[ORAL ARGUMENT SCHEDULED FOR JANUARY 21, 2016]

Nos. 14-7193 (Lead), 14-7194, 14-7195, 14-7198, 14-7202, 14-7203, 14-7204

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSAN WEINSTEIN, et al.,

Plaintiffs-Appellants,

v.

ISLAMIC REPUBLIC OF IRAN, et al.,

Defendants-Appellees,

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Appellee-Garnishee.

On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

Of Counsel:

KELLY R. WELSH
General Counsel
U.S. Department of Commerce
KATHY SMITH
Chief Counsel
MILTON BROWN
STACY M. CHENEY
National Telecommunications & Information Administration
U.S. Department of Commerce

MARY E. MCLEOD
Principal Deputy Legal Adviser
U.S. Department of State

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
CHANNING D. PHILLIPS
United States Attorney
BETH S. BRINKMANN
Deputy Assistant Attorney General
DOUGLAS N. LETTER
MARK R. FREEMAN
SONIA K. MCNEIL
Attorneys, Appellate Staff
Civil Division, Room 7234
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 616-8209

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici

The parties and amici are listed in the parties' briefs.

B. Rulings Under Review

The rulings under review are described in the brief for the plaintiffs.

C. Related Cases

The brief for appellee-garnishee Internet Corporation for Assigned Names and Numbers lists prior appeals to this Court involving plaintiffs in this litigation.

We are not aware of any other related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

s/ Sonia K. McNeil
Sonia K. McNeil

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases: **Page(s)**

Statutes:

* Authorities upon which we chiefly rely are marked with asterisks.

Rules:

Legislative Materials:

Other Authorities:

GLOSSARY

ccTLD	Country-code top-level domain
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers (appellee-garnishee)
IP	Internet Protocol
FSIA	Foreign Sovereign Immunities Act of 1976
NTIA	National Telecommunications & Information Administration
TRIA	Terrorism Risk Insurance Act of 2002

INTRODUCTION AND INTEREST OF THE UNITED STATES

The United States deplores the acts of terrorism that have brought suffering to plaintiffs and their families. Plaintiffs' efforts to attach basic name and address conventions of the global Internet, however, rest on a fundamental misunderstanding of the operation of the Internet and of the role of appellee-garnishee Internet Corporation for Assigned Names and Numbers ("ICANN") within it.

No government owns or controls the root level of the Internet. Nor does ICANN or any other single entity. The Internet functions because network operators worldwide have voluntarily configured their computer systems to adhere to common and trusted technical protocols, naming conventions, and address systems. These features are developed and vetted collaboratively by public and private stakeholders, adopted by consensus on a global scale, and administered jointly by stakeholders for the good of the entire global Internet community. The United States has long been the leading proponent of this self-regulatory, decentralized, trust-based, multi-stakeholder model of Internet governance, which ICANN exemplifies.

The United States has advocated this model in opposition to foreign states, including some of the judgment debtors here, who assert that Internet names and addresses should belong to governments and be subject to transfer and disposition at a government's behest. The United States rejects that view and has for almost two decades adamantly opposed its adoption in international fora. If a U.S. court were to order the attachments the plaintiffs seek, it would not merely threaten disruption of

the global Internet for millions who bear no fault for plaintiffs' injuries. It would also derail vital foreign policy efforts of the United States, destabilizing international confidence in ICANN and providing ammunition to foreign states who argue that the keys to the Internet belong in governmental hands. The result would be an Internet that is less stable, secure, and free—to the detriment of users worldwide.

