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, *individually as Co-Administrator of the Estate of Ira William Weinstein, and as natural guardian of plaintiff David Weinstein (minor)*, et al.,

Appellants,

v.

ISLAMIC REPUBLIC OF IRAN, et al.,

Appellees,

and

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Garnishee-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (Nos. 1:00-cv-2601-RCL; 1:00-cv-2602-RCL; 1:01-cv-1655-RCL; 1:02-cv-1811-RCL; 1:08-cv-520-RCL; 1:08-cv-502-RCL; 1:14-mc-648-RCL)

GARNISHEE-APPELLEE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS' SUPPLEMENTAL BRIEF IN RESPONSE TO THE BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

Jeffrey A. LeVee
Eric P. Enson
JONES DAY
555 South Flower St., 50th Floor
Los Angeles, CA 90071
Telephone: (213) 243-2304
Email: jlevee@jonesday.com
Email: epenson@jonesday.com

Noel J. Francisco (Lead Counsel)
Tara Lynn R. Zurawski
Ryan J. Watson
JONES DAY
51 Louisiana Ave., 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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

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

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES

OTHER AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

GLOSSARY

ccTLD	country-code Top-Level Domain
FSIA	Foreign Sovereign Immunities Act
IANA	Internet Assigned Numbers Authority
ICANN	Internet Corporation for Assigned Names and Numbers
IP	Internet Protocol
IPv4	Internet Protocol Version 4
IPv6	Internet Protocol Version 6
JA	Joint Appendix
TRIA	Terrorism Risk Insurance Act of 2002

STATUTES AND REGULATIONS

Except for the regulations reproduced in the addendum to this brief, all applicable statutes and regulations are contained in the parties' previous briefs.

SUMMARY OF ARGUMENT

The Government's brief powerfully confirms that the District Court's order should be affirmed. Defendants Iran, Syria, and North Korea do not control, much less own, the country-code top-level domain names ("ccTLDs") at issue—namely, ".ir," ".sy," and ".kp" ("the Subject ccTLDs"). Instead, a ccTLD manager "is a trustee for the delegated ccTLD, and has a *duty to serve* the local Internet community as well as the global Internet community." Supp. App'x 40, § 5.1.1 (Principles & Guidelines for the Delegation and Administration of Country Code Top Level Domains, Presented by Gov't Advisory Comm. (2005)) (emphasis added). That is precisely why Defendants here do *not* have final say over who serves as a ccTLD manager. That determination, rather, is made pursuant to policies by which the Internet Corporation for Assigned Names and Numbers ("ICANN") and other parties, and *not* the ccTLD managers, play separate and independent roles. These basic facts, which Appellants cannot dispute, are sufficient to resolve this case.

First, as the Government's brief confirms, ccTLDs are not "property" or "assets" under the Foreign Sovereign Immunities Act ("FSIA") and the Terrorism

Risk Insurance Act of 2002 ("TRIA"), but even if they were, they are not owned by Defendants. A ccTLD is simply a means of identifying the location of a website on the Internet, much like a zip code is a means of identifying a house's location. The delegee of a ccTLD, therefore, does not possess a piece of "property"; instead, a ccTLD is simply the means by which a ccTLD manager fulfills its "duty to serve" the residents of the relevant country or territory. Moreover, even if this "duty to serve" could be transformed into a property right, it would not be one that Defendants own. After all, Defendants do not even have the right to determine who serves as a ccTLD manager. Instead, a ccTLD manager is merely a "trustee of the domain on behalf of the national and global Internet communities." JA 24.19.

Second, although the Government does not discuss the issue at length, its brief likewise confirms why ccTLDs are not *attachable* property under D.C. attachment law. As the Government explains, ccTLDs are inextricably intertwined with the "duty to serve" the Internet community. Here, Appellants seek to attach that duty—that is, they seek to force the Internet community to purchase services from Appellants (or their licensee). It is established law that garnishment cannot be used for that purpose. *See Cummings General Tire Co. v. Volpe Constr. Co.*, 230 A.2d 712, 712–13 (D.C. 1967); *Shpritz v. District of Columbia*, 393 A.2d 68, 69–70 (D.C. 1978). The Government's brief likewise shows how Appellants seek

greater rights than Defendants themselves have in ccTLDs. As the Government explains, Defendants themselves could not transfer the Subject ccTLDs to Appellants or anyone else. It follows, therefore, that Appellants cannot use garnishment law to force such a transfer.

