE YOUR HONOR  
HAS GOTTEN TO THE HEART OF THE SUBSTANTIVE ATTACKS  
ON OUR ANTITRUST CLAIMS IN THIS MATTER.

NOW, YOU'VE ACKNOWLEDGED THAT THE CASE  
LAW ESTABLISHES THAT AN INDUSTRY ASSOCIATION, AN

00:51:42 1 AFFILIATE GROUP CAN BE LIABLE FOR ANTITRUST  
00:51:46 2 ACTIVITIES. YOUR QUESTION IT SEEMS TO BE IS HOW  
00:51:48 3 HAS ARIN'S CONDUCT IN THE PRESENT CASE VIOLATED  
00:51:51 4 THOSE LAWS?

00:51:52 5 THE COURT: THAT WAS AN EARLIER QUESTION  
00:51:54 6 BUT THE PENDING ONE IS GIVE ME SOMETHING THAT I CAN  
00:51:56 7 READ THAT WILL HELP ME TO FOLLOW SOMEONE ELSE'S  
00:51:59 8 LEAD. I LIKE WELL WORN PATHS. THEY USUALLY ARE  
00:52:03 9 SAFER SO.

00:52:06 10 MR. HANLEY: THE ANSWER, YOUR HONOR, IS  
00:52:07 11 THAT CONTRARY TO OPPOSING COUNSEL'S  
00:52:09 12 CHARACTERIZATION OF THE COMPLAINT, IT IS NOT MERELY  
00:52:12 13 THE ESTABLISHMENT OF POLICIES, MERELY THE  
00:52:15 14 REQUIREMENT OF THE SUBMISSION OF DETAILED  
00:52:18 15 INFORMATION BY APPLICANTS FOR IP ALLOCATIONS.

00:52:21 16 THE HARM COMES AND HAS BEEN NOTED  
00:52:23 17 PREVIOUSLY THAT, THAT A GROUP OF SELF-INTERESTED  
00:52:28 18 ECONOMIC INDUSTRY PARTICIPANTS TOOK IT UPON  
00:52:31 19 THEMSELVES TO LOBBY FOR AND CREATE THE PRIVATE  
00:52:36 20 INDUSTRY THAT IS NOW ARIN.

00:52:38 21 THE BOARD OF ARIN, WHICH IS SPECIFICALLY  
00:52:40 22 PLED AND IDENTIFIED IN THE COMPLAINT BY NAME, BY  
00:52:42 23 INDUSTRY AFFILIATION, BY GOVERNMENT ASSOCIATION,  
00:52:47 24 CONTROL EXCLUSIVELY THE ENTRY INTO THE MARKET FOR  
00:52:49 25 IP NUMBERS, ALLOCATIONS AND THEIR USE.



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NOW, IT'S BEEN OBSERVED BY THE U.S.  
SUPREME COURT.

THE COURT: NOW, LET ME SEE IF I FOLLOW  
THAT. I CAN HEAR A CLAIM, AS I UNDERSTAND IT, IF  
YOU CONVINC ME THAT ARIN IS CONTROLLED BY A GROUP  
OF LARGER COMPANIES WHO CONSPIRE TOGETHER TO KEEP  
SMALLER COMPANIES FROM GETTING SOMETHING THAT WOULD  
GIVE THEM ECONOMIC POWER.

AND THAT WOULD BE THESE IP ADDRESSES AND  
SO WHAT YOU'RE DESCRIBING FOR ME, ARIN IS NOT A  
LEGITIMATE ENTERPRISE. IT'S A CONSPIRACY OF, OF  
ITS BOARD TO, TO DENY SOMETHING TO, TO THE MARKET,  
THE COMPETITION OF SMALLER COMPANIES OWNING IP  
ADDRESSES.

DO YOU TAKE THE SAME POSITION AS YOUR  
OPPONENT WHICH IS THE ONE THAT I ASKED THAT IF ARIN  
SAID TO, TO MR. KREMEN ALL WE WANT YOU TO DO IS  
SIGN WHAT EVERYBODY ELSE HAS SIGNED, THAT THAT  
WOULD STILL AMOUNT TO AN ANTITRUST VIOLATION?

MR. HANLEY: IT WOULD, YOUR HONOR.

THE COURT: I'VE GOT THAT. NOW, IS THERE  
ANY CASE LIKE THIS?

MR. HANLEY: YES, YOUR HONOR. AND IN  
FACT, IT'S A CASE CITED IN OPPOSING COUNSEL'S OWN  
MOVING PAPER.

00:54:03 1 THE COURT: GIVE ME THE CITE.

00:54:05 2 MR. HANLEY: U.S. V GRENELL WHICH IS

00:54:08 3 ADDRESSED IN OUR OPPOSITION PAPERS ON PAGE 18.

00:54:11 4 THERE THE U.S. SUPREME COURT HELD THAT IS AN

00:54:14 5 UNLAWFUL MONOPOLY FOR AN ASSOCIATION TO EXCLUDE BY

00:54:16 6 MEANS OF RESTRICTED ENTRY CONTRACTS INTO A

00:54:19 7 COMPETITIVE MARKET. THAT IS EXACTLY THE ACTIVITY

00:54:21 8 THAT HAS BEEN CONDUCTED HERE ON THE PART OF ARIN AS

00:54:24 9 THEY HAVE IDENTIFIED OVER 11,000 TIMES AND, AND

00:54:27 10 INCLUDING IN THE CASE OF MR. KREMEN BUT NOT LIMITED

00:54:30 11 TO THAT CASE.

00:54:30 12 THE COURT: HOW LONG HAS ARIN BEEN

00:54:32 13 AROUND?

00:54:34 14 MR. HANLEY: IT'S DEBATABLE AS TO WHETHER

00:54:36 15 IT'S STILL AROUND OR THEY EXIST NOW LEGALLY. THEY

00:54:40 16 CLAIM TO BE IN OPERATION I BELIEVE SINCE 1998.

00:54:43 17 THE COURT: AND HAS THERE BEEN ANOTHER

00:54:44 18 CASE INVOLVING ARIN HOLDING THAT IT IS VIOLATING

00:54:47 19 THE ANTITRUST LAWS OR HAS THE ISSUE COME UP?

00:54:54 20 MR. HANLEY: TWO PENDING LAWSUITS

00:54:56 21 INVOLVING ICAM, WHICH IS THE ORGANIZATION THAT WE

00:54:59 22 ALLEGE ARIN ATTEMPTS TO DERIVE ITS POWER. THE

00:55:04 23 ACTUAL CONTRACT THAT WOULD EVEN, WOULD EVEN

00:55:10 24 PLAUSIBLY LEGITIMIZE ARIN'S AT THIS POINT HAS BEEN

00:55:16 25 YET TO BE EXECUTED. THERE IS NO EXISTING OPERATION

00:55:18 1 AGREEMENT AT THIS TIME THAT AUTHORIZES ARIN'S  
00:55:21 2 POSITION IN THE MARKET AND THAT CREATES EVEN MORE  
00:55:23 3 OF THE, OF THE CAST, THE GREATER PALLOR OF THIS  
00:55:27 4 ANTICOMPETITIVE ACTION IN THAT THEY CAN'T CLAIM THE  
00:55:30 5 QUASI GOVERNMENTAL AUTHORITY THAT I CAN'T ENJOY AND  
00:55:34 6 ICAM ITSELF IS SUBJECT TO TWO LAWSUITS CURRENTLY  
00:55:38 7 PENDING.

00:55:39 8 THE COURT: WELL, THIS IS A FASCINATING  
00:55:41 9 AREA FOR ME AND I'LL TAKE A LOOK AT IT.

00:55:43 10 IT SEEMS TO ME THAT AT THE HEART OF MY  
00:55:46 11 ATTITUDE IS THE QUESTION THAT I KEEP ASKING,  
00:55:49 12 NAMELY, IS THERE ANYTHING TO THE ANTITRUST CASE IF  
00:55:55 13 I FIND THAT MR. KREMEN'S REFUSAL, PRESUMING THERE  
00:56:03 14 WAS ONE, TO SIGN THE REGISTRATION REQUIREMENT AND,  
00:56:06 15 AND ONCE I GET PASSED THAT, I'LL LOOK A LITTLE MORE  
00:56:11 16 CAREFULLY AT THIS QUESTION OF THE STATUTE OF  
00:56:15 17 LIMITATIONS AND, AND IF I GET PASSED THE STATUTE OF  
00:56:18 18 LIMITATIONS I'LL GET INTO THE SUBSTANCE OF THESE  
00:56:21 19 ALLEGATIONS THAT ARIN, ARIN BY ITS VERY EXISTENCE  
00:56:25 20 AND WHAT IT REQUIRES, IN OTHER WORDS, IT'S THE  
00:56:29 21 REQUIREMENT ITSELF TO, TO SIGN UP THE REGISTRATION  
00:56:32 22 AND, AND BE A PART OF THIS REGISTRY THAT IS  
00:56:36 23 ANTICOMPETITIVE.

00:56:34 24 MR. HANLEY: NOT JUST THE EXISTENCE OF  
00:56:36 25 THE REGISTRY BUT THE PROCEDURES THAT ARE REQUIRED

00:56:39 1 TO OBTAIN THE REGISTRATION, NOT ONLY THE OBTAINMENT  
00:56:41 2 OF IT BUT THE MONITORING, THE GRAB BACK PROVISIONS  
00:56:44 3 THAT WE NOTICED NOT TO MENTION THE FACT THAT THE  
00:56:47 4 ENTIRE TIME FOLLOWING THE ALLOCATION YOU HAVE NOW  
00:56:50 5 PUT IN THE POSSESSION OF YOUR PRIMARY COMPETITORS  
00:56:53 6 DETAILED, AND I MEAN VERY HIGHLY CONFIDENTIAL  
00:56:56 7 INFORMATION REGARDING YOUR NETWORK OPERATIONS DOWN  
00:56:59 8 TO THE NAME OF THE LAPTOP THAT THE CFO OR CEO WOULD  
00:57:03 9 BE OPERATING ON. AND THE AMOUNT OF DETAIL IS  
00:57:06 10 AMAZING AND YOU HANDED IT OVER TO YOUR COMPETITORS  
00:57:09 11 WHO HAVE THE POWER TO TAKE IT OVER AT ANY POINT.

00:57:12 12 THE COURT: IS THERE ANY EVIDENCE THAT  
00:57:13 13 YOU WOULD PROFFER TO THE COURT THAT IT HAS BEEN  
00:57:15 14 ABUSED?

00:57:17 15 MR. HANLEY: WELL, AGAIN, WE'RE AT THE  
00:57:19 16 PLEADING STAGE AT THIS POINT. OF COURSE WE PLAN TO  
00:57:24 17 CONDUCT DISCOVERY.