Accordingly, the district court's order quashing the writs of attachment should be affirmed. The parties' appellate briefs focus on attachment as a matter of District of Columbia law, but that approach assumes the answer to important antecedent federal questions, including whether the plaintiffs seek to attach "property of" or "assets of" a foreign state within the meaning of the Foreign Sovereign Immunities Act ("FSIA") and the Terrorism Risk Insurance Act ("TRIA"). The proposition that country-code top-level domains are the "property of" or "assets of" governments is antithetical to the principles and understandings that have guided the Internet since its inception. To the extent plaintiffs raise and have preserved separate arguments concerning Internet Protocol ("IP") addresses, ICANN is not an appropriate garnishee. Federal Rule of Civil Procedure 69 therefore does not permit attachment here, even assuming IP addresses would otherwise constitute attachable property.

QUESTIONS PRESENTED

This brief addresses whether country-code top-level domains are the "property of" or "assets of" the defendant foreign states within the meaning of the FSIA and TRIA and whether Federal Rule of Civil Procedure 69 authorizes attachment here.

STATEMENT

A. Statutory Background

Under the FSIA, a foreign state is generally immune from the jurisdiction of U.S. courts, *see* 28 U.S.C. § 1604, except as set out in 28 U.S.C. §§ 1605-1607. The property of foreign states is also generally immune from attachment and execution, *see id.* § 1609, subject to certain exceptions in 28 U.S.C. § 1610. Section 1610(g) provides that, for qualifying judgments, "the property of a foreign state" and its agencies or instrumentalities "is subject to attachment in aid of execution, and execution, * * * as provided in this section." *Id.* § 1610(g)(1). Because Section 1610(g)(1) specifies that attachment is allowed only "as provided in *this section* [*i.e.*, 1610]" (emphasis added), Section 1610(g) incorporates by reference certain antecedent restrictions in Section 1610, such as the requirements in Section 1610(a) that any foreign state property sought to be attached must be "in the United States" and "used for a commercial activity in the United States." *See id.* § 1610(a), (b). Section 1610(g) also provides that "[n]othing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment." *Id.* § 1610(g)(3).

TRIA also has provisions related to attachment. Pub. L. No. 107-297, § 201, 116 Stat. 2322, 2337 (2002) (codified in part at 28 U.S.C. § 1610 note). It provides that certain terrorism-related judgment holders may attach "the blocked assets of" a

judgment-debtor foreign state and its agencies or instrumentalities. TRIA § 201(a).

Federal Rule of Civil Procedure 69(a)(1) provides that "[t]he procedure on execution" of judgments "must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies."

B. Factual Background

1. Plaintiffs seek to attach alleged property interests of Iran, Syria, and North Korea in certain aspects of the Internet's global name and address system. Plaintiffs have attempted to effectuate that attachment by serving writs of execution on ICANN, a non-profit California corporation that, among other things, facilitates the technical operation of the Internet's name and address system.

This case involves two features of that system: IP addresses and domain names. IP addresses are sequences of digits used to locate and identify devices that communicate with other devices using the Internet. In general, each computer connected to the Internet is assigned a unique IP address. A domain name is a string of text used to look up the IP address for a particular site or resource on the Internet. The most fundamental part of a domain name is the top-level domain, which is the right-most portion of a domain name (*e.g.*, ".gov"). Associated with each top-level domain may be multiple second-level domains (*e.g.*, "uscourts.gov"), each of which may have associated third-level domains (*e.g.*, "cadc.uscourts.gov"), and so on.

Country-code top-level domains (known as "ccTLDs") are top-level domains associated with geographic regions, typically a member country of the United Nations

or an associated territory. ICANN does not decide "what is and what is not a country."[1] Rather, ICANN takes its cue from the International Standards Organization, which maintains a standard list (known as the ISO 3166-1 standard) of two-letter codes used to designate countries and territories for postal purposes and similar matters. The English-language country-code top-level domains associated with Iran, Syria, and North Korea are .ir, .sy, and .kp, respectively.