Third, the Government's brief confirms that, even if Appellants had preserved their attempt to attach Internet Protocol ("IP") addresses, their argument fails on the merits. As the Government explains, ICANN neither gave individual IP addresses to Defendants, nor does it have the ability to "reclaim" them. Appellants' Br. 10. Nevertheless, Appellants concede that ICANN does not currently possess these IP addresses, which alone forecloses their attempts to attach the IP addresses here.

For all of these reasons, as well as those set forth in ICANN's opening brief, the District Court's judgment should be affirmed.

ARGUMENT

I. THE SUBJECT ccTLDs ARE NOT "PROPERTY" OR "ASSETS" "OF" IRAN, SYRIA, AND NORTH KOREA UNDER FSIA AND TRIA.

A. ccTLDs Are Not "Property" or "Assets."

As ICANN's opening brief makes clear, ICANN fully agrees with the Government's position that ccTLDs are neither "property" nor "assets" within the meaning of FSIA and TRIA. ICANN Br. 11–14, 40–41 & n.9. To the contrary, as the Government explains, a ccTLD "is merely a designation in cyberspace of the

national affiliation of a subset of the global Internet community." Government Br. 9. In other words, a ccTLD serves the same function as an area code in identifying a phone number, or a zip code in identifying a house. Even if the phone number or house is property, the area code and zip code surely are not. ICANN Br. 13. For the same reason, neither is a ccTLD.

Indeed, this is further confirmed by the fact that Defendants here do *not* possess the right to control ccTLDs. Rather, the delegation and re-delegation of ccTLDs are made pursuant to a multistakeholder process. To be sure, a country may provide a recommendation as to what entity should become a ccTLD manager; but it is just that, *a recommendation.* The very policy documents that inform the delegation and re-delegation of ccTLDs likewise repeatedly confirm that "[c]oncerns about 'rights' . . . are inappropriate," JA 24.15 (J. Postel, RFC 1591: Domain Name System Structure and Delegation (Mar. 1994)); that it is instead "appropriate to be concerned about 'responsibilities' and 'service'" pertaining to top-level domains, *id.*; and that a ccTLD manager "is a trustee for the delegated ccTLD, and has a duty to serve the local Internet community as well as the global Internet community," Supp. App'x 40, § 5.1.1 (Principles & Guidelines for the Delegation and Administration of Country Code Top Level Domains, Presented by Gov't Advisory Comm. (2005)).

Accordingly, because ccTLDs are not "property" or "assets" at all, Appellants' attempts to attach them fail at the outset.

B. ccTLDs Are Not Property or Assets "of" Foreign Governments.

As the Government points out, a ccTLD itself is not *granted* to a country or even the ccTLD manager. Government Br. 11. Instead, a ccTLD manager is entrusted with the obligation to "perform[] a public service on behalf of the Internet community" in the relevant region. JA 24.13; *see also* Government Br. 11. A ccTLD manager thus serves as a "trustee of the domain on behalf of the national and global Internet communities." JA 24.19; *see also* Government Br. 11. In light of this, basic principles of trust law demonstrate that the ccTLDs, even if wrongly conceptualized as "property," are certainly not property that Defendants own under FSIA and TRIA. *See* 28 U.S.C. § 1610(g); TRIA § 201(a).

Two trust-law principles discussed in the Government's brief are relevant here. *First*, trustees lack a beneficial property interest in the corpus of the trust. Rather, under "standard common-law doctrine," the beneficiaries of a trust "hold the beneficial interests . . . in the trust property, while the trustee . . . holds 'bare' legal title to the property." Restatement (Third) of Trusts § 42, cmt. a (2003); *see also* Restatement (Third) of Property: Wills & Other Donative Transfers § 24.1, cmt. c (2011) ("If property is held in trust, the trustee has a nonbeneficial interest."). That is, even if the corpus of the trust is "property," it is the trust

beneficiaries—not the trustees—that have a beneficial interest in that property. *See, e.g.*, Restatement (Third) of Trusts § 42, cmt. a.

Second, any nonbeneficial interest that trustees have is not subject to attachment. It is well established that "the trustee's personal creditors . . . may not reach either the trust property or the trustee's nonbeneficial interest." *Id.* cmt. c; *see, e.g.*, *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135–36 (1962) (trustee's creditors may not reach trust property in bankruptcy); *Townsend v. Greeley*, 72 U.S. 326, 337 (1866) (trustee's creditors may not reach trust property through attachment). In other words, "[t]rust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt." D.C. Code § 19-1305.07. These principles reflect the "basic concept" of trust law that the trust corpus is held for the benefit of the beneficiaries, not for the personal enrichment of the trustee. Restatement (Third) of Trusts § 42, cmt. a.