00:57:24 18 THE COURT: YOU DON'T HAVE ANYTHING LIKE  
00:57:26 19 THAT AT THIS POINT.

00:57:27 20 MR. HANLEY: NOT AT THIS POINT, YOUR  
00:57:28 21 HONOR.

00:57:28 22 THE COURT: VERY WELL. THANK YOU. I'LL  
00:57:30 23 HAVE THIS ENTIRE MATTER UNDER SUBMISSION. I'LL  
00:57:33 24 GIVE YOU AN ORDER SHORTLY.

00:57:35 25 MR. HUMMEL: YOUR HONOR, VERY BRIEFLY.

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THE COURT: YES.

MR. HUMMEL: THERE WAS A CASE MANAGEMENT  
CONFERENCE IN THIS MATTER TO SET FOR 10:00 O'CLOCK.

DOES IT MAKE SENSE TO PUT THAT OVER?

THE COURT: YES, I'LL VACATE THAT AND  
I'LL ADDRESS WHAT THE CASE IS AND WE'LL BRING IT  
ALL IN AND TALK ABOUT WHERE WE GO FROM THERE.

MR. HUMMEL: THANK YOU FOR YOUR TIME.

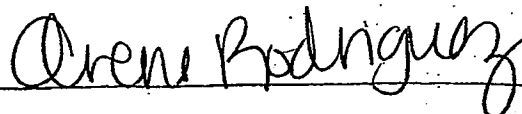
MR. IDELL: THANK YOU, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS IN THIS MATTER  
WERE CONCLUDED.)

1  
2  
3  
4 CERTIFICATE OF REPORTER  
5  
6  
7

8 I, THE UNDERSIGNED OFFICIAL COURT  
9 REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
10 THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
11 FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
12 CERTIFY:

13 THAT THE FOREGOING TRANSCRIPT,  
14 CERTIFICATE, INCLUSIVE, CONSTITUTED A TRUE, FULL  
15 AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN  
16 AS SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
17 HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
18 TRANSCRIPTION TO THE BEST OF MY ABILITY.  
19  
20  
21

22 

23 IRENE RODRIGUEZ, CSR, CRR  
24 CERTIFICATE NUMBER CSR 8074  
25

10/18/07 transcript  
Kremmer  
Phillips

**Blanchard, Judith**

**From:** Lerner, Brian  
**Sent:** Tuesday, November 14, 2006 8:00 PM  
**To:** Ryan, Stephen; Yeh, Jack  
**Cc:** Hummel, Chad  
**Subject:** RE: ARIN's transcript of hearing -- Good news, it's here.

**Attachments:** 102306cv.pdf



102306cv.pdf (100 KB)

Thankfully, we finally received the transcript. However, upon reading it, there are a few misspellings of important words, including Mr. Plzak's name, which was incorrectly spelled "Mr. Zlak." Also, the words "UU NET" should be changed to one word, namely, "UNNET." I requested that the Court Reporter make the corrections and e-mail the modified transcript to me asap. I anticipate receiving the modified transcript by tomorrow.

I attached a .pdf copy of the original transcript we received today for your review.

Cordially,  
Brian G. Lerner  
manatt | phelps | phillips  
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Los Angeles, CA 90064

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

**From:** Ryan, Stephen  
**Sent:** Tuesday, November 14, 2006 5:08 AM  
**To:** Lerner, Brian; Yeh, Jack  
**Subject:** RE: ARIN's transcript of hearing -- Good news, it's almost here.

When we get it let's pdf so I can send to business week.

Sent from my GoodLink Wireless Handheld (www.good.com)

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

**From:** Lerner, Brian  
**Sent:** Monday, November 13, 2006 09:04 PM Pacific Standard Time  
**To:** Yeh, Jack; Ryan, Stephen  
**Subject:** RE: ARIN's transcript of hearing -- Good news, it's almost here.

We will hopefully have the transcript by tomorrow. The Court Reporter informed me that she's almost finished and requested that I provide her with the correct spelling of

certain names, which I did. She's in trial now, but promised to send the transcript asap.

Cordially,  
Brian G. Lerner  
manatt | phelps | phillips  
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Los Angeles, CA 90064

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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. )

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

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1 A P P E A R A N C E S : ( C O N T ' D )  
 2  
 3 F O R T H E P L A I N T I F F S : D I L L O N G E R A R D I  
 4 B Y : T I M O T H Y P . D I L L O N  
 5 4 6 6 0 L A J O L L A V I L L A G E D R I V E  
 6 S U I T E 7 7 5  
 7 S A N D I E G O , C A L I F O R N I A 9 2 1 2 2  
 8  
 9 F O R T H E D E F E N D A N T S : M A N A T T , P H E L P S & P H I L L I P S  
 10 B Y : S T E P H E N M . R Y A N  
 11 C H A D H U M M E L  
 12 J A C K S . Y E H  
 13 7 0 0 1 2 T H S T R E E T , N . W .  
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 15 W A S H I N G T O N , D . C . 2 0 0 0 5  
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1 F A L L O U T I F Y O U A D D R E S S T H A T I S S U E F I R S T .  
 2 T H E C O U R T : V E R Y W E L L .  
 3 M R . R Y A N : L E T M E S A Y W H Y W E A R E S E E K I N G  
 4 T O C H A N G E T H A T O R D E R ? F I R S T O F A L L , I T W A S  
 5 O B T A I N E D I N A N E X P A R T E F A S H I O N W H E N T H E R E W A S  
 6 A B S O L U T E L Y N O E M E R G E N C Y R E A S O N T O D O S O .  
 7 D U R I N G T H E C O U R S E O F T H E R E P R E S E N T A T I O N S  
 8 T H A T W E R E M A D E T O T H E C O U R T , T H E R E W E R E , T H E R E  
 9 W E R E --  
 10 T H E C O U R T : G O A H E A D .  
 11 M R . R Y A N : T H E A M E R I C A N R E G I S T R Y O F  
 12 I N T E R N E T N U M B E R S I S E S S E N T I A L L Y T H E R E G I S T R Y W H E R E  
 13 O N E H A S T O G O T O O B T A I N I P A D D R E S S E S I N L A R G E  
 14 Q U A N T I T I E S . Y O U C A N A L S O O B T A I N T H E M F R O M A N I S P .  
 15 S O , F O R E X A M P L E , S B C W O U L D B E A B L E T O  
 16 G I V E Y O U N U M B E R S A S W E L L . B U T W I T H R E G A R D T O T H E S E  
 17 N E T B L O C K S W E I S S U E D T H E M A P P R O P R I A T E L Y T O  
 18 M R . C O H E N . W E H A D N O T H I N G T O D O W I T H M R . K R E M E N ' S  
 19 L A W S U I T .  
 20 W H E N T H E C O U R T ' S O R D E R W A S I S S U E D I T W A S  
 21 P R E M I S E D I B E L I E V E B A S E D O N R E P R E S E N T A T I O N S T H A T  
 22 M R . K R E M E N M A D E T H A T W E R E I N C O R R E C T O R F A L S E .  
 23 O N E O F T H O S E R E P R E S E N T A T I O N S I S T H A T  
 24 M R . K R E M E N S A I D I N H I S A F F I D A V I T , C O H E N I S A  
 25 S U P P O R T E R O F A R I N T H A T M A K E S V O L U N T A R I L Y D O N A T I O N S

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1 S A N J O S E , C A L I F O R N I A O C T O B E R 2 3 , 2 0 0 6  
 2 P R O C E E D I N G S  
 3 ( W H E R E U P O N , C O U R T C O N V E N E D A N D T H E  
 4 F O L L O W I N G P R O C E E D I N G S W E R E H E L D : )  
 5 T H E C L E R K : C A L L I N G C A S E N U M B E R C - 0 6 - 2 5 5 4 ,  
 6 G A R Y K R E M E N V E R S U S A M E R I C A N R E G I S T R Y F O R I N T E R N E T  
 7 N U M B E R S .  
 8 M R . R Y A N : S T E V E R Y A N F R O M T H E M A N A T T L A W  
 9 F I R M A C C O M P A N I E D B Y M R . H U M M E L A N D M R . Y E H O N  
 10 B E H A L F O F D E F E N D A N T A R I N W H O I S T H E M O V A N T O N T H E  
 11 M O T I O N T O , T O C H A N G E T H E 2 0 0 1 O R D E R .  
 12 T H E C O U R T : G O O D M O R N I N G .  
 13 M R . H U M M E L : G O O D M O R N I N G , Y O U R H O N O R .  
 14 M R . Y E H : G O O D M O R N I N G , Y O U R H O N O R .  
 15 M R . K R O N E N B E R G E R : G O O D M O R N I N G , Y O U R H O N O R .  
 16 K A R L K R O N E N B E R G E R F O R G A R Y K R E M E N A N D A C C O M P A N I E D  
 17 B Y M Y C O L L E A G U E T E R R I H A N L E Y A N D M R . I D E L L , A N D I ' M  
 18 S O R R Y , A N D M R . T I M D I L L O N .  
 19 T H E C O U R T : V E R Y W E L L . V E R Y W E L L .  
 20 M R . R Y A N , T H I S I S Y O U R C L I E N T ' S M O T I O N T O D I S M I S S .  
 21 M R . R Y A N : Y O U R H O N O R , T H E R E A R E T W O  
 22 M O T I O N S B E F O R E T H E C O U R T T H I S M O R N I N G . M R . H U M M E L  
 23 W I L L B E A R G U I N G T H E M O T I O N T O D I S M I S S .  
 24 W H A T I W O U L D L I K E T O A D D R E S S I S T H E 2 0 0 1  
 25 O R D E R B E C A U S E W E B E L I E V E M A N Y O F T H E I S S U E S W I L L

