

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

SUSAN WEINSTEIN, et al.,)	
)	
<i>Appellants,</i>)	
)	
v.)	
)	
ISLAMIC REPUBLIC OF IRAN, et al.,)	Nos. 14-7193 (Lead), 14-7194, 14-7195, 14-7198, 14-7202, 14-7203, 14-7204
)	
<i>Appellees,</i>)	
)	
and)	
)	
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,)	
)	
<i>Garnishee-Appellee.</i>)	
)	

**GARNISHEE-APPELLEE’S UNOPPOSED MOTION FOR LEAVE
TO FILE A SUPPLEMENTAL APPENDIX**

Pursuant to D.C. Circuit Rule 30(e), Garnishee-Appellee, the Internet Corporation for Assigned Names and Numbers (“Appellee”), respectfully requests that the Court grant it leave to prepare and file a Supplemental Appendix containing ten documents, totaling approximately 67 pages, that were not included

in the previously filed Joint Appendix.¹ All of the documents in question are listed in Exhibit A. Filing a Supplemental Appendix would make locating and reviewing the documents more convenient for the Court and the parties.

Circuit Rule 30(e) provides that “[i]f anything material to the appeal or petition is omitted from the appendix, the clerk, on the duly served and filed written request of any party, may allow the appendix to be supplemented.” Each of the documents Appellee seeks to include in the Supplemental Appendix is “material to the appeal.” Appellee’s counsel requested that Appellants include six of these documents in the Joint Appendix. Appellants declined to include these documents and suggested that Appellee consider seeking leave to file a supplemental appendix. *See* Exhibit B (correspondence of counsel). In addition, Appellee seeks to include three documents it did not initially ask Appellants to include in the Joint Appendix; the relevance of these documents became apparent after Appellants filed their opening brief. Finally, Appellee seeks to include an unpublished order from one of the underlying district court actions; this order

¹ Appellee intends to include only a five-page excerpt of the Internet Assigned Numbers Authority Functions Contract. All other documents will be included in their entirety.

provides pertinent details regarding the procedural history of one of the seven consolidated appeals.²

In its brief, Appellee intends to cite each of the documents that it seeks to include in the Supplemental Appendix. Including such documents in the Supplemental Appendix would assist the Court in understanding the issues before it and would facilitate convenient reference to such documents.

Appellee's counsel consulted with Appellants' counsel regarding this motion. Appellants stated that they will not formally object to this motion.

For the foregoing reasons, Appellee respectfully requests that the Court grant its motion for leave to file a Supplemental Appendix.

Dated: September 16, 2015

Respectfully submitted,

/s/ Noel J. Francisco

Noel J. Francisco

Tara Lynn R. Zurawski

Ryan Watson

JONES DAY

51 Louisiana Ave., N.W.

Washington, D.C. 20001

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² With the exception of this unpublished order, all of the documents that Appellee seeks to include in the Supplemental Appendix were filed in each of the underlying district court actions. To reduce the burden on the Court and the parties, however, Appellee will include only one copy of each document within the Supplemental Appendix.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2015, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. The electronic filing caused the foregoing to be served on all registered users to be noticed in this matter, including:

Robert J. Tolchin
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Counsel for Appellants