These trust-law principles are dispositive. ccTLDs are a creature of the entities that created the current domain name infrastructure. And the policy documents that govern and define that infrastructure make clear that ICANN acts on behalf of the entire Internet community, and each ccTLD manager serves as a "trustee for the domain on behalf of the national and global Internet communities." JA 24.19. Dr. Postel's "foundational 1994 Internet governance policy statement" (Government Br. 11) similarly underscores that "[t]he designated manager is the

trustee of the top-level domain" and that it "perform[s] a public service on behalf of the Internet community." JA 24.13, 24.15. *See also, e.g.*, Supp. App'x 40, § 5.1.1 (Principles & Guidelines for the Delegation and Administration of Country Code Top Level Domains, Presented by Gov't Advisory Comm. (2005)) (stating that a ccTLD manager "is a trustee for the delegated ccTLD, and has a duty to serve the local Internet community as well as the global Internet community").

The policies discussed above make clear that ccTLD managers maintain certain authority that can be exercised with respect to the ccTLDs. However, neither Defendants nor the managers of the Subject ccTLDs *own* the ccTLDs. Instead, ccTLD managers exercise limited authority over ccTLDs and can be relieved of their delegated duties when necessary. *See, e.g.*, *infra* at § II (ccTLD managers do not have unilateral authority to determine who will manage the ccTLD); ICANN Br. 33. That is precisely why Defendants do *not* have the power to delegate or re-delegate ccTLDs; although they are generally consulted on the issue, "[i]t is not a requirement they consent." Supp. App'x 32.

II. THE GOVERNMENT'S ARGUMENTS CONFIRM THAT ccTLDs ARE NOT ATTACHABLE UNDER DISTRICT OF COLUMBIA LAW.

Although the Government does not discuss D.C. attachment law at length, its arguments illustrate why—even if one wrongly assumed that the Subject ccTLDs were "property" in some sense—they are not *attachable* property under D.C. law. In particular, they confirm that ccTLDs are inextricably intertwined

with the provision of services, and that Appellants here seek to exercise greater power over the Subject ccTLDs than Defendants themselves have, both of which are contrary to established attachment law principles.[1]

A. ccTLDs Are Not Attachable Because They Are Inextricably Intertwined with the Provision of Services.

Appellants seek the right to force the holders of second-level domains registered within the Subject ccTLDs to purchase administrative, registry, and other technical services necessary to operate the ccTLDs from Appellants (or Appellants' licensee) in order for Appellants to satisfy judgments issued in their favor. However, it is well established that judgment creditors, such as Appellants here, cannot attach the right to provide services. *See, e.g.*, *Cummings*, 230 A.2d at 712–13; *Shprtiz*, 393 A.2d at 69–70. Indeed, the Government's brief confirms this and demonstrates how a ccTLD cannot be separated from the "*duty to serve* the local Internet community as well as the global Internet community." Supp. App'x 40, § 5.1.1 (Principles & Guidelines for the Delegation and Administration of Country Code Top Level Domains, Presented by Gov't Advisory Comm. (2005)) (emphasis added).

[1] Since these arguments turn on fundamental attachment law principles that do not vary across jurisdictions, the Government correctly concludes there is no reason to certify questions to the D.C. Court of Appeals. *See* Government Br. 20 n.24.

In fact, the relief Appellants seek is even more improper than the relief sought in *Cummings* and *Shpritz*. In those cases, the judgment creditors simply sought *payments* due under services contracts. *Cummings*, 230 A.2d at 712 (holding that money relating to a services contract was not garnishable because the defendant did not owe the garnishee any money until the contract work had been completed); *Shprtiz*, 393 A.2d at 69–70 (money allegedly due under services contract was not subject to levy because the recipient of the services had not "approved the services" performed). Here, in contrast, Appellants seek to attach the "duty to serve" itself—that is, the right to *perform* the services in exchange for money. A simple hypothetical drives home the point. Suppose a corporation agreed to pay a law firm a $1000-per-month retainer in exchange for legal services for ten years, and a plaintiff obtained a judgment against the law firm in an unrelated case. Under Appellants' theory here, the plaintiff in this hypothetical could step into the shoes of the law firm and force the corporation to pay the plaintiff (or the plaintiff's designee) in exchange for legal services. That is an obviously impermissible use of garnishment law.