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1 T O A R I N . T H A T ' S S I M P L Y N O T T R U E . E V E R Y B O D Y I S  
 2 R E Q U I R E D T O S I G N A S E R V I C E A G R E E M E N T I F Y O U W A N T T O  
 3 G E T I S S U E D T H E I P O R D E R S A N D T H E Y H A V E T O B E D O N E  
 4 T H A T W A Y .  
 5 S O T H E C O U R T E I T H E R R E C E I V E D  
 6 R E P R E S E N T A T I O N S F R O M M R . K R E M E N T H A T W E R E E I T H E R  
 7 F A L S E O R U N I N T E N T I O N A L L Y M I S L E A D I N G .  
 8 I N A D D I T I O N T H E W A Y W E W O R K W I T H T H E S E  
 9 R E S O U R C E S , Y O U R H O N O R , W E I S S U E T H E M P R O P E R L Y T O  
 10 P E O P L E W H E N T H E Y S I G N A N A G R E E M E N T T O U S .  
 11 W H E N T H E Y ' R E D O N E W I T H T H E M O R T H E C O U R T  
 12 O R D E R S U S T O , T O C H A N G E T H A T , W E H A V E T O R E V O K E  
 13 T H E M F R O M T H E O N E P A R T Y A N D T H E N R E I S S U E T H E M T O  
 14 T H E N E X T P A R T Y . T H E Y A R E N ' T J U S T T R A N S F E R R E D F R O M  
 15 O N E P A R T Y T O A N O T H E R .  
 16 S O W H E N T H E C O U R T I S B E I N G A S K E D B Y  
 17 M R . K R E M E N I N A N E X P A R T E W A Y W A S A S K E D T O R E G I S T E R  
 18 T H E R E S O U R C E S T O M R . K R E M E N , T H A T ' S N O T H O W W E D O  
 19 B U S I N E S S . I N E S S E N C E W E G I V E T H E M T O S O M E O N E , W E  
 20 H A V E T O R E V O K E T H E M A N D T H E N R E I S S U E T H E M .  
 21 T H R O U G H O U T T H I S P R O C E S S W E H A V E B E E N  
 22 F U L L Y W I L L I N G , E V E N T H O U G H T H E O R D E R W A S D O N E E X  
 23 P A R T E , T O G I V E H I M T H E R E S O U R C E S .  
 24 H E H A S B E E N U N W I L L I N G A N D A B S O L U T E L Y  
 25 U N Y I E L D I N G I N H I S I N T E N T I O N N O T T O S I G N A N Y O F T H E

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1 NECESSARY PAPERWORK THAT THE DEPARTMENT OF DEFENSE  
 2 THE U.S. DEPARTMENT OF JUSTICE, ANY ISP LIKE  
 3 VERIZON OR SBC, ANY INDIVIDUAL, EVERYONE SINCE 1998  
 4 WHO HAS WANTED RESOURCES HAS BEEN ASKED TO SIGN AN  
 5 AGREEMENT SAYING THAT THEY WILL USE THE RESOURCES  
 6 PROPERLY, THAT THEY'LL PAY FOR THE SERVICES ON A  
 7 REGULAR BASIS AND IF THEY'RE MISUSED IT GIVES THE  
 8 COMMUNITY THE RIGHT TO RESOURCES. HE'S ABSOLUTELY  
 9 REFUSED. SO THE REASON THAT THE RESOURCES HAVE NOT  
 10 BEEN TRANSFERRED TO HIM IS SOLELY HIS OWN DOING.  
 11 WITH REGARD TO WHY THE COURT SHOULD  
 12 CHANGE THE ORDER IT'S IN ESSENCE A MISREADING OF  
 13 YOUR ORDER IN 2001 THAT HE DID NOT HAVE TO COMPLY  
 14 WITH ANY OF THE ACTIVITIES THAT A NORMAL APPLICANT  
 15 OR REGISTRANT WOULD DO.  
 16 WE BELIEVE THAT THE ONLY APPROPRIATE WAY  
 17 TO DEAL WITH THIS IS TO NOT GIVE HIM GREATER RIGHTS  
 18 THAN ANYONE ELSE IN THE INTERNET COMMUNITY. WHAT  
 19 HE'S ASKING FOR IS THAT WE TRANSFER THESE RIGHTS TO  
 20 HIM WITHOUT ANY SERVICE AGREEMENT, WITHOUT ANY DUTY  
 21 FOR HIM TO PAY IN THE FUTURE AND WITH HIS ABILITY  
 22 TO MISUSE THE RESOURCES IF HE CHOSE WITHOUT US  
 23 HAVING A CONTRACTUALLY BASED RIGHT IN THE SERVICE  
 24 AGREEMENT TO DEAL WITH THAT.  
 25 THE RESOURCES THAT WERE ISSUED, THERE'S

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1 ABOUT 12,000 IP NUMBERS THAT ARE OUT AT AN ISP THAT  
 2 MAY WELL BE CONTROLLED BY MR. COHEN, BUT THERE ARE  
 3 THIRD PARTIES THAT ARE OBTAINING SERVICES FROM THAT  
 4 ISP.  
 5 WE HAVE SAID ALL ALONG THAT CHANGING THE  
 6 REGISTRATION AND PERHAPS SHUTTING THAT DOWN MAY NOT  
 7 BE THE APPROPRIATE WAY AND WE WANTED TO MAKE SURE  
 8 THAT THE COURT IS AWARE THAT THERE IS A POSSIBILITY  
 9 OF THREE PARTY HARM THAT PEOPLE COULD SUE ARIN, FOR  
 10 EXAMPLE, BECAUSE THE COURT DIDN'T ORDER THE, THE  
 11 RESOURCES REVOKED. IT'S NOT CLEAR THAT WE HAVE THE  
 12 RIGHT TO REVOKE BASED ON THE COURT'S ORDER.  
 13 WE WOULD LIKE THE COURT'S ORDER TO BE  
 14 AMENDED TO SHOW THAT WE HAVE THE RIGHT TO REVOKE  
 15 THOSE RESOURCES WHICH WE BELIEVE IS CONSISTENT WITH  
 16 THE INTENT OF YOUR ORDER BUT WASN'T SPELLED OUT AND  
 17 IN PART BECAUSE WE WEREN'T A PARTY.  
 18 ARIN POTENTIALLY, BY THE WAY, COULD BE  
 19 HARMED IN EFFECT BY, BY THE INABILITY OF OURSELVES  
 20 TO, TO MAINTAIN THE UNIQUENESS OF THOSE IP NUMBERS.  
 21 SO, FOR EXAMPLE, IF WE WERE TO REGISTER  
 22 THEM AS THE COURT ORDER SAID TO MR. KREMEN, HE  
 23 COULD BE BEGIN USING THOSE NUMBERS WHILE SOMEONE  
 24 ELSE IS USING THOSE NUMBERS. THAT'S EXACTLY WHAT  
 25 OUR JOB IS TO PREVENT. IT'S TO GRANT UNIQUE,

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1 UNIQUE NUMBERS TO EACH PARTY FOR THE PERIOD THAT  
 2 THEY'RE ENTITLED TO USE THEM.  
 3 WHEN THEY'RE NOT ENTITLED TO USE THEM WE  
 4 BRING THEM BACK AND PUT THEM BACK IN THE TREASURY  
 5 AND RE-ISSUE THEM TO THE NEXT PARTY.  
 6 THE COURT: WHAT DO YOU DO IF THERE'S A  
 7 CONFLICT?  
 8 MR. RYAN: THERE'S NO CONFLICT FROM OUR  
 9 PROCESS. WE ARE THE "WHO IS" DIRECTORY. WHEN WE  
 10 PUBLISH SOMETHING, THIS IS THE AUTHORITATIVE LIST  
 11 OF WHO HAS THE RIGHT TO THOSE RESOURCES.  
 12 THE COURT: THE PEOPLE, THE THIRD PARTIES  
 13 YOU'RE NOW TELLING ME ABOUT, HOW DID THEY COME  
 14 TO -- THROUGH WHOM DID THEY OBTAIN RIGHTS?  
 15 MR. RYAN: SO WHEN WE ISSUED THE ORIGINAL  
 16 RESOURCES TO COHEN OR TO A COHEN ASSOCIATED ENTITY,  
 17 THEY THEN WOULD USE THOSE RESOURCES TO PROVIDE AN  
 18 INDIVIDUAL, SAY A STUDENT, OR, OR A BUSINESS WITH  
 19 THOSE, WITH THOSE NUMBERS TO DO BUSINESS WITH THEIR  
 20 ISP.  
 21 THE COURT: YOU'RE GIVING ME THAT AS A  
 22 HYPOTHETICAL BUT CAN YOU TRACE THROUGH NOW TO KNOW  
 23 EXACTLY WHO THE THIRD PARTIES ARE?  
 24 MR. RYAN: NO, WE DO NOT HAVE SUFFICIENT  
 25 RECORDS TO KNOW WHO THOSE THIRD PARTIES ARE. WE

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1 SIMPLY BELIEVE. AND WE KNOW MR. KREMEN HAS BEEN IN  
 2 TOUCH WITH THOSE PEOPLE THAT CONTROL THE ISP FAR  
 3 MORE THAN WE HAVE BUT THE ISP HAS MADE  
 4 REPRESENTATIONS TO US THAT THEY ARE THIRD PARTIES  
 5 SO THEY WOULD BE HARMED. WE DON'T CARE SO AS LONG  
 6 AS THE COURT ORDERS US TO REVOKE THAT.  
 7 WE WANTED TO POINT OUT THE EQUITIES THAT  
 8 THERE ARE THIRD PARTIES INVOLVED BUT WE DON'T  
 9 REALLY WANT TO STAND BETWEEN MR. KREMEN AND  
 10 MR. COHEN. WE NEVER WANTED TO BE THERE.  
 11 WE WANT TO GIVE THOSE RESOURCES, AS THE  
 12 COURT WANTED US TO, TO HIM, BUT ONLY AFTER, AFTER  
 13 HE SIGNS AN AGREEMENT THAT SAYS HE'LL USE THEM  
 14 PROPERLY AND HE'LL BE GOVERNED BY THE RULES OF THE  
 15 COMMUNITY IN THE SAME WAY AS EVERYONE ELSE.  
 16 THE COURT: VERY WELL. LET ME INTERRUPT  
 17 WHATEVER COMMENTS YOU'RE GOING TO MAKE AND HEAR  
 18 FROM YOUR OPPONENT.  
 19 MR. IDELL: GOOD MORNING, YOUR HONOR. I  
 20 WANT TO START THIS DISCUSSION OFF BY APPROACHING IT  
 21 IN A MUCH SIMPLER WAY. YOU KNOW, YOUR HONOR, IN  
 22 THE FIVE YEARS OR SO THAT WE HAVE COME BEFORE YOU  
 23 ON A NUMBER OF DIFFERENT PROPERTY ISSUES, THE ISSUE  
 24 HAS ALWAYS BEEN THE SAME, THERE'S A JUDGMENT  
 25 PROVIDES FOR A CONSTRUCTIVE TRUST OVER PROPERTY

