JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113

TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

Direct Number: (202) 879-5485
njfrancisco@jonesday.com

January 19, 2016

BY CM/ECF

Mark Langer, Clerk of the Court
U.S. Court of Appeals for the D.C. Circuit
E. Barrett Prettyman Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *Weinstein, et al. v. Islamic Republic of Iran, et al.* (No. 14-7193)[1]

Dear Mr. Langer:

The intermediate Canadian appellate court decision, *Tucows.com v. Lojas Renner S.A.*, 2011 ONCA 548 (Ct. App. Ontario 2011), is irrelevant and, if anything, undermines Appellants' case.

First, *Tucows* involves second-level domain names, not top-level domain names, let alone country-code top-level domain names ("ccTLDs"). As ICANN has explained, "even if a second-level domain name could be conceptualized to be a mix of a property right and a services contract, a ccTLD cannot." ICANN Br. 28–29.

Second, even if ccTLDs could be construed as some form of property, *Tucows* does not address the critical question whether ccTLDs are *attachable* property. They clearly are not, for three basic reasons:

- As the District Court correctly found, attachment law prohibits Appellants from inserting themselves into the middle of an ongoing relationship to provide services. *See* ICANN Br. 21–32; ICANN Supp. Br. 8–9. Here, however, that is precisely what Appellants seek to do—namely, to force Internet users to purchase services from Appellants (or their designee).

[1] Consolidated with Nos. 14-7194, 14-7195, 14-7198, 14-7202, 14-7203 and 14-7204.

- Appellants can have no greater rights in the ccTLDs than Defendants themselves have. Here, however, Defendants have no right to transfer the ccTLDs to Appellants or anyone else. Appellants, therefore, cannot use garnishment to force that transfer. *See* ICANN Br. 32–34; ICANN Supp. Br. 9–12.

- The terms "goods" and "chattels" are limited to tangible personal property. *See* ICANN Br. 15–21. Here, however, *Tucows* confirms that second-level domain names are, at best, "a new type of *intangible* property." *Tucows* ¶ 50 (emphasis added).

Third, *Tucows* confirms that Internet Protocol ("IP") addresses cannot be attached here. As *Tucows* explains, ICANN does not distribute specific IP addresses to individual users; rather, "IP numbers are allocated through regional Internet registries," *id.* ¶ 42. As a result, ICANN does not have the ability to revoke individual IP addresses. ICANN Supp. Br. 14–15. The IP addresses are also not attachable because ICANN does not currently possess them, which is why Appellants are seeking to force ICANN to "reclaim" them contrary to D.C. attachment law. ICANN Supp. Br. 15–17; Appellants' Br. 10.

Respectfully submitted,
/s/ Noel J. Francisco

Noel J. Francisco
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Email: njfrancisco@jonesday.com

Counsel for Garnishee-Appellee Internet Corporation for Assigned Names and Numbers

cc: All counsel of record via CM/ECF

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2016, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system. The electronic filing described above caused the foregoing to be served on all registered users to be noticed in this matter, including:

Robert J. Tolchin
Berkman Law Office, LLC
111 Livingston Street, Suite 1928
Brooklyn, NY 11201
Email: rtolchin@berkmanlaw.com
Counsel for Appellants

Meir Katz
Berkman Law Office, LLC
PO Box 65335
Baltimore, MD 21215
Email: MKatzLitigation@gmail.com
Counsel for Appellants

Steven Thomas Gebelin
Scott Michael Lesowitz
Raines Feldman LLP
9720 Wilshire Boulevard, 5th Floor
Beverly Hills, CA 90212
Email: sgebelin@raineslaw.com
Email: slesowitz@raineslaw.com
Counsel for Appellants

Dated: January 19, 2016

/s/ Noel J. Francisco
Noel J. Francisco
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Email: njfrancisco@jonesday.com

Counsel for Garnishee-Appellee Internet Corporation for Assigned Names and Numbers