B. Appellants Seek Greater Rights in ccTLDs Than Defendants Have.

"[A] judgment creditor cannot acquire more property rights in a property than those already held by the judgment debtor." *Heiser v. Islamic Rep. of Iran*, 735 F.3d 934, 938 (D.C. Cir. 2013); *see also Zink v. Black Star Line*, 18 F.2d 156,

157 (D.C. App. 1927) (the rights of a judgment creditor over property "cannot rise higher than those which the [judgment debtor] itself would have had"). That is, since attachment allows a judgment creditor to stand in the shoes of the judgment debtor, the creditor "can enforce only such rights as the debtor himself might enforce." *Walker v. Doak*, 290 P. 290, 292 (Cal. 1930).

This well-established principle forecloses the relief Appellants seek here. As the Government explains, Iran, Syria, and North Korea could not themselves transfer the Subject ccTLDs to Appellants or anyone else. That determination, rather, is made pursuant to policies by which ICANN and other parties, and *not* the ccTLD managers, play separate and independent roles. As a result, a foreign government can make only a non-dispositive *recommendation*; although "it is expected that relevant local governments are consulted regarding a delegation or redelegation[,] *[i]t is not a requirement they consent*." Supp. App'x 32 (IANA: Common Questions on Delegating & Redelegating Country-Code Top-Level Domains (ccTLDs) (emphasis added)); Government Br. 16. More specifically, in order to effectuate a delegation or re-delegation, ICANN must recommend a delegation or re-delegation to the Department of Commerce, and the Department of Commerce must approve it, before any such transfer can be made. *See, e.g.*, ICANN Br. 33, 49. Moreover, when making its recommendation, ICANN takes into account the views of the Internet community as a whole.

The re-delegations of the ".sy" and ".kp" ccTLDs illustrate this process. As the Government's brief highlights, when a Syrian governmental agency commenced a re-delegation request for ".sy" in 2010, ICANN did not merely rubber stamp it. Government Br. 16–17. Instead, ICANN took into account the fact that private Internet Service Providers supported the re-delegation request.[2] In addition, ICANN evaluated various criteria, such as whether the proposed manager had "undertake[n] to operate the domain in a fair and equitable manner," whether the re-delegation would lead to instability in the domain name system, and whether the proposed ccTLD manager had appropriate "technical and operational infrastructure and expertise." *Id.*

ICANN likewise exercised independent judgment regarding a re-delegation request for ".kp" in 2011. Although the proposed ccTLD manager was a joint venture that included a North Korean governmental enterprise, ICANN did not simply issue a rote recommendation favoring the re-delegation. Instead, it evaluated criteria such as the proposed ccTLD manager's "technical and operational infrastructure and expertise," whether the proposed ccTLD manager

[2] Redelegation of the .SY Domain Representing the Syrian Arab Republic to the National Agency for Network Services, https://www.iana.org/reports/2011/sy-report-07jan2011.html.

had undertaken to operate the domain in a fair and equitable manner, and whether the proposed re-delegation had the support of the North Korean Government.[3]

In short, the Governments of Syria, Iran, and North Korea do *not* have the power to transfer ccTLDs to Appellants or anyone else. Accordingly, Appellants, as judgment creditors, do *not* have that power either and cannot use garnishment proceedings as a way to force such a transfer.

III. INDIVIDUAL IP ADDRESSES ARE NOT SUBJECT TO ATTACHMENT.

The Government also is correct that, "[t]o the extent that the [Appellants] have preserved separate arguments about IP addresses," those arguments are unavailing. Government Br. 19–20. As a threshold matter, Appellants have not preserved the argument that IP addresses are attachable. In any event, as the Government notes, Appellants' attempt to attach IP addresses fails on the merits.