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1 THAT COHEN HAD. THIS ORDER IS NO DIFFERENT THAN  
 2 ANY OF THOSE.  
 3 IT'S NOT COMPLICATED. IT'S VERY SIMPLE.  
 4 IT'S UNDISPUTED THAT, THAT COHEN, SANDMAN, PACNET,  
 5 THE LATTER COMPANY BEING ONE THAT IT TOOK US A  
 6 WHILE TO FIGURE OUT HOW WE COULD PROVE THE ALTER  
 7 EGO STATUS BUT NOW HAS BEEN SHOWN THESE ARE ALL  
 8 COMPANIES THAT OBTAINED THESE RESOURCES FROM ARIN.  
 9 INTERESTINGLY, YOUR HONOR, THE STATEMENT  
 10 HAS BEEN MADE IN THE REPLY THAT KREMEN FOR THE  
 11 FIRST TIME IS COMING FORWARD AND SAYING HE'LL STEP  
 12 IN THE SHOES OF MR. COHEN. THAT'S NOT AT ALL TRUE.  
 13 WE HAVE BEEN SAYING THAT SINCE DAY ONE. WE SAID  
 14 THAT THE FIRST DAY WE CAME IN HERE ON  
 15 SEPTEMBER 17TH AND ASKED YOUR HONOR TO MAKE AN  
 16 ORDER THAT THEY REREGISTER THESE. THAT'S ALL WE  
 17 EVER ASKED FOR.  
 18 WE FILED OUR OPPOSITION TO THIS MOTION  
 19 AFTER, AFTER NOT ONE BUT TWO SUBPOENAS HAVE BEEN  
 20 ISSUED ON ARIN.  
 21 IN, IN NEITHER OF THE PRODUCTIONS THEY  
 22 NEVER PRODUCED IN RESPONSE TO THOSE SUBPOENAS THESE  
 23 CONTRACTS WHICH THEY GAVE US TWO DAYS AFTER WE  
 24 FILED OUR OPPOSITION. AND NOW THEY -- AND IT'S  
 25 VERY CURIOUS THAT THEY DIDN'T PRODUCE THOSE

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1 CONTRACTS BUT, BUT IT'S PERHAPS ANSWERED IN THE  
 2 FACT THAT THOSE CONTRACTS DON'T EVEN DESIGNATE WHAT  
 3 RESOURCES THEY APPLY TO.  
 4 BUT NOW WE KNOW THIS CONTRACT BECAUSE  
 5 THEY HAVE GIVEN THEM TO US AND THEY SAY THAT THESE  
 6 ARE CONTRACTS THAT APPLY IN SOME WAY. THEY SAY WE  
 7 CAN FIGURE OUT, IF YOU LOOK AT MR. -- IF I'M  
 8 PRONOUNCING HIS NAME CORRECTLY -- MR. ZLAK'S  
 9 DECLARATION HE SAYS WE CAN FIGURE OUT WHICH  
 10 RESOURCES WERE COVERED BY THIS CONTRACT. I CAN'T  
 11 FIGURE IT OUT. NO ONE ELSE FROM THIS LEGAL TEAM  
 12 CAN FIGURE IT OUT. IT'S NOT EVEN CLEAR FROM THE  
 13 DECLARATION.  
 14 THE COURT: LET'S GO BACK TO YOUR  
 15 STATEMENT ABOUT THAT THERE IS A CONFLICT, AS I  
 16 HEARD IT, BETWEEN THE POSITION OF ARIN AND THE  
 17 PLAINTIFF HERE OR, OR WITH RESPECT TO, WITH RESPECT  
 18 TO WHETHER OR NOT YOU HAD, YOU HAD INDICATED YOUR  
 19 WILLINGNESS TO SIGN WHATEVER THEY TENDERED TO YOU  
 20 TO SIGN FOR PURPOSES OF, OF TRANSFER. HOW DO I  
 21 RESOLVE THAT CONFLICT? IS THERE SOME DOCUMENT THAT  
 22 I CAN LOOK AT THAT WILL TELL ME WHETHER THE OFFER  
 23 WAS MADE AND REJECTED OR WHETHER IT WAS ACCEPTED?  
 24 MR. IDELL: YOUR HONOR, THAT'S A  
 25 DIFFERENT ISSUE. WHAT I SAID WAS --

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1 THE COURT: THAT'S THE ISSUE I'M ASKING  
 2 ABOUT. THAT'S THE ISSUE I WANT TO KNOW ABOUT. IS  
 3 THERE A PLACE THAT I CAN LOOK TO FIND THE ANSWER TO  
 4 THAT?  
 5 MR. IDELL: TO FIND THE ANSWER AS TO  
 6 WHETHER OR NOT MR. KREMEN WOULD SIGN AN AGREEMENT  
 7 IS THAT THE QUESTION?  
 8 THE COURT: SIGN WHATEVER AND INDICATED  
 9 IT NEEDED TO HAVE SIGNED IN ORDER TO, TO TRANSFER  
 10 TO MR. KREMEN WHAT, WHAT WAS ON ITS BOOKS BELONGING  
 11 TO MR. COHEN.  
 12 MR. IDELL: THEY HAD NEVER PRESENTED US  
 13 WITH ANY DOCUMENT WHICH THEY SAID THAT IF YOU SIGN  
 14 THIS DOCUMENT THEN, THEN YOU WILL BE IN THE SHOES  
 15 OF MR. COHEN.  
 16 HOWEVER, YOUR HONOR, THEY WOULD NEED TO  
 17 DO THAT BECAUSE IF THEY HAD VALID CONTRACTS WITH  
 18 MR. COHEN AND PACNET AND THESE OTHER COMPANIES THEN  
 19 BY REGISTERING THESE BLOCKED NUMBERS AND ASN  
 20 NUMBERS IN MR. KREMEN'S NAME, MR. KREMEN IS BOUND  
 21 BY WHATEVER CONTRACT COHEN IS BOUND BY.  
 22 THE COURT: AND HOW DOES ONE REGISTER?  
 23 MR. IDELL: THEY HAVE THE ABILITY, YOUR  
 24 HONOR, TO CHANGE THE RECORD OF WHO, OF WHO CONTROLS  
 25 THESE NET BLOCK NUMBERS AND AS NUMBERS. THEY DO

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1 THAT THROUGH AN ELECTRONIC PROCESS. IT'S VERY  
 2 SIMILAR TO WHAT HAPPENS IN THE DOMAIN NAME CONTEXT  
 3 IN TERMS OF MAKING AN ELECTRONIC ENTRY.  
 4 MR. RYAN STATED TO YOU IN HIS BRIEF  
 5 PRESENTATION THAT THEY HAVE TO TAKE THE RESOURCES  
 6 BACK AND REISSUE THEM. IT SOUNDS LIKE THEY'RE  
 7 DOING SOMETHING BUT THEY'RE NOT. ALL THEY'RE DOING  
 8 IS FLIPPING A SWITCH, AN ELECTRONIC SWITCH,  
 9 CHANGING A NAME FROM JONES TO SMITH. THAT'S ALL IT  
 10 IS.  
 11 MY POINT, YOUR HONOR, IS THAT THEY, THEY  
 12 HAVE BEEN IN AN EVOLVING PROCESS. THEY HAVE THIS  
 13 LONG HISTORY OF HOW THEY GOT THEIR POWERS, TO THE  
 14 EXTENT THAT THEY HAVE ANY, WHICH IS ANOTHER ISSUE  
 15 THAT WE CAN GET INTO INVOLVING THE OTHER MOTION.  
 16 BUT THERE'S A LONG HISTORY AS TO HOW THEY  
 17 GOT THEIR POWERS AND HOW THEY DEVELOPED THEIR  
 18 SYSTEMS AND ALONG THE WAY THERE WERE CERTAIN  
 19 RESOURCES THAT WERE ISSUED BEFORE THEY EVER CAME  
 20 INTO THE PICTURE WHICH ARE NOT REGULATED BY THESE  
 21 CONTRACTS. THAT'S THE SO CALLED LEGACY RESOURCES  
 22 WHICH APPARENTLY MR. COHEN HAS SOME OF THOSE.  
 23 THOSE ARE THE ONES THAT THEY SAY WE DON'T CONTROL.  
 24 THOSE ARE WITH UU NET.  
 25 BUT AS TO THE ONES THEY DO CONTROL

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

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

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

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

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

1 ELSE DID. I WAS NOT TRYING TO EXEMPT HIM FROM  
2 THAT.  
3 NOTHING IN MY ORDER CONTAINS ANY KIND OF  
4 EXEMPTION AND THE DETAIL OF MY ORDER IS MERELY A  
5 REFLECTION OF WHAT I WAS ASKED FOR WITHOUT  
6 OPPOSITION AND SO IF THERE HAD BEEN OPPOSITION  
7 EXPLAINING TO ME HOW TO SHAPE THE ORDER, I MIGHT  
8 HAVE SHAPED IT DIFFERENTLY.

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

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

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

1 OF HIS ASSETS TO BE SURRENDERED TO, TO MR. KREMEN.  
2 AND, AND BECAUSE OFTEN THERE IS NO OPPOSITION.

3 SO IF THIS HAD BEEN PRESENTED TO ME AS A  
4 PROBLEM EARLY ON, IT WOULD HAVE GIVEN ME AN  
5 OPPORTUNITY TO COMMENT ON IT.

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

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

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

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

1 SEE WHERE WE COME OUT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 THE COURT: SO THE ONLY REASON THEY  
5 DIDN'T SIGN IS THAT BECAUSE HE DIDN'T COME FORWARD  
6 WITH WHAT THEY --

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

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

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

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

1 RESTRICTIONS.

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

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

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

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

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

1 RESTRICTION?

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

7 THE COURT: AND IS THAT THE ONLY REASON?

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

10 THE COURT: ALL RIGHT. THANK YOU.  
11 LET ME GO BACK OVER HERE, AND I KNOW I'M  
12 SHORT OF TIME OR OUT OF TIME.

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

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

19 THE COURT: PASS IT UP.

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

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

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

7 THE COURT: WHY DON'T YOU CARE?

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

12 THE COURT: YOU'VE GOT ME NOW.

13 MR. RYAN: I UNDERSTAND.

14 THE COURT: WHY DON'T YOU CARE?

15 MR. RYAN: I DO ACTUALLY.

16 THE COURT: IS IT SIGNIFICANT BETWEEN  
17 THESE?

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

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

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

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

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

23 SO IN 2002, WE TRANSFERRED THINGS TO  
24 MEXICO. THAT WAS PERFECTLY APPROPRIATE.

25 NOW, THERE'S TWO THINGS WE CAN DO. WE

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

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

8 THE COURT: SO THEY'RE USED TO THAT?

9 MR. RYAN: THEY'RE USED TO THAT.

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

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

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

23 THE COURT: I HEARD THAT.

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

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

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

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

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

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

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

21 MR. RYAN: IT'S AN E-MAIL. IF YOU LOOK  
22 AT THAT E-MAIL ON JANUARY 30TH, 2004, THIS IS  
23 APPROXIMATELY 30 DAYS AFTER, AFTER MR. KREMEN  
24 FINALLY DECIDED HE WANTED TO ENFORCE THE COURT'S  
25 2001 ORDER. IF YOU READ THAT E-MAIL, THE ONLY