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Counsel for Appellants

Dated: September 16, 2015

/s/ Noel J. Francisco

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

EXHIBIT A

Docket Entry¹	Document Description	Number of Pages
22	Memorandum Order	23
89-3	Internet Assigned Numbers Authority Functions Contract – filed as Exhibit B to the Enson Declaration in Support of Motion to Quash	5 (excerpt)
89-3	ICANN’s Common Questions on Delegating and Redelegating Country-Code Top-Level Domains (ccTLDs) – filed as Exhibit E to the Enson Declaration in Support of Motion to Quash	4
89-3	ICP-1: Internet Domain Name System Structure and Delegation (ccTLD Administration and Delegation) (“ICP-1”) – filed as Exhibit F to the Enson Declaration in Support of Motion to Quash	4
89-3	Governmental Advisory Committee’s Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains – filed as Exhibit M to the Enson Declaration in Support of Motion to Quash	4
89-3	Letter from Drafting Committee, Alternate ccTLD Best Practices Draft – filed as Exhibit N to the Enson Declaration in Support of Motion to Quash	2
101-1	Declaration of Eric Enson in Support of ICANN’s Opposition to Plaintiffs’ Motion to Compel	5
107-2	Excerpts from Form 10-Q of Neustar, Inc. (June 2014) – filed as Exhibit D to the Gebelin Declaration in Support of Discovery Motion	14
107-2	N. Cohen, As Online Video Surges, the .TV Domain Rides the Wave, N.Y. Times (Aug. 26, 2014) – filed as Exhibit G to the Gebelin Declaration in Support of Discovery Motion	4
107-2	Letter to Bill Manning (May 2, 2008) – filed as Exhibit E to the Gebelin Declaration in Support of Discovery Motion	2

¹ The docket numbers were taken from the *Weinstein v. Islamic Rep. of Iran*, No. 00-cv-2601-RCL, docket.

EXHIBIT B



Re: ICANN appendix

Meir Katz

to:

Ryan J Watson

08/26/2015 11:24 PM

Cc:

"Eric P. Enson", "Erik S. Syverson", Noel J Francisco, Robert Tolchin, "Steven T. Gebelin"

Hide Details

From: Meir Katz <mkatz@berkmanlaw.com> Sort List...

To: Ryan J Watson <rwatson@jonesday.com>,

Cc: "Eric P. Enson" <epenson@JonesDay.com>, "Erik S. Syverson"

<ESyverson@raineslaw.com>, Noel J Francisco <njfrancisco@jonesday.com>, Robert

Tolchin <rtolchin@berkmanlaw.com>, "Steven T. Gebelin" <sgebelin@raineslaw.com>

Thank you Ryan.

(My response was delayed because I wanted to confirm with the printer. We will be including just one copy of each, as you suggested.)

On 8/25/2015 5:40 PM, Ryan J Watson wrote:

Meir,

I just discussed this issue with Noel. For those two declarations, feel free to include only 1 copy of each -- namely, the copy filed in *Weinstein v. Islamic Republic of Iran*, No. 00-2601-RCL.

Best,
Ryan

From: Meir Katz <mkatz@berkmanlaw.com>
 To: Noel J Francisco <njfrancisco@jonesday.com>,
 Cc: "Eric P. Enson" <epenson@JonesDay.com>, "Erik S. Syverson" <ESyverson@raineslaw.com>, Robert Tolchin <rtolchin@berkmanlaw.com>, Ryan J Watson <rwatson@jonesday.com>, "Steven T. Gebelin" <sgebelin@raineslaw.com>
 Date: 08/25/2015 05:24 PM
 Subject: Re: ICANN appendix

I forgot to mention that we will have to include 7 copies of each of your declarations dated 7/29 given that the cover page of each is different. So while together they are just 11 pages, it will increase the length of the appendix by 77 pages.

A lot of work went into keeping this appendix reasonably short.

On 8/25/2015 5:13 PM, Noel J Francisco wrote:

Thanks. Best, Noel

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

----- Message from "Meir Katz" <mkatz@berkmanlaw.com> on Tue, 25 Aug 2015 21:12:36 GMT -----

From: "Meir Katz" <mkatz@berkmanlaw.com>
To: "Noel J Francisco"
CC: "Eric P. Enson" , "Erik S. Syverson" , "Robert Tolchin" , "Ryan J Watson" , "Steven T. Gebelin" , "Meir Katz"
Subject: Re: ICANN appendix

Very well. In addition to the documents that I told you about yesterday, we will include the Jeffrey declaration, the 7/29 Enson declaration w/ Ex C, D, and L, and the 10/14 Enson declaration w/o exhibits.

As I said in my initial response, we will not object if you feel you need a supplemental appendix, provided that what you propose to include is not particularly vexatious.