The domain name system relies on a global network of dedicated computers ("name servers") that enable the translation of a domain name into an IP address. The foundation of this network is the "authoritative root zone file," which is in effect the Internet's master directory. The authoritative root zone file specifies the current IP addresses of the name servers for each top-level domain on the Internet. Each of those name servers, in turn, stores the IP addresses of the name servers for the next level of domains. A computer can thus "look up" the address of another computer anywhere in the world by querying servers in the order denoted by the domain name.[2]

2. At issue in this case is ICANN's designated role on behalf of the global Internet community as the Internet Assigned Numbers Authority ("IANA")—*i.e.*, the entity "responsible for the operational aspects of coordinating the Internet's unique identifiers and maintaining the trust of the community to provide these services in an

[1] http://www.iana.org/help/eligible-tlds.

[2] *See generally* GAO-15-642, *Internet Management* 4-12 (Aug. 2015), http://www.gao.gov/assets/680/672055.pdf (describing the Internet domain name system). The summary in this brief is necessarily simplified for present purposes.

unbiased, responsible and effective manner."[3] In that capacity, ICANN helps to administer the authoritative root zone file, including by processing change requests. ICANN also coordinates the allocation of the world's mathematically finite pool of unique IP addresses. ICANN allocates large groups of such addresses to five "regional Internet registries," which are independent non-profit organizations that serve defined regions of the globe. The regional Internet registries then allocate IP addresses in smaller groups to other entities (like Internet service providers), that may in turn assign IP addresses to other organizations (like businesses) or individual users.[4]

ICANN currently performs these Internet name and number assignment functions under a no-cost and largely symbolic contract with the National Telecommunications & Information Administration ("NTIA"), a component of the U.S. Department of Commerce. The agency's role under that contract is limited to ensuring that ICANN has followed appropriate processes and avoided technical errors.[5] The Commerce Department's contract with ICANN is an artifact of the earliest days of the Internet, which emerged from research networks developed by the United States Government. *See* 63 Fed. Reg. 8,826 (Feb. 20, 1998).

3. The policy of the United States is that the Internet's domain name system should be free from the control of any government, including our own. In 1997,

---

[3] http://www.iana.org/about. ICANN has other functions not at issue here.

[4] *See generally* https://www.iana.org/numbers; https://aso.icann.org/about-the-aso/address-supporting-organization-and-the-number-resource-organization/.

[5] *See* http://www.ntia.doc.gov/page/iana-functions-purchase-order.

President Clinton directed the Secretary of Commerce "to support efforts to make the governance of the domain name system private and competitive and to create a contractually based self-regulatory regime."[6] In the ensuing years, the United States has worked to achieve a fully private, trust-based, consensus model of Internet governance, administered by and for all members of the Internet community. Congress has affirmed this approach in unanimous resolutions exhorting the Executive Branch to "promote a global Internet free from government control and preserve and advance the successful multistakeholder model that governs the Internet today." *See* S. Con. Res. 50, 112th Cong. (2012); H.R. Con. Res. 127, 112th Cong. (2012); *see also* S. Res. 71, 114th Cong. (2015) (affirming that "the United States remains committed to the multistakeholder model of Internet governance").

Consistent with this initiative, the Department of Commerce is in the process of transitioning its vestigial role in the domain name system to the global Internet community. The Commerce Department has encouraged stakeholders to develop and comment on transition proposals. *See* 80 Fed. Reg. 47,911 (Aug. 10, 2015). The agency has announced that it "will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution."[7]

The United States has also sought to secure and protect the multi-stakeholder

---

[6] Statement on Electronic Commerce 1008 (July 1, 1997), https://www.gpo.gov /fdsys/pkg/WCPD-1997-07-07/pdf/WCPD-1997-07-07-Pg1006-2.pdf.

[7] Press Release, NTIA (Mar. 14, 2014), https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions.

model of Internet governance by rallying international partners to defeat proposals that would permit increased governmental control over the Internet. *See* Cong. Research Serv., R42351, *Internet Governance and the Domain Name System: Issues for Congress* 12-26 (Nov. 20, 2015).[8] Proponents of such proposals include Iran, Russia, China, Sudan, and other nations. *Id.* at 23-26. Those proposals often seek to justify and buttress the proposed governmental control over the Internet by asserting sovereign rights over Internet names and addresses. *Id.* at 23. The United States has declared that such proposals are "inconsistent with a multi-stakeholder model of Internet governance." *See ibid.* (quoting Terry Kramer, Ambassador, Head of U.S. Delegation for the World Conf. on Int'l Telecomms., U.S. Dep't of State).