A. Appellants Forfeited Any Argument That IP Addresses Are Subject to Attachment.

On the day the writs of attachment were served, Appellants sent a cover letter and served subpoenas *duces tecum* that referred to the Subject ccTLDs and certain IP addresses. Supp. App'x at 70, 74–75. ICANN's position as to the scope

[3] Redelegation of the .KP Domain Representing the Democratic People's Republic of Korea to Star Joint Venture Company, http://www.iana.org/reports/2011/kp-report-20110401.html. Notably, Appellants rely on reports regarding delegation and re-delegation decisions, including this very report. *See* Appellants' Br. 12–13.

of the proceedings was clear from the outset: Appellants were seeking to attach the Subject ccTLDs and the IP addresses used for the name servers that house the Subject ccTLDs' registries. Accordingly, ICANN's memorandum in support of its motions to quash focused on "the .IR, .SY and .KP country code top-level domains ('ccTLDs'), related non-ASCII ccTLDs, *and supporting IP addresses*." Mem. in Support of ICANN's Mot. to Quash Writs of Attachment, D.E. 89-1 at 9 (July 29, 2014) (emphasis added). Similarly, ICANN's reply in support of the motions to quash contended that "Plaintiffs' Opposition does not—and cannot—refute the basic fact that the .IR, .SY, and .KP ccTLDs, related non-ASCII ccTLDs *and supporting IP addresses* (the '.IR, .SY, and .KP ccTLDs') are not property subject to attachment." ICANN's Reply in Support of Mot. to Quash, D.E. 109 at 6 (Oct. 10, 2014) (emphasis added).[4]

If Appellants disagreed with ICANN's position regarding the scope of the proceedings, they had a full and fair opportunity to clarify their position in the District Court. However, they chose not to do so. Nor did their opposition to the motions to quash contain *any* substantive arguments as to why they believe that the IP addresses are subject to attachment. *See* JA 59–61. To the contrary, in their motion for discovery, Appellants appeared to embrace ICANN's understanding,

[4] When citing record items that are not in an appendix, docket numbers correspond to *Weinstein* and page numbers correspond to the electronic-case-filing numbering.

arguing that discovery would "allow this Court to make a fully informed decision on a very important and novel legal question: Whether or not judgment creditors may seize internet country code top level domains ('ccTLDs') and/or revenues derived therefrom in order to satisfy legal judgments." Pls.' Mot. for Six Month Discovery Period, D.E. 107 at 4 (Sept. 25, 2014). The District Court then resolved the motions based on the parties' briefing, holding that the Subject ccTLDs cannot be attached. JA 63–73. In short, Appellants forfeited any argument that IP addresses are subject to attachment. *E.g.*, *Odhiambo v. Rep. of Kenya*, 764 F.3d 31, 35 (D.C. Cir. 2014).

B. In Any Event, Individual IP Addresses Are Not Attachable.

Forfeiture issues aside, the Government's brief is correct that IP addresses are not subject to attachment here for numerous reasons.

First, as the Government notes, ICANN cannot revoke the allocation of specific IP addresses because, among other things, ICANN does not allocate specific IP addresses in the first place. As demonstrated by publicly available policies, the only entities to which ICANN allocates IP addresses such as those at issue here are Regional Internet Registries.[5] Specifically, ICANN allocates to

[5] *See, e.g.*, Internet Assigned Numbers Authority (IANA) Policy For Allocation of IPv6 Blocks to Regional Internet Registries, https://www.icann.org/resources/pages/allocation-ipv6-rirs-2012-02-25-en (last visited Dec. 31, 2015) ("IPv6 Allocation Policy"); Global Policy for Post Exhaustion IPv4 Allocation

Regional Internet Registries large blocks of IP addresses, which typically comprise millions of IP addresses.[6] Regional Internet Registries then allocate IP addresses to Internet Service Providers and network operators, typically in much smaller blocks.[7] Finally, Internet Service Providers allocate IP addresses to end users. *E.g.*, RIPE Allocation Policy, *supra*, at § 2. If a ccTLD manager operates its own network, then it obtains its IP addresses from the Regional Internet Registry, and if it does not operate its own network, it obtains IP addresses from its Internet Service Provider. Either way, ccTLD managers do *not* receive IP addresses from ICANN and, as a result, ICANN could not "reclaim" them even if it wanted to.

Second, even assuming for the sake of argument that IP addresses are property, the Government also correctly explains that IP addresses are not subject to attachment because ICANN does not currently possess them and did not possess

(continued…)

Mechanisms by the IANA, https://www.icann.org/resources/pages/allocation-ipv4-post-exhaustion-2012-05-08-en (last visited Dec. 31, 2015) ("Post Exhaustion IPv4 Allocation Mechanisms"); The Number Resource Organization, Free Pool of IPv4 Address Space Depleted (Feb. 3, 2011) ("Number Resource Organization").