Meir

On 8/25/2015 5:06 PM, Noel J Francisco wrote:
Meir,

With respect to Exhibits D, E, F, L, and M to the 7/29 Enson declaration, you asked me to let you know if "1 or 2 of them are particularly important." On that point, the answer is that Exhibits D and L (which are a combined length of 10 pages) are the most important. Thus, if you're saying that you're willing to include only 1-2 of this category of documents, please include Exhibits D and L, which address issues relating to delegation, redelegation, and administration of ccTLDs.

We continue to believe that you should include the declarations and exhibits listed in my email from earlier this afternoon. And I must say, this is the first time I've ever had a dispute with opposing counsel over this issue. Consequently, we reserve our right to seek leave to file a supplemental appendix if necessary.

Best,
Noel

Noel J. Francisco ([bio](#))
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From: Meir Katz <mkatz@berkmanlaw.com>
To: Noel J Francisco <njfrancisco@jonesday.com>
Cc: "Eric P. Enson" <epenson@JonesDay.com>, "Erik S. Syverson" <ESyverson@raineslaw.com>, Robert Tolchin <rtolchin@berkmanlaw.com>, Ryan J Watson <rwatson@jonesday.com>, "Steven T. Gebelin" <sgebelin@raineslaw.com>
Date: 08/25/2015 03:54 PM
Subject: ICANN appendix

Noel,

Thanks for your response. My replies:

1) We are including our preliminary response to your motion to quash, which is not an opposition on the merits. It's content is "independent[ly] relevan[t]," as I'm sure you acknowledge. Your memoranda of law are not. I am happy that you have properly agreed to exclude them.

2) We never had any intention of including our memorandum in support of the motion for discovery. The "motion" is a mere page of text.

3&4) Our exhibits total just 10 pages and are being included solely to establish some of the procedural history. We are including 2 declarations, one of which is 2 pages and is being included simply because it accompanies our exhibits. You propose including 5 declarations and 6 exhibits that together are vastly longer than what we're including. Your suggestion that this is a reciprocal request is rather transparent. Nonetheless, we will agree to include the Jeffrey declaration, the 7/29 Enson declaration w/ Ex C, the 10/14 Enson declaration w/o exhibits,

Exhibits D, E, F, L, and M to the 7/29 Enson declaration are redundant. Please explain why you think you need all of them, particularly when you can just cite to your websites (i.e. ICANN and IANA) website to support any arguments you wish to make related to delegation. If you feel that 1 or 2 of them are particularly important, please let me know.

The 8/18 Enson declaration and 8/28 Enson declaration strike me as completely irrelevant to this appeal. All the more so given that the motion to compel was withdrawn and is not being included in the appendix. They will not be included, unless you can explain their relevance to me.

Please let me know if this is acceptable to you. If so, I will inform our printer.

As to the "tone" of my email, how do you justify an email 2 days before the appendix is due asking to include several hundred (perhaps a thousand, I didn't count) additional pages of material that would contravene both the letter and the intent of the local rules? I found that a bit shocking. As to our obligations under FRAP, I don't think the record has been filed, which is the trigger of the deadline that you reference. In any event, we called the clerk long ago and were told that we were not under any obligation to discuss with you the content of

the appendix, which we compiled in good faith, given that you are free to fill a supplemental appendix.

I would greatly prefer if we could deal with each other "calmly," but your actions until now haven't exactly demonstrated good faith. Nonetheless, if you show a desire to do so going forward, I would be happy to press the reset button and reciprocate.

Meir

On 8/25/2015 2:40 PM, Noel J Francisco wrote:

Meir,

We're well aware of the rules relating to joint appendices. Although we think everything we've proposed to be included is eminently reasonable, we're willing to compromise as follows. If we feel additional materials are necessary, we will take up your suggestion of a supplemental appendix.