ARGUMENT

I. Country-Code Top-Level Domains Are Not "Property of" or "Assets of" a Foreign State Under the FSIA or TRIA

The judgment of the district court should be affirmed because country-code top-level domains are not the "property of" or "assets of" a foreign state under federal law. *See* 28 U.S.C. § 1610(a); TRIA § 201(a). It is far from clear that such domains can properly be characterized as "property" at all. But even if they could, country-code top-level domains are not the property "of" the foreign states under the

[8] *See also Preserving the Multistakeholder Model of Internet Governance: Hearing Before the S. Comm. on Commerce, Science, & Transp.*, 114th Cong. (Feb. 25, 2015) (statement of Lawrence E. Strickling, Asst. Sec'y for Commc'ns and Info., NTIA, U.S. Dep't of Commerce), https://www.ntia.doc.gov/print/speechtestimony/2015/testimony-assistant-secretary-strickling-senate-committee-commerce-science-and-.

FSIA or TRIA. They are therefore not properly subject to attachment here. *See Heiser v. Islamic Republic of Iran*, 735 F.3d 934, 938-40 (D.C. Cir. 2013).[9]

A. Country-Code Top-Level Domains Are Not Naturally Characterized as "Property" or "Assets" Under Federal Law

The FSIA and TRIA authorize plaintiffs in certain circumstances to attach "property" or "assets." *See* 28 U.S.C. § 1610(a), (g)(1); TRIA § 201(a). But a country-code top-level domain, which is a root-level Internet naming convention, is merely a designation in cyberspace of the national affiliation of a subset of the global Internet community. That designation includes not only government entities, but also millions of private businesses and individuals. It is far from clear that this type of top-level domain can be understood in conventional property terms.

Although the right to designate its territory "Iran" is presumably valuable to the Iranian government, no one would suggest that the name "Iran" in an atlas or a newspaper—or even official publications—is itself the "property" of the Iranian government subject to attachment by creditors. This is true even though the name "Iran," as the English-language designation for one of the world's recognized sovereign states, serves the valuable identification function of denoting the national affiliation of a geographic region (as well as practical functions, such as facilitating the delivery of mail). In the same way, a country-code top-level domain serves the

[9] The United States does not address any other question presented in this case, including whether plaintiffs have satisfied other applicable prerequisites to attachment under the FSIA, TRIA, or District of Columbia law.

valuable function of denoting a national affiliation in cyberspace, but it does not follow that it constitutes "property" merely because it has that valuable purpose.

At a minimum, there is no reason to believe that Congress intended the terms "property" and "assets" in Section 1610 of the FSIA or TRIA to encompass anything of this kind. In this Court, property ownership under these statutes is governed by federal common law. *See Heiser*, 735 F.3d at 940-41. For something as inchoate and unique as a country-code top-level domain, it also seems appropriate for federal common law to govern the threshold characterization of an interest as "property" or an "asset." In the context of the global Internet, and considering the foreign policy implications of decisions under the FSIA and TRIA, "[t]he desirability of a uniform rule is plain." *Clearfield Trust Co. v. United States*, 318 U.S. 363, 367 (1943); *cf.* H.R. Rep. No. 94-1487, at 13 (1976) (explaining that "uniformity in decision * * * is desirable since a disparate treatment of cases involving foreign governments may have adverse foreign relations consequences").