[6] *See* IPv6 Allocation Policy, *supra*; RIPE NCC: Understanding IP Addressing and CIDR Charts, https://www.ripe.net/about-us/press-centre/understanding-ip-addressing (last visited Dec. 31, 2015) ("Understanding IP Addressing"); Number Resource Organization, *supra*; Post Exhaustion IPv4 Allocation Mechanisms, *supra*.

[7] *See, e.g.*, IPv6 Allocation Policy, *supra*; RIPE NCC: IPv6 Address Allocation & Assignment Policy, Abstract (2015) ("RIPE Allocation Policy"); *id.* at § 4.3; Understanding IP Addressing, *supra*.

them at the time the writs of attachment were served. Government Br. 19–20. D.C. law follows the "general rule" 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.*, 6 Am. Jur. 2d Attachment & Garnishment § 72. For example, in *Consumers United*, the D.C. Court of Appeals held that a judgment creditor could not garnish a judgment debtor's funds from a bank where the funds came into the bank's hands after the service of the writ. 644 A.2d at 1355–56. In fact, the D.C. statutory provisions governing garnishment presuppose this common law rule—they contemplate garnishment of property "in" a garnishee's "hands" or "possession or charge." D.C. Code § 16-552(a)–(b).

Here, it is undisputed that ICANN does not currently hold the relevant IP addresses, nor did it hold them at the time that Appellants served the writs of attachment. Rather, Appellants ask that ICANN be ordered to "*reclaim* blocks of IP addresses," Appellants' Br. 10 (emphasis added), that are currently in the hands of others. *See also id.* at 11 (claiming that ICANN "has the ability to demand" the IP addresses from certain Regional Internet Registries). As such, Appellants' effort to attach IP addresses fails.

Nor can Appellants bypass the above-described rule by arguing that ICANN has the "authority" to "reclaim blocks of IP addresses" from Regional Internet

Registries. Appellants' Br. 10. As an initial matter, Appellants' premise is false. ICANN does not have the "authority" to compel Regional Internet Registries to do ICANN's bidding. The Regional Internet Registries, which are located abroad, are independent of ICANN. Government Br. 20. But even if ICANN could reclaim IP addresses from Regional Internet Registries, its authority to do so would be irrelevant. The "object of garnishment" is to reach property belonging to the judgment debtor that is already "in the possession" of the garnishee (38 C.J.S. Garnishment § 63), not to conscript the garnishee as a collection agent. Thus, "a garnishee is under no obligation to collect anything from the judgment debtor, or anyone else, in order to satisfy a garnishment." *Id.* That is why only property "actually in possession of the garnishee, at and after the time the writ of garnishment is served on the garnishee, may be reached by garnishment." *Id.*; *see also Shanks v. Lowe*, 774 A.2d 411, 414 (Md. 2001) (restaurant does not have obligation to "take possession of [waitress's] tips and hold them in order to satisfy [a] garnishment [of her property]"). Under this rule, ICANN has "no obligation" to reclaim "anything" (including IP addresses) from "anyone" (including Regional Internet Registries) to satisfy Appellants' garnishment efforts. *See id.*

Third, IP addresses are not attachable under D.C. Code § 16-544 because they are not "goods" or "chattels." As this Court has held, D.C. applies the strict construction rule to garnishment statutes, which requires courts to adopt the

narrowest reasonable reading of statutory language. *Heiser*, 735 F.3d at 186. The D.C. Court of Appeals and other courts have made clear that one common meaning of "goods and chattels" is limited to "tangible personal property." *D.C. v. Estate of Parsons*, 590 A.2d 133, 137 (D.C. 1991); *see also* ICANN Br. at 17 (citing cases). Here, even assuming that IP addresses are property at all, they are intangible (given that they are merely a numerical sequence used to identify a device that is connected to the Internet) and are therefore not attachable. *See* ICANN Br. 15–21.

IV. THE RELIEF APPELLANTS SEEK WOULD UNDERMINE THE SUBJECT ccTLD REGISTRIES.

Finally, the Government also correctly argues that the relief Appellants seek would undermine the operability of the Subject ccTLD registries. Government Br. 1–2. Appellants would get little of value. Yet, in the meantime, the registries for the Subject ccTLDs would be thrown into disarray.