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1 IMPORT OF WHAT WE'RE SAYING IS THAT WE ASKED HIM TO  
 2 FILL OUT THE PAPERWORK, AND, IN FACT, YOUR HONOR.  
 3 THE COURT: WHERE IS THAT LANGUAGE?  
 4 MR. RYAN: THIS IS MR. IDELL'S LANGUAGE.  
 5 AS WE DISCUSSED IN WASHINGTON, WE AGREED TO RESOLVE  
 6 THE MATTER AND ENFORCEMENT OF THE ORDER BY  
 7 ASSIGNMENT OF THE NET BLOCKS TO GARY, ARIN WANTED  
 8 IN THE SECOND PARAGRAPH, ARIN WANTED GARY TO FILL  
 9 OUT THE USUAL PAPERWORK BEFORE THE ACTUAL  
 10 ASSIGNMENT. IT WAS UNDERSTOOD THAT MR. JIMMERSON  
 11 AND YOU, IF NECESSARY, WOULD ASSIST GARY THROUGH  
 12 THAT PROCESS.  
 13 I CAN TELL YOUR HONOR, I WILL REPRESENT  
 14 TO THE COURT THAT I HAD MY STAFF PREPARE THE PAPERS  
 15 FOR THEM SO THAT THEY COULD JUST SIGN THEM.  
 16 SO SINCE 2004 ALL OF THE, ALL OF THE  
 17 ENERGY AND WASTE HAS BEEN GENERATED BECAUSE GARY  
 18 KREMEN WANTED DIFFERENT RIGHTS THAN EVERYBODY ELSE  
 19 IN THE INTERNET. HE WANTED DIFFERENT RIGHTS THAN  
 20 MR. COHEN HAD, HE WANTED DIFFERENT RIGHTS THAN THE  
 21 DEPARTMENT OF DEFENSE, AND WE WERE UNWILLING TO  
 22 GRANT THAT.  
 23 THE COURT: ALL RIGHT. I'M OUT ON TIME  
 24 ON THIS WHOLE MATTER SO I MOVE TO HAVE IT  
 25 SUBMITTED.

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1 I'LL TAKE A LOOK AT YOUR PROPOSED ORDER.  
 2 IT, AS I SAID, IT DOES APPEAR TO ME THAT, THAT MY  
 3 GOAL WAS SIMPLY TO, TO PUT MR. KREMEN IN OWNERSHIP  
 4 OF THIS BLOCK OF RESOURCES AS A WAY OF, OF, OF  
 5 SATISFYING A JUDGMENT.  
 6 IT APPEARS TO ME TO TIE TO WHAT WAS TAKEN  
 7 FROM HIM THAT MR. COHEN HAD DEVELOPED OVER TIME  
 8 UNLAWFULLY, AND BUT I WAS NOT TRYING TO EXEMPT HIM  
 9 FROM NORMAL REGISTRATION REQUIREMENTS SIGNING  
 10 WHATEVER AGREEMENTS WOULD BE REQUIRED. THEY WERE  
 11 TO MAINTAIN THE RESOURCE AND IT WAS MY INTENT TO  
 12 HAVE HIM TAKE THE RIGHTS AND BUT ONLY UNDER THE  
 13 USUAL AND NORMAL CIRCUMSTANCES AND I'LL TRY IMPOSE  
 14 AN ORDER WHICH, WHICH TAKES, TAKES THAT INTO  
 15 CONSIDERATION.  
 16 MR. IDELL: MAY I BE HEARD BRIEFLY, YOUR  
 17 HONOR?  
 18 THE COURT: BRIEFLY.  
 19 MR. IDELL: YOUR HONOR, WHAT I SAID WAS,  
 20 AND I DON'T SEE HOW MR. RYAN CAN DISAGREE WITH  
 21 THIS, WE NEVER FOUND OUT UNTIL AFTER THIS OUR  
 22 OPPOSITION TO THE MOTION THAT THE CONTRACTS WERE  
 23 FILED.  
 24 AND THE E-MAIL COUNSEL REFERRED YOU TO  
 25 SAYS NOTHING ABOUT CONTRACTS AND ALL OF THE

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1 E-MAILS, AND THERE'S MANY OF THEM IN THERE, THOSE  
 2 WERE ALL SETTLEMENT DISCUSSIONS THAT PROBABLY  
 3 SHOULDN'T BE BEFORE THIS COURT BUT SUFFICE IT TO  
 4 SAY THAT THEY DIDN'T DISCLOSE TO US THAT THEY  
 5 DIDN'T CONTROL THE UU NET BLOCK, THEY DIDN'T  
 6 DISCLOSE TO US THAT THEY HAD GIVEN AWAY TO THEIR  
 7 LATIN AMERICAN BROTHER ONE OF THE BLOCKS, THAT THEY  
 8 ONLY HAD THREE BLOCKS.  
 9 THEY HANDED MR. KREMEN PAPERWORK WHICH  
 10 WAS THEIR CURRENT PAPERWORK AND MR. KREMEN STARTED  
 11 FILLING IT OUT AND SAYING, WAIT A MINUTE, I'M NOT  
 12 APPLYING FOR THIS. I DON'T HAVE TO APPROVE THAT  
 13 I'M DOING THIS. I DON'T HAVE TO DO THIS. ALL I'M  
 14 GETTING IS WHAT COHEN HAD. AND WHEN WE TOLD THEM  
 15 THAT, THEY NEVER SAID, WELL, COHEN SIGNED A  
 16 CONTRACT, HERE IT IS. INSTEAD THEY DID NOTHING.  
 17 AND, AND, YOUR HONOR, WE HAVEN'T  
 18 DISCUSSED THE, THE VARIOUS, THE VARIOUS PROCEDURAL  
 19 BLOCKS TO THEIR, TO THEIR RELIEF. WE HAVE BRIEFED  
 20 THAT ALL EXTENSIVELY. I THINK THEY'RE OUT OF THE  
 21 BOX ON ANY OF THE GROUNDS OF RULE 60 AND, AND I'M  
 22 HAPPY TO SUBMIT IT, YOUR HONOR, BUT I WANTED TO  
 23 MAKE SURE THAT WHILE THEY SAY WE'RE THE PARTY  
 24 TRYING TO SOLVE THIS ALL MR. KREMEN HAS SAID SINCE  
 25 THE HEARING IS EXACTLY WHAT YOUR HONOR SAID: I

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1 WANT TO STEP INTO THE SHOES AND DO WHAT HE DID,  
 2 NOTHING MORE, NOTHING LESS.  
 3 THE COURT: WELL, I'M SURE YOU'LL AGREE  
 4 WITH THE COURT THAT I HAVE MADE THIS COURT AND, AND  
 5 AVAILABLE TO YOU FOR ANY DISPUTE. IF I HAD KNOWN  
 6 ABOUT IT EARLIER, IF THIS HAD BEEN STARTED IN 2004,  
 7 IF I HAD KNOWN ABOUT IT IN 2004, IT WOULD HAVE BEEN  
 8 RESOLVED IN 2004.  
 9 NOW THAT I KNOW ABOUT IT, I'LL TRY AND  
 10 GIVE YOU A RESOLUTION THAT IS CONSISTENT WITH MY  
 11 ATTITUDE ABOUT THIS.  
 12 MR. IDELL: THANK YOU, YOUR HONOR.  
 13 THE COURT: NOW -- SO LET'S MOVE TO THE,  
 14 TO THE SECOND OF THE MOTIONS WHICH IS THE MOTION  
 15 TO, TO DISMISS.  
 16 MR. HUMMEL: GOOD MORNING, YOUR HONOR.  
 17 CHAD HUMMEL ON BEHALF OF ARIN THE DEFENDANT IN THIS  
 18 CASE AND THE MOVING PARTY.  
 19 YOUR HONOR HAS ALREADY HIT ON A NUMBER OF  
 20 THE THEMES THAT WE RAISED IN THE MOTION TO DISMISS.  
 21 THIS WAS A COMPLAINT THAT WAS BROUGHT THAT RELATES  
 22 ENTIRELY TO THIS COURT'S SEPTEMBER 17TH, 2001  
 23 ORDER.  
 24 THE COMPLAINT RECITES CLAIMS OR PURPORTS  
 25 TO RECITE CLAIMS UNDER SECTION 1 OF THE SHERMAN



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

8 ALL OF THOSE CAUSES OF ACTION ARISE OUT  
9 OF BASICALLY THE FOLLOWING CONDUCT NONE OF WHICH IS  
10 SUFFICIENT TO JUSTIFY THAT THE LAWSUIT CONTINUES  
11 PAST TODAY.

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

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

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

25 THE COURT: IS THERE A CASE HOLDING THAT

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

5 SECTION 1 OF THE SHERMAN ACT AS YOUR  
6 HONOR KNOWS ONLY PROHIBITS RESTRAINTS OF TRADE AND  
7 COMBINATIONS OR CONSPIRACIES THAT UNREASONABLY  
8 RESTRAIN TRADE.