1. Memorandum and Reply in Support of Motion to Quash: We asked you to include our memorandum in support of the motion to quash and our reply in support thereof. These requests are quite reasonable, given that you're planning to include your opposition to the motion to quash. It makes no sense to include *your* memorandum in opposition, but to omit *our* memoranda relating to the same motion. Nonetheless, consistent with a spirit of accommodation, we're willing to give in on this -- no need to include our memorandum in support of the motion to quash and our reply in support thereof.

2. Opposition to the Motion for Six-Month Discovery Period: You're planning to include Plaintiffs' motion for a six-month discovery period. We initially asked you to include ICANN's opposition thereto. We'll give in on this, as long as you aren't planning to include your memorandum in support of this motion. In other words, if you don't include your memorandum in support of the motion, there's no need to include our memorandum in opposition. However if you include your motion, then our opposition should be included as well.

3. Exhibits: We'll meet you more than half way. Please include Exhibits C, D, E, F, L, and M from the Enson Declaration in support of the motion to quash. No need to include any of the other exhibits we initially mentioned. The *total* length of the exhibits that we'd like included is 29 pages.

This is eminently reasonable, particularly given that you'll be including some exhibits.

4. Declarations: By my count, the declarations we want to include amount to a grand total of 21 pages. Please include them. It's more than reasonable to do so, especially since you're including a couple of declarations.

Finally, I'd note that the tone of your email is a bit much, especially since you are the one that failed to comply with your obligation to serve us with a timely designation of the materials you'd like to include in the appendix--and you only did so once we reminded you of that obligation. See Fed. R. App. P. 30(b)(1) ("In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review.").

No reason we can't negotiate these calmly--i.e., without bold, underlined references to sanctions, in response to an initial proposal.

Best,
Noel

Noel J. Francisco ([bio](#))

Partner

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From: Meir Katz <mkatz@berkmanlaw.com>
To: Ryan J Watson <rwatson@jonesday.com>,
Cc: Robert Tolchin <rtolchin@berkmanlaw.com>, "Eric P. Enson" <epenson@JonesDay.com>, Noel J Francisco <njfrancisco@jonesday.com>, "Erik S. Syverson" <ESyverson@raineslaw.com>, "Steven T. Gebelin" <sgebelin@raineslaw.com>,
Meir Katz <mkatz@berkmanlaw.com>
Date: 08/25/2015 11:17 AM
Subject: Re: Fwd: 14-7193 Susan Weinstein, et al v. Islamic Republic of Iran, et al "Per Curiam Order Filed (Special Panel)" (1:00-cv-02601-RCL)

Ryan,

The documents that you wish to include would add literally several hundreds of pages to the appendix, and would do so needlessly. The legal memoranda certainly don't belong and the countless exhibits you wish to include add very little, particularly considering that the court will have access to anything in the record. I recommend that you read Circuit Rule 30(b), which I've copied here, in pertinent part, for you:

"Counsel must not, however, burden the appendix with material of excessive length or items that do not bear directly on the issues raised on appeal. Costs will not be awarded for unnecessary reproduction of items such as discovery materials, memoranda, pretrial briefs, or interlocutory motions or rulings that lack direct relevance to the appeal; **appropriate sanctions will be imposed**, after notice and opportunity to respond, if the court finds counsel to have been unreasonable in including such material."

After reviewing your requests and the local rules, I respectfully decline. Note that the DC Circuit has a very liberal policy with regard to supplemental appendices. (I've relied on it myself in the past and found the process very easy.) We would have no objection to your seeking leave to file a supplemental appendix including the material that you feel we improperly omitted. (While we don't anticipate using it, we reserve the right to object to the inclusion of any particularly vexatious material.) On the topic of supplemental appendices, take a look at Circuit Rule 30(e), reproduced here:

"Supplementing the Appendix. If anything material to the appeal or petition is omitted from the appendix, the clerk, on the duly served and filed written request of any party, may allow the appendix to be supplemented."