A country-code top-level domain is unlike any conventional form of property. Generally, when evaluating the nature and extent of a novel asserted interest, a court considers "existing rules or understandings that stem from an independent source" to decide whether any interest has been "created" and how its "dimensions are defined." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972); *see also Town of Castle Rock v. Gonzales*, 545 U.S. 748, 765-66 (2005). The practice of participants in the system alleged to give rise to the asserted interests is also relevant to the inquiry. *See,*

e.g., *Perry v. Sindermann*, 408 U.S. 593, 600-02 (1972).

Here, none of these sources suggests that country-code top-level domains constitute property. To the contrary, a foundational 1994 Internet governance policy statement, still regarded by the Internet community as authoritative, explicitly rejects efforts to assert property rights in such domains: "Concerns about 'rights' * * * are inappropriate. It is appropriate to be concerned about 'responsibilities' and 'service' to the community." *See* RFC 1591, *DNS Structure and Delegation* 4-5 (Mar. 1994).[10]

The actual practice under which country-code top-level domains have been established and managed from their inception underscores that such domains are not the property of anyone. A country-code top-level domain is not "granted" to the government of a country; instead, the management of such a top-level domain is "delegat[ed]" to a local manager to "perform[] a public service on behalf of the Internet community" in the relevant region. RFC 1591, at 2. When considering requests to change country-code top-level domain managers, ICANN does not treat any person as the owner of that domain, but rather "take[s] into account a number of technical and public interest criteria" that "relate to the basic principles that the manager be a responsible and technically competent trustee of the domain on behalf of the national and global Internet communities."[11]

In these and other respects, country-code top-level domains are distinct from

[10] https://www.ietf.org/rfc/rfc1591.txt.
[11] https://www.iana.org/help/cctld-delegation.

second-level domains, which are commonly acquired and alienated unilaterally by particular entities or individuals under the laws of a particular country and are therefore more naturally characterized as personal property. Indeed, in certain circumstances, federal law treats second-level domain-name registrations as property for some purposes. *See, e.g.*, 15 U.S.C. § 1125(d)(2) (civil *in rem* action under trademark law). The Department of Justice also seeks and obtains forfeiture of second-level domain-name registrations under statutes providing for the forfeiture of "property." *See, e.g.*, 18 U.S.C. § 2323 (forfeiture of property used in trafficking of counterfeit goods). As plaintiffs recognize (Br. 32), however, second-level domains are "significantly different" from country-code top-level domains, which since the inception of the Internet have been governed by different principles.[12]

It would be particularly strange to conceive of country-code top-level domains as "property" or "assets" under Section 1610 of the FSIA or TRIA. Congress enacted these statutes to permit plaintiffs to recover amounts owed to them under judgments against foreign states by attachment of the property of the judgment debtor. But a U.S. court has no meaningful way to enforce the attachment of a country-code top-level domain or ensure its transfer to a judgment creditor. Although ICANN is within the reach of U.S. courts, the global Internet exists without regard to U.S. law. As plaintiffs acknowledge (Br. 34), therefore, "any power that ICANN has over"

[12] For this reason, plaintiffs' assertion (Br. 9, 34) that Internet users may register lower-level domains within some country-code top-level domains is beside the point.

country-code top-level domains "stems only from the fact that the global community allows it to play that role." 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. And if that happened, any changes made to the current root file at the behest of a U.S. court would effectively become irrelevant.

As we have explained, some foreign states already oppose the multi-stakeholder model of Internet governance generally and ICANN in particular. It is not difficult to imagine that a court-ordered change to the authoritative root zone file at the behest of private plaintiffs would prompt members of the global Internet community to turn their backs on ICANN for good. Such a change would immediately be cited by the countries who advocate full governmental control over the domain name system as evidence that ICANN should not be administering the system. Recognizing this possibility, moreover, no rational company would "purchase" from plaintiffs the right to manage the country-code top-level domains associated with defendants. *Cf.* Reply Br. 33 (explaining that the plaintiffs hope "to license" for money "the operation of" the country-code top-level domains). Any attempted attachment would thus likely be fruitless in the end, because the putative "property" plaintiffs seek cannot meaningfully be used to offset a judgment. But the result would be devastating for ICANN, for the multi-stakeholder model of Internet governance, and for the freedom and stability of the Internet as a whole.