To effectively transfer a ccTLD today, three basic things need to happen. First, ICANN would have to recommend, and the Department of Commerce would have to approve, the transfer from a current ccTLD manager to a new one. Second, Verisign (the Root Zone Maintainer) would then have to make the technical adjustments necessary to re-delegate the ccTLD. Third, and perhaps even more importantly, the current ccTLD manager would have to transfer to the new ccTLD manager all of the information on its server regarding domain names that are registered under the ccTLD. Unless this third step happens, the public's ability to

access websites registered within the ccTLD would be substantially impeded, unless and until the domain names are re-registered with the new ccTLD manager.

Under existing policy, ICANN does not recommend a re-delegation unless it is assured that this third step will be smoothly accomplished. Thus, "[f]or the redelegation of an existing operational ccTLD, it is a requirement that the requestor provide information on how existing operations will be transferred to the proposed new manager in a safe manner." JA 24.20. Similarly, the requestor "must explain how the stability of the domain will be preserved and how existing registrants will be impacted by the change." *Id.*; *see also* JA 24.4 (noting that a criterion for evaluating a proposed re-delegation is whether "a stable transfer plan" exists). This is necessary for ICANN to fulfill its duty to ensure the "stable and secure operation" of the Internet. Supp. App'x 40 (Principles & Guidelines for the Delegation and Administration of County Code Top Level Domains, Presented by the Gov't Advisory Comm. (2005)).

Here, it is inconceivable that the current ccTLD managers in Iran, Syria, and North Korea will transfer to Appellants the information on their servers regarding websites that are registered in the ccTLDs. As a result, the public's access to these websites would be substantially impeded until the registrants re-register them with Appellants (or their licensee). However, such re-registration could implicate U.S. sanctions laws, which it is far from clear that Appellants could satisfy. *See, e.g.*,

31 C.F.R. § 560.204; 31 C.F.R. § 542.207; 31 C.F.R. § 510.201. Thus, Appellants would obtain something that has little or no value to them while, at the same time, undermining the Internet's operability in these three ccTLDs. That result plainly is not authorized under applicable federal and D.C. law.

CONCLUSION

This Court should affirm the District Court's order.

Dated: January 14, 2016

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

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the page limit established by this Court's November 23, 2015 order. In addition, I hereby certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman type.

Dated: January 14, 2016

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

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2016, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. In addition, 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 14, 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

REGULATORY ADDENDUM

TABLE OF CONTENTS FOR THE REGULATORY ADDENDUM

Reproduction of Relevant Authorities:

31 C.F.R. § 560.204 Prohibited exportation, reexportation, sale or supply of goods, technology, or services to Iran.

Except as otherwise authorized pursuant to this part, including § 560.511, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that:

(a) Such goods, technology, or services are intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran or the Government of Iran; or

(b) Such goods, technology, or services are intended specifically for use in the production of, for commingling with, or for incorporation into goods, technology, or services to be directly or indirectly supplied, transshipped, or reexported exclusively or predominantly to Iran or the Government of Iran.

31 C.F.R. § 542.207 Prohibited exportation, reexportation, sale, or supply of services to Syria.

Except as otherwise authorized, the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any services to Syria is prohibited.

31 C.F.R. § 510.201 Prohibited transactions.

(a) All transactions prohibited pursuant to Executive Order 13466 are also prohibited pursuant to this part.

Note to § 510.201(a): The property and interests in property of North Korea or a North Korean national blocked pursuant to this paragraph are referred to throughout this part as "property and interests in property blocked pursuant to § 510.201(a)."

(b) All transactions prohibited pursuant to Executive Order 13551 are also prohibited pursuant to this part.

Note 1 to § 510.201(b): The names of persons listed in or designated pursuant to Executive Order 13551, whose property and interests in property therefore are blocked pursuant to paragraph (b) of this section, are published in the Federal Register and incorporated into the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List ("SDN List") with the identifier "[DPRK]." The SDN List is accessible through the following page on the Office of Foreign Assets Control's Web site: http://www.treasury.gov/sdn. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 510.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (b) of this section.

Note 2 to § 510.201(b): The International Emergency Economic Powers Act (50 U.S.C. 1701-1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (b) of this section also are published in the Federal Register and incorporated into the SDN List with the identifier "[BPI-DPRK]."

(c) All transactions prohibited pursuant to Executive Order 13570 are also prohibited pursuant to this part.

Note to § 510.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of the status of their property and interests in property as blocked

pursuant to § 501.201(a) or of their status as persons whose property and interests in property are blocked pursuant to § 510.201(b).