Best,
Meir

On 8/25/2015 9:11 AM, Ryan J Watson wrote:
Meir,

Thanks for sending us your list of materials for the joint appendix. Please add the following documents:

- Jeffrey Declaration in Support of Motion to Quash (no exhibits)
- Enson Declaration in Support of Motion to Quash (include only Exhibits A, B, C, D, E, F, L, M, and N)

- ICANN's Reply in Support of the Motion to Quash
- ICANN's Opposition to Plaintiffs' Motion for Six-Month Discovery Period
- Enson Declaration in Support of ICANN's Opposition to Plaintiffs' Motion for Six-Month Discovery Period (include only Exhibit A)
- Enson Declaration in Support of ICANN's Opposition to Plaintiffs' Motion to Compel (include Exhibit A)
- Enson Declaration in Support of ICANN's Opposition to Plaintiffs' Motion for Enlargement of Time to File Response to Motion to Quash (include Exhibit A)
- Finally, you mentioned that you'd include our "motion to quash." Please be sure to include the memorandum in support of that motion, as well as the motion itself.

Thanks again.

Best,
Ryan

Ryan J. Watson ([bio](#))

Associate

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From: Noel J Francisco/JonesDay
To: Meir Katz <mkatz@berkmanlaw.com>,
Cc: Robert Tolchin <rtolchin@berkmanlaw.com>, Eric P. Enson/JonesDay@JonesDay, Ryan J Watson/JonesDay@JonesDay
Date: 08/24/2015 04:54 PM
Subject: Re: Fwd: 14-7193 Susan Weinstein, et al v. Islamic Republic of Iran, et al "Per Curiam Order Filed (Special Panel)" (1:00-cv-02601-RCL)

Meir, thanks very much. We will let you know if we have any additional materials that we would like included. Best, Noel

Noel J. Francisco ([bio](#))

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From: Meir Katz <mkatz@berkmanlaw.com>
To: Noel J Francisco <nifrancisco@jonesday.com>,
Cc: Robert Tolchin <rtolchin@berkmanlaw.com>

Date: 08/24/2015 04:50 PM

Subject: Re: Fwd: 14-7193 Susan Weinstein, et al v. Islamic Republic of Iran, et al "Per Curiam Order Filed (Special Panel)" (1:00-cv-02601-RCL)

Noel,

The appendix will have

- 1) the underlying judgments to be enforced
- 2) your motion to quash
- 3) the district court's order regarding the motion to consolidate
- 4) the district court's order regarding the consent motion regarding timing
- 5) our motion for a 6-month discovery period
- 6) The Syverson declaration in support of the discovery motion and its 3 exhibits
- 7) The Gebelin declaration in support of the discovery motion, with no exhibits
- 8) Our preliminary response to the motion to quash
- 9) the order and opinion granting your motion to quash and denying our motion for discovery
- 10) (in the Weinstein case only) the 11/25/14 order renewing the judgment
- 11) the notices of appeal

Best,
Meir

From: Noel J Francisco <njfrancisco@jonesday.com>

Date: August 24, 2015 at 4:31:54 PM EDT

To: rtolchin@berkmanlaw.com

Cc: "Eric P. Enson" <epenson@JonesDay.com>, Ryan J Watson <rwatson@jonesday.com>

Subject: Re: Fw: 14-7193 Susan Weinstein, et al v. Islamic Republic of Iran, et al "Per Curiam Order Filed (Special Panel)" (1:00-cv-02601-RCL)

Robert,

I'm writing to touch base about the contents of the joint appendix in the ccTLD appeals. As you know, under Fed. R. App. P. 30(b), the parties are encouraged to agree about the contents of the joint appendix--and, absent agreement, (i) "the appellant must . . . serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix"; (ii) the appellee may then "serve on the appellant a designation of additional parts to which it wishes to direct the court's attention"; and (iii) "[t]he appellant must include the designated parts in the appendix."

Could you please email me a list of what you intend to include in the appendix as soon as possible?

Best,
Noel

Noel J. Francisco ([bio](#))

Partner

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Meir Katz, Esq.*

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** admitted in MD and DC*

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Meir Katz, Esq.*

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