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

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

25 NUMBER THREE, THERE'S NO COMBINATION OR

1 THAT'S A PROPERTY RIGHT?

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

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

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

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

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

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

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

<p style="text-align: right;">Page 34</p> <p>1 MONOPOLY POWER, THAT IS THE ABILITY TO CONTROL                  2 PRICE AND EXCLUDE COMPETITION THROUGH PREDATORY OR                  3 EXCLUSIONARY CONDUCT. AGAIN, WHAT IS THE CONDUCT                  4 HERE? THE CONDUCT IS MERELY HAVING LEGITIMATE                  5 SPECIFIC PREREQUISITES TO OBTAINING THESE IP                  6 RESOURCES AS A MATTER OF LAW THAT'S NOT                  7 EXCLUSIONARY OR PREDATORY CONDUCT.                  8 MORE IMPORTANTLY, HOWEVER, YOUR HONOR,                  9 THERE'S NO CAUSAL RELATIONSHIP BETWEEN HAVING AN                  10 INFORMATION DISCLOSURE REQUIREMENT AND THE PAYMENT                  11 OF FEES REQUIREMENT OR, OR THE SIGNING OF A                  12 REGISTRATION SERVICES AGREEMENT IN THE CONTRACTUAL                  13 PROVISIONS WITH HOW ARIN ACHIEVED ITS POSITION IN                  14 THE MARKET. THERE'S NO CAUSAL RELATIONSHIP BETWEEN                  15 THE TWO. IT DIDN'T GRANT IT THAT AUTHORITY, NOR                  16 DOES IT ALLOW IT TO MAINTAIN THAT AUTHORITY.                  17 THERE'S NO CAUSAL CONNECTION.                  18 AND AGAIN, FOR THE SAME REASON THAT THE                  19 SECTION 1 CLAIM FAILS ON STATUTORY GROUNDS,                  20 STATUTORY LIMITATIONS GROUNDS AND, AND THE, THE                  21 ENTIRE FAILURE OF, OF MR. KREMEN TO ALLEGE ANY HARM                  22 TO COMPETITION, THE SECTION 2 CLAIM FAILS AS WELL.                  23 YOUR HONOR, AS TO THE CONVERSION CLAIM I                  24 THINK THAT'S BEEN ADEQUATELY BRIEFED. THERE'S NO                  25 CONVERSION UNDER CALIFORNIA LAW AND UNDER THE</p>	<p style="text-align: right;">Page 36</p> <p>1 NO OBJECTION IS MADE TO THE TARDY SERVICE AND SORT                  2 OF TARDY SERVICE IS WAIVED, AND THEN AT THAT POINT                  3 IN 2003, YOU'RE TELLING ME DECEMBER 2003, THEY'RE                  4 THEN TOLD WE'RE NOT GOING TO COMPLY WITH IT, WHY                  5 DOESN'T THAT START THE RUNNING OF THE STATUTE OF                  6 LIMITATIONS?                  7 MR. HUMMEL: NUMBER ONE, YOU HAVE TO                  8 STICK TO THE ALLEGATIONS OF THE COMPLAINT AND THEY                  9 ALLEGE IN NUMEROUS PLACES THAT WE CITE IN OUR BRIEF                  10 THAT THE HARM OCCURRED AT THE MOMENT THE ORDER WAS                  11 ISSUED.                  12 NUMBER TWO, REGARDLESS, AND I CAN                  13 ACTUALLY FIND THE PRECISE CITES IN THE COMPLAINT TO                  14 WHERE THAT --                  15 THE COURT: WELL, YOU'RE RIGHT IN TERMS                  16 OF A MOTION TO DISMISS I NEED TO TAKE THOSE                  17 ALLEGATIONS AS TRUE.                  18 IS THAT A FACT OR IS THAT A LEGAL                  19 CONCLUSION THOUGH?                  20 MR. HUMMEL: IT'S BOTH. I THINK IT'S                  21 BOTH.                  22 THE FACT IS THAT WHEN YOUR HONOR ISSUED                  23 THE ORDER, YOU INTENDED TO, TO EFFECTUATE                  24 ESSENTIALLY PUTTING MR. KREMEN IN THE SHOES OF                  25 MR. COHEN WITH ALL OF THE RIGHTS AND ALL OF THE</p>
<p style="text-align: right;">Page 35</p> <p>1 FEDERAL CASES THAT INTERPRET CALIFORNIA LAW IF                  2 THERE HASN'T BEEN NOTICE AND AN OPPORTUNITY TO BE                  3 HEARD IN CONNECTION WITH, WITH, IN CONNECTION WITH                  4 A COURT ORDER.                  5 FINALLY UNDER THE BREACH OF FIDUCIARY                  6 DUTY CLAIM, WHICH IS ALSO TIME BARRED AS WELL AS                  7 THE CONVERSION CLAIM, THE BREACH OF FIDUCIARY DUTY                  8 CLAIM FAILS SIMPLY BECAUSE THERE'S NO FIDUCIARY                  9 RELATIONSHIP BETWEEN ARIN AND AN APPLICANT FOR IP                  10 RESOURCES PERIOD. THERE'S NO FACTS ALLEGED THAT                  11 WOULD SUPPORT THE EXISTENCE OF A DUTY UNDER                  12 CALIFORNIA LAW AND THAT SHOULD FAIL.                  13 THE COURT: COULD YOU SAY MORE UNDER                  14 STATUTORY ANALYSIS. WHEN DOES THE STATUTE BEGIN TO                  15 RUN?                  16 MR. HUMMEL: AT THE TIME THE COURT                  17 ENTERED THE ORDER.                  18 THE COURT: WHY?                  19 MR. HUMMEL: BECAUSE THE COMPLAINT ITSELF                  20 ALLEGATION IN STICKING TO THE FOUR CORNERS OF THE                  21 COMPLAINT, THAT THAT'S THE TIME THAT THE HARM                  22 OCCURRED THROUGH NONCOMPLIANCE.                  23 THE COURT: WELL, BUT IF, IF MY ORDER IS                  24 NOT SELF-EXECUTING IF, IF THEY CHOOSE TO, CHOOSE TO                  25 DELAY SERVING THE ORDER AND IT'S AT THAT POINT THAT</p>	<p style="text-align: right;">Page 37</p> <p>1 OBLIGATIONS THAT MR. COHEN HAD.                  2 WHEN THAT DIDN'T HAPPEN, THAT IS THE TIME                  3 THAT THE STATUTE OF LIMITATIONS BEGAN TO RUN, AND,                  4 FRANKLY, YOUR HONOR, THEY SHOULDN'T BE ABLE TO                  5 MANIPULATE THE STATUTE BY DELAYING SERVICE.                  6 WHAT HAPPENED WAS THAT WE WEREN'T                  7 FORMALLY SERVED BUT WE RECEIVED NOTICE OF THE ORDER                  8 ALMOST IMMEDIATELY UPON ISSUANCE AND THESE                  9 NEGOTIATIONS AND THESE CONVERSATIONS INVOLVING                  10 MR. RYAN BEGAN.                  11 THE COURT: LET ME HEAR FROM YOUR                  12 OPPONENT.                  13 MR. KRONENBERGER: CARL KRONENBERGER FOR                  14 GARY KREMEN. YOUR HONOR, WITH YOUR PERMISSION, I                  15 WOULD LIKE TO ADDRESS THE STATUTE OF LIMITATIONS                  16 ISSUES, FIDUCIARY DUTY AND UNFAIR COMPETITION ISSUE                  17 AND THEN HAVE MY COLLEAGUE TERRY HANLEY ADDRESS THE                  18 ANTITRUST ISSUES EXCEPT AS THEY RELATE TO STATUTE                  19 OF LIMITATIONS.                  20 THE COURT: I'M NOT SURE I'LL HAVE TIME                  21 FOR ALL OF THAT BUT WHY DON'T YOU GET STARTED.                  22 MR. KRONENBERGER: YOUR HONOR, I'D LIKE                  23 TO ADDRESS A COMMENT THAT THE DEFENDANT HAS MADE                  24 REGARDING, REGARDING THE ANTITRUST CASE IN GENERAL                  25 AND THAT IS THAT IT HAS ARISEN OUT OF THE 2001</p>

1 ORDER. THAT IS SIMPLY NOT THE CASE.  
2 THE 2001 ORDER THEIR DISPUTE WITH IT  
3 RELATES TO, TO THE ARIN POLICIES AND WHETHER OR NOT  
4 THEY'RE CONTRACTS AND THIS GETS INTO WHAT MR. IDELL  
5 WAS DISCUSSING ON WHETHER OR NOT THERE ARE ANY  
6 CONTRACTS AND WHAT MR. KREMEN SHOULD BE OBLIGATED  
7 TO.

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

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

20 AND, AND THE BACKGROUND HERE, YOUR HONOR,  
21 IS ARIN IS SORT OF IN A LONG HISTORY OF THE  
22 LOCATION OF IP ADDRESSES. THERE ARE MANY  
23 ADDRESSES, OTHERS THAT OWN THEIR OWN IP ADDRESSES  
24 AND ARIN HAS NO AUTHORITY WHATSOEVER OVER THOSE.  
25 WE SIMPLY DO NOT KNOW WHETHER THESE

1 BLOCKS ARE ARIN BLOCKS OR PRE-ARIN BLOCKS BECAUSE  
2 THEY ONLY CAME INTO EXISTENCE IN 1998.

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

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

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

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

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

25 THE COURT: ALL RIGHT. LET'S SAY

1 SOMETHING STARTED IN 2001, SO IF THAT IS THE BASIS  
2 OF THE CLAIM, WHATEVER HAPPENED IN 2001, YOU'RE  
3 TARDY.

4 MR. KRONENBERGER: THE MOST IMPORTANT  
5 ISSUE, YOUR HONOR, THE MOST IMPORTANT POINT IN TIME  
6 IS THE SERVICE OF THE ORDER WHICH, WHICH, WHICH  
7 IT'S EITHER LATE 2003, OR AS MR. ZLAK SAYS ON 2003  
8 OF HIS DECLARATION, THE FIRST TWO WEEKS OF 2004.

9 WHAT HAPPENED BETWEEN THE ISSUANCE OF THE  
10 ORDER AND ANY OTHER DATE THAT IS DIFFERENT.

11 MR. KRONENBERGER: THERE WAS A  
12 STIPULATION BETWEEN PACNET AND MR. KREMEN NOT TO  
13 ENFORCE THE ORDER BECAUSE THEY WERE WORKING OUT  
14 ISSUES REGARDING THEIR DISPUTE AND, AND ON -- AND  
15 THERE'S A LETTER WHICH IS EXHIBIT L, I BELIEVE,  
16 TO --

17 THE COURT: HOW DOES THAT AFFECT ARIN?

18 MR. KRONENBERGER: IN A WAY IT DOESN'T.  
19 YOU MAKE A GOOD POINT BUT THE REASON WHY IT WAS NOT  
20 SERVED UPON ARIN IS BECAUSE, IS BECAUSE PACNET WAS  
21 ON THE REGISTRATION OF THE NET BLOCKS AND, AND  
22 MR. KREMEN HAD A DISPUTE WITH PACNET AND THERE WAS  
23 A STIPULATION NOT TO ENFORCE THIS ORDER WHILE THEY  
24 WORKED OUT THEIR DISPUTE. THEY DON'T WORK OUT  
25 THEIR DISPUTE AND THEN ON EXHIBIT L YOU HAVE A

1 LETTER FROM MR. IDELL TO THE ATTORNEY FOR PACNET  
2 SAYING THAT WE'RE GOING TO PROCEED TO ENFORCE.  
3 THIS WAS NOVEMBER 6TH, 2003, A MONTH LATER THE  
4 ORDER WAS SERVED SO DECEMBER 2003, WHEREAS MR. ZLAK  
5 SAYS JANUARY OF 2004, REGARDLESS, IT'S WITHIN THE  
6 STATUTE OF LIMITATIONS AND THAT'S RELEVANT FOR UPON  
7 CONVERSION.

8 THE COURT: IT BEING WHAT?

9 MR. KRONENBERGER: THE SERVICE WHERE AN  
10 ABSOLUTE DUTY.

11 THE COURT: THE SERVICE DOESN'T, THE  
12 SERVICE DOESN'T AFFECT STATUTE OF LIMITATIONS.  
13 IT'S THE FILING OF THE COMPLAINT. SERVICE IS JUST  
14 A PROCESS BY WHICH NOTICE IS GIVEN OF A COMPLAINT.  
15 I HAVE TO JUDGE THE TOLLING OF THE STATUTE OF THE  
16 FILING OF THE COMPLAINT, DON'T I?