B. Country-Code Top-Level Domains Are Not Owned by a Foreign State Within the Meaning of the FSIA or TRIA

The FSIA and TRIA permit attachment only of property or assets "of" a judgment-debtor foreign state. *Heiser*, 735 F.3d at 938-40. These statutes allow attachment of property or assets in which the foreign state has an "ownership interest." *Id.* at 941. This Court has rejected the notion that "ownership interests" under these statutes "include any interest in the property bundle." *Id.* at 940. Rather, Congress contemplated that creditors may "attach assets in which foreign states have '*beneficial ownership*.'" *Id.* at 938 (quoting H.R. Rep. No. 110–477, at 1001 (2007) (Conf. Rep.)) (emphasis added). Whether a foreign state has such an interest is a question this Court resolves by reference to federal common law. *Id.* at 940-41.

This Court should affirm the district court's judgment on the ground that the defendant states lack the necessary ownership interest in the country-code top-level domains at issue. The public record belies any claim that country-code top-level domains are owned by the countries and territories to which they refer. To the contrary, a foundational policy document explains that "[c]oncerns about * * * 'ownership'" of country-code top-level domains "are inappropriate." RFC 1591, at 5.

If country-code top-level domains were property at all, these domains would be most analogous to the corpus of a public trust administered by ICANN for the benefit of the global Internet community. In effect, ICANN serves as a trustee of the Internet's unique names and numbers in service to all Internet users. Each local

manager of a country-code top-level domain, in turn, effectively functions as the local agent of ICANN in the relevant regional Internet community. It makes no difference for these purposes that, according to plaintiffs (Br. 12-15), the local managers of the .ir, .sy, and .kp domains include government instrumentalities. In their capacity as managers of country-code top-level domains, they exercise responsibility delegated from ICANN on behalf of the Internet community as a whole.

ICANN's policies reflect this understanding. ICANN expressly treats the manager of each country-code top-level domain as a "trustee for the domain on behalf of the national and global Internet communities."[13] The manager of such a domain is "performing a public service on behalf of the Internet community." RFC 1591, at 2. Other statements of Internet governance principles likewise describe the roles of ICANN and country-code top-level domain managers in terms of a trust relationship: "The designated manager is the trustee of the top-level domain." RFC 1591, at 3-4; *see also* Gov'tl Advisory Comm., *Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains* § 5.1.1 ("The ccTLD Registry is a trustee for the delegated ccTLD, and has a duty to serve the local Internet community as well as the global Internet community.").[14] This approach reflects ICANN's status under California law as a nonprofit "public benefit" corporation—an entity organized for the benefit of the public. *See* Cal. Corp. Code § 5110 *et seq.*

[13] https://www.iana.org/help/cctld-delegation.
[14] https://archive.icann.org/en/committees/gac/gac-cctld-principles.htm.

ICANN does not treat local managers of country-code top-level domains—or the associated sovereign states—as the "owners" of these domains. When making decisions about the management of such a domain, ICANN treats the views of the relevant government as important because the government is "an important part of the local Internet community."[15] But ICANN pointedly does *not* treat the relevant government's views as dispositive. For example, although ICANN can and sometimes does "redelegate" the management of a particular country-code top-level domain to a different entity, it will not do so—even at the request of the relevant government—without "documentation indicating local Internet community support for the proposed manager."[16] Indeed, the consent of the relevant government is *not* required to make changes to the management of the domain. ICANN policies explain: "[I]t is expected that relevant local governments are consulted regarding a delegation or redelegation. It is not a requirement that they consent, but if they do not have an opinion, a statement of non-objection can be useful."[17] This enduring practice is impossible to reconcile with any claim of meaningful state ownership.

