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January 25, 2016

**BY ECF**

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

Re: *Weinstein v. Islamic Rep. of Iran (and consolidated cases)*

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

Dear Mr. Langer,

During oral argument, ICANN invoked *Kramer v. Gates*, 481 F.3d 788, 791 (D.C. Cir. 2007), and *Chalabi v. Hashemite Kingdom of Jordan*, 543 F.3d 725, 728 (D.C. Cir. 2008), erroneously suggesting that this Court may affirm by assuming hypothetical jurisdiction. Because ICANN did not brief this issue, Appellants lacked an opportunity to fully argue the point.

*Chalabi* permitted assumption of hypothetical jurisdiction *only* where the merits claims are “plainly barred.” *Id.* Where affirmance on the merits is not “clearly” appropriate, statutory jurisdictional questions must be reached *first*. *Al-Zahrani v. Rumsfeld*, 684 F.Supp.2d 103, 111 (D.D.C. 2010). Hypothetical jurisdiction may be assumed *only* where “a prior judgment...*forecloses* the merits issue,” rendering the merits question “a *foregone conclusion*.” *Sherrod v. Breitbart*, 720 F.3d 932, 937 (D.C. Cir. 2013) (emphasis added).

Further, the only case *Kramer* cites for support on this issue is *Steel v. Citizens for a Better Env't*, 523 U.S. 83, 96-97 & n.2 (1998). *Kramer*, 481 F.3d at 791. *Steel* relies on the frequent “overlap” of statutory jurisdictional and merits inquiries. *Steel*, 523 U.S. at 97 n.2. *Steel* indicates that without this “overlap,” it

is necessary to resolve the jurisdictional inquiry first. *Id.* That is indeed how *Nat'l Sec. Counselors v. C.I.A.* understood *Chalabi*. 898 F.Supp.2d 233, 254 (D.D.C. 2012) (indicating that hypothetical jurisdiction may be assumed only where merits issues “relate to” statutory standing.). Such “overlap” between the merits and jurisdictional questions does not exist here (the merits questions pertain to whether the Internet assets are attachable and have little to do with FSIA jurisdiction, which turns on whether the assets are “property of” or “blocked assets of” the judgment debtors).

Finally, if this Court extends *Chalabi* as ICANN requests, it will needlessly split with three other Circuits. *Leibovitch v. Islamic Rep. of Iran*, 697 F.3d 561, 573 (7th Cir. 2012) (demanding preliminary consideration of FSIA jurisdiction); *Am. Telecom Co. v. Rep. of Lebanon*, 501 F.3d 534, 537 (6th Cir. 2007) (same); *Asemani v. Attorney Gen. of U.S.*, 140 F. App'x 368, 375-76 & n.5 (3d Cir. 2005) (demanding preliminary consideration of *two* statutory jurisdictional provisions).

Respectfully yours,

/s/ Meir Katz

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2016, I filed the foregoing using the ECF system, which is expected to electronically serve all counsel of record.

/s/ Meir Katz  
Meir Katz