

### Terrorist attacks victims attempt to recuperate ccTLDs United States - Hogan Lovells LLP

### Domain names

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In recent years, the victims of a number of terrorist attacks have successfully obtained US federal court judgments amounting to more than a billion dollars against the Iranian, Syrian and North Korean governments on the basis that these governments allegedly contributed to the funding of the terrorist acts in question. As a result, the victims have since sought to recover certain assets located in the United States belonging to these governments.

In June 2014, as part of this process, the victims served the [Internet Corporation for Assigned Names and Numbers](#) (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 (*Haim v Islamic Republic of Iran*, among others).

The plaintiff victims basically wished to obtain control of the ‘.ir’, ‘.sy’, ‘.kp’, ‘سور’ and ‘ایران’ extensions in order to benefit from their value. If ICANN was forced to comply with such a request, this could potentially have far-reaching consequences, such as blocking access to the Internet in the concerned countries.

In July 2014 ICANN filed motions to quash with the US District Court of the District of Columbia (ie, it requested that the orders to which it was subject be held null or invalid by the court), explaining that a ccTLD cannot be “attached” by plaintiffs in a lawsuit of this nature for a number of reasons, including the following:

- A ccTLD is not “property” subject to attachment: “a ccTLD can be thought of as a zip code. That zip code may encompass many different addresses, and those addresses in turn may correspond to certain places on the Internet that people can access, such as websites. But the street address itself is not property, nor is the zip code in which the street address exists... To the extent a ccTLD is capable of a legal definition, it is a collection of technical and administrative services, rather than property”;
- The relevant ccTLDs are not “owned” by the defendant governments or anyone else;
- The relevant ccTLDs are not located “within the District of Columbia or even in the United States” and thus, according to US case law, the District Court of the District of Columbia has no jurisdiction over the ccTLDs in question;
- ICANN cannot unilaterally re-delegate or transfer the ccTLDs and to do so would interfere with contractual relationships; and
- “A forced transfer of the ‘.ir’, ‘.sy’ and ‘.kp’ ccTLDs would destroy whatever value may exist in these ccTLDs, would wipe out the hundreds of thousands of second-level domain names registered therein by various individuals, businesses and charitable organisations, and could jeopardise the single, global, interoperable structure the Internet”.

John Jeffrey, ICANN's General Counsel and Secretary, explained:

*“We filed a motion to quash in the US federal court today, to ensure that the court has the essential information about how the Internet's domain name system (DNS) works. While we sympathise with what plaintiffs may have endured, ICANN's role in the domain name system has nothing to do with any property of the countries involved.”*

This case is interesting in that, whilst in the past there have been a number of court cases in various different countries dealing with the question of whether second-level domain names can be classified as “property”, there do not appear to be any precedents dealing with the question of whether a ccTLD itself may be termed “attachable property” for the purposes of judgment enforcement proceedings.

The case looks as though it will continue for some time to come. The plaintiffs are requesting a six-month discovery period, but ICANN opposed this in its filing of October 14 2014.

ICANN's motions to quash and the rest of the case documents are available [here](#).

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