

D.C. Circuit Rules Terrorism Victims Can't Attach Countries' Internet Domains

Foreign Sovereign Immunities Act Will Not Reach Iranian, Syrian, and North Korean Domains

By Brian J. Goodrich

The U.S. Court of Appeals for the D.C. Circuit has held that country code top-level domains (“ccTLDs”) are not attachable foreign property under the Foreign Sovereign Immunities Act (“FSIA”). [*Weinstein v. Islamic Republic of Iran*](#), No. 14-7193 (D.C. Cir. Aug. 2, 2016).

The plaintiffs — victims of terrorist attacks and their family members — held substantial unsatisfied money judgments against defendants Iran, Syria, and North Korea arising out of claims brought under FSIA.

In an opinion occupied by a technical explanation of how the internet functions, Judge Karen L. Henderson for a unanimous D.C. Circuit panel found that allowing the plaintiffs to attach ccTLDs would affect parties unrelated to the lawsuit and jeopardize the Internet Corporations for Assigned Names and Numbers' (“ICANN”) management of internet domain registration.

Background

In 2002, the U.S. District Court for the District of Columbia found Iran liable for its role in a 1996 terrorist bombing in Jerusalem. The family of one of the victims, Susan Weinstein, sued Iran and obtained a default judgment in 2003. The plaintiffs then moved to attach Iranian property pursuant to the Foreign Sovereign Immunities Act (FSIA) and the Terrorism Risk Insurance Act (TRIA). To satisfy the judgments, the plaintiffs sought to attach Iranian Internet data managed by ICANN, a California non-profit corporation that is responsible for coordinating the maintenance and procedures related to the introduction of new TLDs, and the operation of root name servers, and, accordingly, served writs of attachment on ICANN. On ICANN's motion, the district court quashed the writs, finding the ccTLDs not to be “property” under District of Columbia law.

Top-level domains (TLDs) form part of the foundation of internet connectivity. All internet users come into contact with TLDs. The most commonly-known TLD is “.com.” A ccTLD is a TLD that is associated with a particular country or political association — for example, “.us” for the United States and “.ir” for Iran, “.sy” for Syria and “.kp” for North Korea. ICANN, a non-profit corporation based in California, manages ccTLDs pursuant to a contract with the

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U.S. Department of Commerce. ICANN’s responsibilities include selecting and approving qualified entities to operate the different ccTLDs.

Court of Appeals' Opinion

The D.C. Circuit agreed with the District Court's holding that the plaintiffs could not attach the ccTLDs at issue (.ir, .sy, and .kp), but on different grounds. Assuming that the ccTLDs constitute “property,” Judge Henderson found that attachment could not be permitted because attachment would affect a number of third parties unrelated to the suit — grounds under FSIA for a court to set aside a claim.

Specifically, Judge Henderson noted that requiring ICANN to delegate management of the .ir ccTLD to plaintiffs via court order would mean that anyone seeking a new .ir website name would have to request the new website from plaintiffs, and that the plaintiffs could charge a fee for all new .ir websites. Requiring ICANN to delegate .ir to plaintiffs would also bypass ICANN's credentialing process, which is designed to ensure TLD managers have the technical competence to manage the TLD.

The D.C. Circuit also recognized that allowing plaintiffs to attach a ccTLD risked disrupting the entire arrangement under which the internet operates:

ICANN occupies its position only because “the global community allows it to play that role.” Appellants' Br. at 34. “[T]he operators of . . . top level domains” can “form a competitor to ICANN and agree to refer all DNS traffic to a new root zone directory.” *Id.*; *see also* Br. for United States as Amicus Curiae at 13 (“As a technological matter, nothing prevents an entity outside the United States from publishing its own root zone file and persuading the operators of the Internet's name servers to treat that version as authoritative instead.”). This result, known as “splitting the root,” is widely viewed as a potentially disastrous development; indeed, some regard it as the beginning of “ultimate collapse of Internet stability” — a “doomsday scenario for the globally accessible” network and, thus, for ICANN.

Allowing plaintiffs to attach a ccTLD risked disrupting the entire arrangement under which the internet operates.

Weinstein v. Islamic Republic of Iran, No. 14-7193 (D.C. Cir. Aug. 2, 2016), at pages 26-27. Unusually, the U.S. government submitted an amicus brief arguing that, while deploring acts of terrorism, the government could not support the seizure the ccTLDs from states that support terrorism given the massive ramifications on global internet stability. The State Department and the Department of Commerce jointly signed an amicus brief underscoring the disruption the attachment of ccTLD’s could cause.

Conclusion

While the Court of Appeals carefully analyzed the practical ramifications of finding ccTLDs to be attachable foreign property, it sidestepped the larger question whether ccTLDs should be deemed “property” at all. The answer to that question, which may have even larger ramifications, will have to await another case.

Brian J. Goodrich is an associate with Holland & Knight LLP in Washington, D.C.



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