17 MR. KRONENBERGER: YES, YOUR HONOR. THE  
18 IMPORTANT THING IS THAT, IS THAT EACH TIME THE  
19 PLAINTIFF IS INJURED OR EACH TIME THE PLAINTIFF'S  
20 INTEREST IS INVADED THERE'S CONTINUING HARM AND THE  
21 HARM IS, IS AND THE STATUTE OF LIMITATIONS IS  
22 CONTINUALLY RESTARTED WITH THIS CONTINUING HARM.

23 THE COURT: THERE IS SUCH A THING, AS I  
24 WOULD RECOGNIZE, AND COURTS HAVE RECOGNIZED, AS, AS  
25 THAT A HARM THAT TAKES PLACE STARTING THE STATUTE

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1 OF THE LIMITATIONS AND SO YOU'RE ABLE TO ATTACK ON  
 2 SOMETHING NEW, THAT MIGHT EXTEND THE STATUTE OF  
 3 LIMITATIONS BUT IF THE HARM IS, IS, IS THE HOLDING  
 4 OF SOMETHING THAT REALLY BELONG TO THE OTHER AND  
 5 FOR THAT ENTIRE PERIOD OF TIME IT CONTINUES TO BE  
 6 HELD, WHAT IS YOUR ARGUMENT THAT THAT ALLOWS YOU  
 7 YOU TO HAVE AN ENDLESS STATUTE OF LIMITATIONS?  
 8 MR. KRONENBERGER: YOUR HONOR, THERE'S  
 9 SPECIFIC CASE LAW THAT ADDRESSES IT AND WE WEREN'T  
 10 ABLE TO PUT THIS IN OUR DOCUMENTS BECAUSE IT WAS  
 11 ONLY BROUGHT UP IN THE REPLY OF ARIN. THEY BROUGHT  
 12 UP A DOCTRINE DEALING WITH THE QUOTE, "LAST OVERT  
 13 ACT" AND THAT FOCUSES ON NEW AND INDEPENDENT ACTS  
 14 THAT OCCUR AFTER AN INITIAL AGREEMENT THAT, THAT  
 15 THAT HAD HARMED FOR THE PURPOSE OF, OF CONTINUING  
 16 HARM IN THE STATUTE OF LIMITATIONS.  
 17 SPECIFICALLY THE COLUMBIA STEEL CASE, 111  
 18 F.3D. 1427, IT GOES INTO THIS DISCUSSION WHERE  
 19 ACTIVE ENFORCEMENT OF A POLICY, JUST LIKE WE HAD IN  
 20 ARIN, ACTIVE ENFORCEMENT OF A POLICY IS A NEW AND  
 21 INDEPENDENT ACT FOR STATUTE OF LIMITATIONS AND THIS  
 22 WAS AN 18-YEAR AGREEMENT IN THE COLUMBIA STEEL  
 23 CASE, 18 YEARS BUT THE COURT JUST FOCUSED ON  
 24 14 YEARS PRIOR TO THE FILING OF THE COMPLAINT. THE  
 25 ACTIVE ENFORCEMENT OF THE POLICY WITHIN THAT

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1 FOUR YEARS WAS CONTINUING HARM WITHIN THE STATUTE  
 2 OF LIMITATIONS.  
 3 SO THIS IS, THIS LINE OF CASE LAW  
 4 STARTING WITH COLUMBIA STEEL, HENNIGAN, 787 F.2D  
 5 1289 IS ANOTHER CASE AND IT DEALS WITH THE  
 6 AGREEMENT TO DIVERT CUSTOMERS OVER A LONG PERIOD OF  
 7 TIME JUST PRIOR TO THE FILING OF THE CASE WE'RE  
 8 ANALYZED.  
 9 THE COURT: I'LL LOOK AT THAT. THAT IS A  
 10 CASE SIMILAR TO THIS WHERE THE DEFENDANT REFUSED TO  
 11 DO SOMETHING AT THE VERY BEGINNING OF THE RUNNING  
 12 OF THE STATUTE, CONTINUED TO REFUSE TO DO WHATEVER  
 13 IT WAS SUBJECT TO CONDITIONS, LET'S TAKE THAT OFF,  
 14 JUST REFUSE TO TRANSFER, AND, AND THE COURT ALLOWED  
 15 AN 18-YEAR STATUTE OF LIMITATIONS?  
 16 MR. KRONENBERGER: IN ESSENCE, YES.  
 17 THE COURT: I'LL TAKE A LOOK AT THAT. IT  
 18 JUST SEEMS TO ME THAT WHAT THAT MEANS IS, IS THAT  
 19 WHEN YOU PUT SOMEONE ON NOTICE THAT THEY'RE HOLDING  
 20 SOMETHING, THERE IS NO STATUTE OF LIMITATIONS AND I  
 21 JUST HAVEN'T SEEN ENOUGH CASE LAW TO CONVINCE ME OF  
 22 THAT, ESPECIALLY AN ANTITRUST CASE.  
 23 MR. KRONENBERGER: THAT WAS AN ANTITRUST  
 24 CASE?  
 25 THE COURT: SO THAT'S WHAT I NEED TO LOOK

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1 AT.  
 2 MR. KRONENBERGER: YOUR HONOR, THERE ARE  
 3 TWO OTHER CASES THAT DEAL WITH ACTIVE ENFORCEMENT  
 4 OF ILLEGAL AGREEMENTS, AIRLINE WELD, 742 F.2D 1194,  
 5 AND AURORA ENTERPRISES 688 --  
 6 THE COURT: AND IN WHAT SENSE IS THIS  
 7 CASE INVOLVE -- THEY SAY IN LAW SCHOOL ALWAYS STOP  
 8 AND GET THE QUESTION BUT YOU DON'T ALWAYS OBEY THAT  
 9 STUFF ANYWAY SO.  
 10 IN WHAT SENSE DOES THIS CASE INVOLVE  
 11 ACTIVE ENFORCEMENT OF A LEGAL AGREEMENT?  
 12 MR. KRONENBERGER: THIS ENTIRE LINE OF  
 13 CASES.  
 14 THE COURT: THIS CASE.  
 15 MR. KRONENBERGER: THE ARIN CASE, THE  
 16 AGREEMENT IS THE ARIN POLICY WHICH IS THE HEART OF  
 17 THE ANTITRUST MATTER. IT'S THE ARIN POLICY OF  
 18 REQUIRING THIS, THIS -- A GREAT AMOUNT OF  
 19 INFORMATION BEING COLLECTED FROM PEOPLE WHO NEED IP  
 20 ADDRESS BLOCKS AND THEN, AND THEN BEING ABLE TO  
 21 SELECTIVELY AND UNDER THE PURE AND ABSOLUTE  
 22 DISCRETION OF ARIN DECIDE WHO GETS ADDRESS BLOCKS  
 23 AND WHO DOESN'T AND THE --  
 24 THE COURT: DOES THAT HAPPEN HERE?  
 25 MR. KRONENBERGER: YES, YOUR HONOR.

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1 THERE'S A HUGE BUSINESS FOR SMALL BUSINESSES: THEY  
 2 GET THE COMPANY AND THERE'S NO PROBLEM AT ALL BUT  
 3 SMALL BUSINESSES THEY WANT TO GET NET BLOCKS AND  
 4 OBTAIN NET BLOCKS TO RUN THEIR BUSINESS AND IT'S A  
 5 HUGE PROBLEM. THERE ARE HUGE DELAYS AND THE DELAYS  
 6 ARE PUT IN PLACE BECAUSE THERE'S AN INCENTIVE FOR  
 7 LARGE COMPANIES TO PROHIBIT SMALLER PLAYERS TO GET  
 8 INTO THE MARKET BECAUSE SMALL COMPANIES LEASE IN  
 9 TURN IP BLOCKS FROM THE BIGGER COMPANIES IF THEY  
 10 CAN'T GET THEM FROM ARIN. SO THERE'S AN INCENTIVE  
 11 FOR LARGE TELECOMMUNICATION COMPANIES WHO CONTROL  
 12 ARIN AND THE BOARD OF DIRECTORS AND BOARD OF  
 13 ADVISORS, THERE'S AN INTEREST OF THOSE ADVISORS IN  
 14 PROHIBITING PLAYERS FROM ENTERING THE MARKET LIKE  
 15 MR. KREMEN.  
 16 SO AS YOU SEE, YOUR HONOR, WE'RE NOT  
 17 DEALING JUST WITH THE SEPTEMBER 2001 ORDER.  
 18 THE COURT: NOW, LET ME ASK THIS, IF I  
 19 FIND CONSISTENT WITH MY EARLIER DISCUSSION THAT  
 20 IT'S LEGITIMATE FOR ARIN TO HAVE REQUIRED  
 21 MR. KREMEN TO SIGN WHATEVER RESTRICTIONS IT IMPOSED  
 22 UPON REGISTRANTS, WHETHER THEY BE WHAT MR. COHEN  
 23 HAD IN HIS POSSESSION OR AS REVISED LATER, IS THERE  
 24 ANYTHING TO YOUR ANTITRUST CLAIM?  
 25 MR. KRONENBERGER: THE ANTITRUST CLAIM IS

1 NOT AFFECTED IN ANY WAY.  
2 THE COURT: ALL RIGHT. SO IT'S MERE  
3 EXISTENCE AND REQUIREMENT THAT YOU SIGN ANYTHING  
4 THAT IS AT THE HEART OF YOUR ANTITRUST CLAIM?  
5 MR. KRONENBERGER: THAT'S RIGHT, AND THE  
6 SPECIFICS IN THEIR --  
7 THE COURT: I STICK MY NECK OUT. DO YOU  
8 HAVE ANY CASE AUTHORITY TO FIND OUT THAT ARIN'S  
9 PRACTICED EXISTENCE IN WHAT IT REQUIRED PEOPLE TO  
10 DO VIOLATED THE ANTITRUST LAW?  
11 MR. KRONENBERGER: IT'S CLEARLY  
12 DISCRIMINATORY.  
13 THE COURT: DO YOU HAVE ANY CASE  
14 AUTHORITY?  
15 MR. KRONENBERGER: ACTUALLY I WOULD LIKE  
16 PERMISSION.  
17 THE COURT: ANYONE BRING ME CASE  
18 AUTHORITY THAT I CAN READ SOME OTHER JUDGE WHAT  
19 YOU'RE ASKING ME TO DO.  
20 MR. HANLEY: GOOD MORNING. TERRI HANLEY  
21 FOR PLAINTIFF GARY KREMEN. I BELIEVE YOUR HONOR  
22 HAS GOTTEN TO THE HEART OF THE SUBSTANTIVE ATTACKS  
23 ON OUR ANTITRUST CLAIMS IN THIS MATTER.  
24 NOW, YOU'VE ACKNOWLEDGED THAT THE CASE  
25 LAW ESTABLISHES THAT AN INDUSTRY ASSOCIATION, AN

