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Court rules that ccTLDs are not attachable property

United States - Hogan Lovells LLP

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In July 2014 the Internet Corporation for Assigned Names and Numbers (ICANN), the non-profit organisation managing the global domain name system, filed motions to quash with the District Court for the District of Columbia in the context of various federal court judgments obtained against the Iranian, Syrian and North Korean governments by the victims of terrorist attacks.

The plaintiff victims served ICANN with "writs of attachment" and subpoenas ordering it to "hold" the country-code top-level domains (ccTLDs) belonging to the defendant governments, namely '.ir' (Iran), '.sy' (Syria) and '.kp' (North Korea), as well as 'سور.' and 'ایران.', the internationalised top-level domains in non-ASCII characters for Iran and Syria, and seeking information to help them seize these ccTLDs (*Ben Haim v Islamic Republic of Iran*, among others).

The plaintiffs basically wished to seize control of the ccTLDs in order to recover certain assets located in the United States belonging to these governments. In its motions, ICANN argued that a ccTLD could not be "attached" by plaintiffs in an action of this nature.

On November 10 2014 the US District Court for the District of Columbia granted ICANN's motion to quash requesting that the orders be held null or invalid. The court held that a ccTLD could not be attached in satisfaction of a judgment and based this decision upon its interpretation of certain US court precedents.

After noting that there was little authority on the question of whether ccTLDs may be attached in satisfaction of a judgment as there was no reported decision of any US court appearing to have decided this specific issue, the court referred to the Virginia Supreme Court's discussion in *Network Solutions Inc v Umbro Int'l Inc* (529 SE2d 80 (Va 2000), which it found helpful in illuminating the issue at stake, even though it dealt with second-level domain names rather than ccTLDs. The Virginia Supreme Court had held that a domain name could not be garnished by a judgment creditor under the relevant Virginia statute because it was "inextricably bound" to the domain name services provided by the registry, and further stated that the contractual rights which the judgment debtor had in the domain names "do not exist separate and apart from [the registry] services that make the domain names operational internet addresses".

The court found this reasoning persuasive as applied to District of Columbia attachment law as well. It stated that ccTLDs, like domain names, cannot be conceptualised apart from the services provided by both the ccTLD managers that administer the registries of second-level domain names within them and the parties that cause the ccTLDs to be listed on the root zone file. The court found that a judgment creditor may not be inserted into an ongoing contractual arrangement that requires continued work or services to have value. In this case, the ccTLDs had value only because they were operated by ccTLD managers and because they were connected to computers around the world through the root zone. Thus their attachment could not be allowed by the court.

It should be noted that the court underlined that the fact that ccTLDs could not be attached under District of Columbia law did not mean that domain names themselves were not property, it just meant that they were not attachable property within the particular statutory scheme. In this regard, the court cited *Kremen v Cohen* (337 F3D 1024, 1030 (9th Cir 2002)), a previous decision construing domain names to be a form of intangible property.

The question of whether or not domain names are "property" is often discussed, and this decision highlights that this is by no means a straightforward issue. It cannot be denied that domain names are assets that sometimes change hands for important sums of money. Yet, despite this, it is not uncommon for domain name registries to provide in their terms and conditions that domain names are not property but instead represent a contractual licence, and to state that they will not recognise any mortgage obligations. Thus it is often difficult to take security over a domain name, for example. It would therefore seem that the question of whether or not a domain name can be seen as "property" is rather over simplistic. Instead it makes more sense to consider whether or not it is property in a certain context and/or for a certain purpose (such as judgment enforcement proceedings, to take the case at hand).

An appeal was filed on December 12 2014, but it is unlikely that the court's decision will be overturned.

The case documents are available here.

David Taylor, Sarah Taieb and Jane Seager, Hogan Lovells LLP, Paris

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