ICANN's 2011 published report on the redelegation of the .sy domain—one of the domains that plaintiffs seek to attach—is typical. *See* IANA, *Redelegation of the .SY Domain Representing the Syrian Arab Republic to the National Agency for Network Services* (Jan.

[15] http://www.iana.org/help/cctld-delegation-answers.
[16] https://www.iana.org/help/cctld-delegation.
[17] http://www.iana.org/help/cctld-delegation-answers.

7, 2011).[18] The Syrian government requested in 2010 that ICANN redelegate the .sy domain to a new local manager. ICANN did not treat that request as dispositive merely because it came from the Syrian government. Instead, ICANN analyzed various "public-interest criteria for eligibility," including the views of "all ten of the private [Internet Service Providers] that operate in the country," and stressed that the request would be considered in light of "ICANN's core mission of ensuring the stable and secure operation of the Internet's unique identifier systems." *Ibid.*[19]

When the roles of ICANN and the managers of country-code top-level domains are understood by analogy to trust principles, it is clear that the defendant foreign states have no beneficial ownership interest subject to attachment under the FSIA or TRIA.[20] Under well-settled principles, the corpus of a trust is not subject to attachment to satisfy the debts of the trustee or a trustee's agent. "If property is held in trust, the trustee has a nonbeneficial interest." 3 Restatement (Third) of Property

---

[18] https://www.iana.org/reports/2011/sy-report-07jan2011.html.

[19] *See also, e.g.*, https://www.iana.org/reports/2007/kp-report-11sep2007.html (initial delegation of .kp domain); https://www.iana.org/reports/2011/kp-report-20110401.html (redelegation of .kp domain); https://www.iana.org/reports/2000/pn-report-11feb00.html (redelegation of .pn domain associated with Pitcairn Island).

[20] Plaintiffs highlight (Br. 8-9) a letter from a representative of the Department of Commerce to a private party who claimed to be the manager of the ccTLD associated with the United States Minor Outlying Islands. The letter explained that, because of this association, "the .UM ccTLD is a United States Government asset." The point of that letter was not to assert that ccTLDs constitute "property" or "assets" in any traditional legal sense, much less for the specific purposes of the FSIA or TRIA. Rather, the letter explained that the nine islands comprising the U.S. Minor Outlying Islands are U.S. territories and that the U.S. Government is therefore the relevant local agent for decisions affecting the .UM top-level domain.

§ 24.1 cmt. c (2011); *see also* 2 Restatement (Third) of Trusts § 42 cmt. c (2003). *Cf. Curtin v. United Airlines, Inc.*, 275 F.3d 88, 93 n.6 (D.C. Cir. 2001) (explaining that courts "often look to the * * * Restatement when deciding questions of federal common law").

Applying these principles here is consistent with the judgments of the political branches "in ordering our relationships with other members of the international community." *Cf. Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425-26 (1964) (explaining the rationale for treating "exclusively as an aspect of federal law" "legal problems affecting international relations"). As explained above, the Executive Branch and Congress have repeatedly expressed the commitment of the United States to the multi-stakeholder model of Internet governance and have emphasized the importance of this model to maintaining a stable, open, and decentralized Internet that is free from governmental control. Sovereign beneficial ownership of country-code top-level domains is anathema to this model and these goals.

II. Rule 69 Does Not Permit Attachment Here

In any event, the district court correctly held that Federal Rule of Civil Procedure 69 poses an independent bar to the attachment that plaintiffs seek.

Consistent with the FSIA and TRIA, Rule 69 would not permit attachment of country-code top-level domains by service of process on ICANN. Whether a foreign state that manages the top-level domain associated with a country code is best understood as a trustee, or as an agent for specific purposes of another entity (like

ICANN) that serves in a trustee role, the plaintiffs may not attach country-code top-level domains to satisfy the judgments they hold. It is clear under District of Columbia law and settled principles of attachment law that property held in trust cannot be garnished or encumbered to satisfy the obligations of a trustee.[21] D.C. Code § 19-1305.07 ("Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt."); *see also* 50 C.J.S. Judgments § 794 (2009); 6 Am. Jur. 2d Attachment and Garnishment § 159 (2008).