1 NOW, IT'S BEEN OBSERVED BY THE U.S.  
2 SUPREME COURT.  
3 THE COURT: NOW, LET ME SEE IF I FOLLOW  
4 THAT. I CAN HEAR A CLAIM, AS I UNDERSTAND IT, IF  
5 YOU CONVINC ME THAT ARIN IS CONTROLLED BY A GROUP  
6 OF LARGER COMPANIES WHO CONSPIRE TOGETHER TO KEEP  
7 SMALLER COMPANIES FROM GETTING SOMETHING THAT WOULD  
8 GIVE THEM ECONOMIC POWER.  
9 AND THAT WOULD BE THESE IP ADDRESSES AND  
10 SO WHAT YOU'RE DESCRIBING FOR ME, ARIN IS NOT A  
11 LEGITIMATE ENTERPRISE. IT'S A CONSPIRACY OF, OF  
12 ITS BOARD TO, TO DENY SOMETHING TO, TO THE MARKET,  
13 THE COMPETITION OF SMALLER COMPANIES OWNING IP  
14 ADDRESSES.  
15 DO YOU TAKE THE SAME POSITION AS YOUR  
16 OPPONENT WHICH IS THE ONE THAT I ASKED THAT IF ARIN  
17 SAID TO, TO MR. KREMEN ALL WE WANT YOU TO DO IS  
18 SIGN WHAT EVERYBODY ELSE HAS SIGNED, THAT THAT  
19 WOULD STILL AMOUNT TO AN ANTITRUST VIOLATION?  
20 MR. HANLEY: IT WOULD, YOUR HONOR.  
21 THE COURT: I'VE GOT THAT. NOW, IS THERE  
22 ANY CASE LIKE THIS?  
23 MR. HANLEY: YES, YOUR HONOR. AND IN  
24 FACT, IT'S A CASE CITED IN OPPOSING COUNSEL'S OWN  
25 MOVING PAPER.

1 AFFILIATE GROUP CAN BE LIABLE FOR ANTITRUST  
2 ACTIVITIES. YOUR QUESTION IT SEEMS TO BE IS HOW  
3 HAS ARIN'S CONDUCT IN THE PRESENT CASE VIOLATED  
4 THOSE LAWS?  
5 THE COURT: THAT WAS AN EARLIER QUESTION  
6 BUT THE PENDING ONE IS GIVE ME SOMETHING THAT I CAN  
7 READ THAT WILL HELP ME TO FOLLOW SOMEONE ELSE'S  
8 LEAD. I LIKE WELL WORN PATHS. THEY USUALLY ARE  
9 SAFER SO.  
10 MR. HANLEY: THE ANSWER, YOUR HONOR, IS  
11 THAT CONTRARY TO OPPOSING COUNSEL'S  
12 CHARACTERIZATION OF THE COMPLAINT, IT IS NOT MERELY  
13 THE ESTABLISHMENT OF POLICIES, MERELY THE  
14 REQUIREMENT OF THE SUBMISSION OF DETAILED  
15 INFORMATION BY APPLICANTS FOR IP ALLOCATIONS.  
16 THE HARM COMES AND HAS BEEN NOTED  
17 PREVIOUSLY THAT, THAT A GROUP OF SELF-INTERESTED  
18 ECONOMIC INDUSTRY PARTICIPANTS TOOK IT UPON  
19 THEMSELVES TO LOBBY FOR AND CREATE THE PRIVATE  
20 INDUSTRY THAT IS NOW ARIN.  
21 THE BOARD OF ARIN, WHICH IS SPECIFICALLY  
22 PLED AND IDENTIFIED IN THE COMPLAINT BY NAME, BY  
23 INDUSTRY AFFILIATION, BY GOVERNMENT ASSOCIATION,  
24 CONTROL EXCLUSIVELY THE ENTRY INTO THE MARKET FOR  
25 IP NUMBERS, ALLOCATIONS AND THEIR USE.

1 THE COURT: GIVE ME THE CITE.  
2 MR. HANLEY: U.S. V GRENELL WHICH IS  
3 ADDRESSED IN OUR OPPOSITION PAPERS ON PAGE 18.  
4 THERE THE U.S. SUPREME COURT HELD THAT IS AN  
5 UNLAWFUL MONOPOLY FOR AN ASSOCIATION TO EXCLUDE BY  
6 MEANS OF RESTRICTED ENTRY CONTRACTS INTO A  
7 COMPETITIVE MARKET. THAT IS EXACTLY THE ACTIVITY  
8 THAT HAS BEEN CONDUCTED HERE ON THE PART OF ARIN AS  
9 THEY HAVE IDENTIFIED OVER 11,000 TIMES AND, AND  
10 INCLUDING IN THE CASE OF MR. KREMEN BUT NOT LIMITED  
11 TO THAT CASE.  
12 THE COURT: HOW LONG HAS ARIN BEEN  
13 AROUND?  
14 MR. HANLEY: IT'S DEBATABLE AS TO WHETHER  
15 IT'S STILL AROUND OR THEY EXIST NOW LEGALLY. THEY  
16 CLAIM TO BE IN OPERATION I BELIEVE SINCE 1998.  
17 THE COURT: AND HAS THERE BEEN ANOTHER  
18 CASE INVOLVING ARIN HOLDING THAT IT IS VIOLATING  
19 THE ANTITRUST LAWS OR HAS THE ISSUE COME UP?  
20 MR. HANLEY: TWO PENDING LAWSUITS  
21 INVOLVING ICAM, WHICH IS THE ORGANIZATION THAT WE  
22 ALLEGE ARIN ATTEMPTS TO DERIVE ITS POWER. THE  
23 ACTUAL CONTRACT THAT WOULD EVEN, WOULD EVEN  
24 PLAUSIBLY LEGITIMIZE ARIN'S AT THIS POINT HAS BEEN  
25 YET TO BE EXECUTED. THERE IS NO EXISTING OPERATION

1 AGREEMENT AT THIS TIME THAT AUTHORIZES ARIN'S  
2 POSITION IN THE MARKET AND THAT CREATES EVEN MORE  
3 OF THE, OF THE CAST, THE GREATER PALLOR OF THIS  
4 ANTICOMPETITIVE ACTION IN THAT THEY CAN'T CLAIM THE  
5 QUASI GOVERNMENTAL AUTHORITY THAT I CAN'T ENJOY AND  
6 ICAM ITSELF IS SUBJECT TO TWO LAWSUITS CURRENTLY  
7 PENDING.

8 THE COURT: WELL, THIS IS A FASCINATING  
9 AREA FOR ME AND I'LL TAKE A LOOK AT IT.

10 IT SEEMS TO ME THAT AT THE HEART OF MY  
11 ATTITUDE IS THE QUESTION THAT I KEEP ASKING,  
12 NAMELY, IS THERE ANYTHING TO THE ANTITRUST CASE IF  
13 I FIND THAT MR. KREMEN'S REFUSAL, PRESUMING THERE  
14 WAS ONE, TO SIGN THE REGISTRATION REQUIREMENT AND,  
15 AND ONCE I GET PASSED THAT, I'LL LOOK A LITTLE MORE  
16 CAREFULLY AT THIS QUESTION OF THE STATUTE OF  
17 LIMITATIONS AND, AND IF I GET PASSED THE STATUTE OF  
18 LIMITATIONS I'LL GET INTO THE SUBSTANCE OF THESE  
19 ALLEGATIONS THAT ARIN, ARIN BY ITS VERY EXISTENCE  
20 AND WHAT IT REQUIRES, IN OTHER WORDS, IT'S THE  
21 REQUIREMENT ITSELF TO, TO SIGN UP THE REGISTRATION  
22 AND, AND BE A PART OF THIS REGISTRY THAT IS  
23 ANTICOMPETITIVE.

24 MR. HANLEY: NOT JUST THE EXISTENCE OF  
25 THE REGISTRY BUT THE PROCEDURES THAT ARE REQUIRED

1 THE COURT: YES.  
2 MR. HUMMEL: THERE WAS A CASE MANAGEMENT  
3 CONFERENCE IN THIS MATTER TO SET FOR 10:00 O'CLOCK  
4 DOES IT MAKE SENSE TO PUT THAT OVER?

5 THE COURT: YES, I'LL VACATE THAT AND  
6 I'LL ADDRESS WHAT THE CASE IS AND WE'LL BRING IT  
7 ALL IN AND TALK ABOUT WHERE WE GO FROM THERE.

8 MR. HUMMEL: THANK YOU FOR YOUR TIME.  
9 MR. IDELL: THANK YOU, YOUR HONOR.  
10 (WHEREUPON, THE PROCEEDINGS IN THIS MATTER  
11 WERE CONCLUDED.)

1 TO OBTAIN THE REGISTRATION, NOT ONLY THE OBTAINMENT  
2 OF IT BUT THE MONITORING, THE GRAB BACK PROVISIONS  
3 THAT WE NOTICED NOT TO MENTION THE FACT THAT THE  
4 ENTIRE TIME FOLLOWING THE ALLOCATION YOU HAVE NOW  
5 PUT IN THE POSSESSION OF YOUR PRIMARY COMPETITORS  
6 DETAILED, AND I MEAN VERY HIGHLY CONFIDENTIAL  
7 INFORMATION REGARDING YOUR NETWORK OPERATIONS DOWN  
8 TO THE NAME OF THE LAPTOP THAT THE CFO OR CEO WOULD  
9 BE OPERATING ON. AND THE AMOUNT OF DETAIL IS  
10 AMAZING AND YOU HANDED IT OVER TO YOUR COMPETITORS  
11 WHO HAVE THE POWER TO TAKE IT OVER AT ANY POINT.

12 THE COURT: IS THERE ANY EVIDENCE THAT  
13 YOU WOULD PROFFER TO THE COURT THAT IT HAS BEEN  
14 ABUSED?

15 MR. HANLEY: WELL, AGAIN, WE'RE AT THE  
16 PLEADING STAGE AT THIS POINT. OF COURSE WE PLAN TO  
17 CONDUCT DISCOVERY.

18 THE COURT: YOU DON'T HAVE ANYTHING LIKE  
19 THAT AT THIS POINT.

20 MR. HANLEY: NOT AT THIS POINT, YOUR  
21 HONOR.

22 THE COURT: VERY WELL. THANK YOU. I'LL  
23 HAVE THIS ENTIRE MATTER UNDER SUBMISSION. I'LL  
24 GIVE YOU AN ORDER SHORTLY.

25 MR. HUMMEL: YOUR HONOR, VERY BRIEFLY.

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