To the extent that the plaintiffs have preserved separate arguments about IP addresses, those arguments fare no better. District of Columbia law provides that "a writ of garnishment covers only the property of the debtor in the hands of the garnishee at the time the writ is served." *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1356 (D.C. 1994); *see, e.g.*, D.C. Code § 16-552(a), (b) (contemplating attachment of property "in" a garnishee's "hands" and "possession or charge"). As plaintiffs acknowledge (Br. 11), however, ICANN does not itself assign IP addresses directly to users. That is the role of the relevant regional Internet registries—in this case, the Réseaux IP Européens Network Coordination Centre (for the region including Iran and Syria) and the Asia-Pacific Network Information Centre (for the region including North Korea). If the IP addresses associated with the defendants could be said to be

[21] Because the result under D.C. law is consistent with federal law, this case does not require this Court to decide whether or to what extent the FSIA, TRIA, or principles of federal common law may inform, supplement, or override state law governing attachment under Rule 69.

"in the hands of" anyone, therefore, that entity would not be ICANN.

Plaintiffs assert (Br. 10) that ICANN could in theory "reclaim blocks of IP addresses" from regional Internet registries by exercising its "authority." Even if that were true, plaintiffs do not suggest that ICANN has any mechanism for reclaiming the *specific* IP addresses they seek. Nor do plaintiffs cite any plausible basis for their assertion that ICANN could compel the relevant regional registries, which are located in foreign jurisdictions, to act at ICANN's behest. The regional Internet registries are independent bodies whose relationship with ICANN is arms-length.[22] Indeed, the written agreement between ICANN and an organization that represents the regional registries expressly provides for dispute resolution through arbitration.[23]

For present purposes, however, it does not matter whether ICANN *could* reclaim IP addresses, because it is undisputed that it has not done so here. Because ICANN concededly (*see* Pl. Br. 11) did not have "in [its] hands" the IP addresses that plaintiffs seek at the time the writs were served, *Consumers United*, 644 A.2d at 1356, the writs of attachment were appropriately quashed as to IP addresses as well.[24]

CONCLUSION

The judgment of the district court should be affirmed.

---

[22] *See* https://www.icann.org/resources/pages/new-rirs-criteria-2012-02-25-en.

[23] *See, e.g.*, https://archive.icann.org/en/aso/aso-mou-29oct04.htm (¶ 7).

[24] Because any applicable District of Columbia law is "reasonably clear and provides a 'discernible path' to the resolution of this case," *Dial A Car, Inc. v. Transportation, Inc.*, 132 F.3d 743, 746 (D.C. Cir. 1998), the motion to certify a question of law to the D.C. Court of Appeals should be denied. *See* Order (Aug. 6, 2015).

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

CHANNING D. PHILLIPS
United States Attorney

BETH S. BRINKMANN
Deputy Assistant Attorney General

DOUGLAS N. LETTER
MARK R. FREEMAN

s/ Sonia K. McNeil
SONIA K. MCNEIL
Attorneys, Appellate Staff
Civil Division, Room 7234
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 616-8209
sonia.k.mcneil@usdoj.gov

Of Counsel:

KELLY R. WELSH
General Counsel
U.S. Department of Commerce
KATHY SMITH
Chief Counsel
MILTON BROWN
STACY M. CHENEY
National Telecommunications & Information Administration
U.S. Department of Commerce

MARY E. MCLEOD
Principal Deputy Legal Adviser
U.S. Department of State

DECEMBER 2015

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with this Court's order of November 13, 2015. This brief does not exceed 20 pages. This count excludes the parts of the brief exempted under Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

s/ Sonia K. McNeil
Sonia K. McNeil

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2015, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Sonia K. McNeil
Sonia K. McNeil