**JURISDICTION SUBGROUP ICANN LITIGATION SUMMARY v2.1**

|  |  |
| --- | --- |
| Reviewed by: | Avri Doria |
| Name of Case: | KARL AUERBACH v. ICANN |
| Parties:[[1]](#footnote-1) | Karl Auerbach (P)ICANN (R) |
| Citizenship of Parties: | USA |
| Court/Venue: | SUPERIOR COURT FOR THE STATE OF CALIFORNIA |
| Was a contract involved? Did it have a Choice of Law provision; if so, which jurisdiction?: | No contract |
| Law used to determine conflict of laws issues (i.e., to determine which substantive law applies): | Case involved California Corporations Code § 6334 and rule governing relationship between directors and the Corporation regarding transparency. There was no conflict of jurisdiction |
| Substantive Law Governing the Dispute (i.e., which law applies to the dispute and/or interpretation of contracts): | California Corporations Code §§ 5110 et seq. |
| Date Case Began: | 18 March 2002 |
| Date Case Ended: | August 2002 |
| Causes of Action:[[2]](#footnote-2) | Petitioned Court for a peremptory Writ of Mandate or other extraordinary Writ or Order to the Respondent, ordering and directing Respondent immediately to make available to Petitioner for inspection and copying all corporate records. |
| Issues Presented/Brief Summary of Case: | “Rather, this is an age-old tale of a California corporation refusing access to corporate records to a member of its Board of Directors, or seeking to impose improper and unlawful conditions on the Director before allowing such access.” |
| Was Preliminary Relief Requested (and if so, was it granted)?: | No |
| Relief Requested by Plaintiff: | N/A |
| Outcome of Case and Relief Granted (if any): |  P was granted the access to the documents requested,. Essentially both the P & D were deemed to be partially in error. Some document were restricted to inspection while others were provided to the P who was ordered to respect ICANN’s confidentiality rules. |
| Was Jurisdiction Contested, and if so, what was the outcome?:[[3]](#footnote-3) | No |
| Relevance of the case to the Jurisdiction Subgroup mandate: | Case was about adherence to CA law for Director access to corporate documentation. |
| Impact of case on ICANN accountability/operations:[[4]](#footnote-4) | Relates to accountability in that Corporation was controlled by California statute. |
| Impact if case were decided for the other party?: | It was essentially a tie. |
| Did the Court comment on any jurisdiction-related matters?: | Do not have court comment, only ICANN report on that comment. |
| Did the Court comment on the merit, lack of merit and/or frivolity of the plaintiff’s claims?: | Unknown |
| Key Documents: | * [Petition](https://www.icann.org/en/news/litigation/auerbach-v-icann/petition-18mar02-en.pdf) (18 March 2002) [PDF, 81 KB]
* [Answer](https://www.icann.org/en/news/litigation/auerbach-v-icann/answer-17apr02-en.pdf) (17 April 2002) [PDF, 64 KB]
* [Amended Answer](https://www.icann.org/en/news/litigation/auerbach-v-icann/amended-answer-01may02-en.pdf) (1 May 2002) [PDF, 68 KB]
* ICANN's Motion for Summary Judgment (21 May 2002):
	+ [Memorandum of Points and Authorities](https://www.icann.org/en/news/litigation/auerbach-v-icann/icann-summary-judgment-memo-17may02-en.pdf) [PDF, 96 KB]
	+ [Declaration of Vinton Cerf](https://www.icann.org/en/news/litigation/auerbach-v-icann/cerf-decl-16apr02-en.pdf) [PDF, 430 KB]
	+ [Declaration of M. Stuart Lynn](https://www.icann.org/en/news/litigation/auerbach-v-icann/lynn-decl-16may02-en.pdf) [PDF, 3.87 MB]
	+ [Declaration of Louis Touton](https://www.icann.org/en/news/litigation/auerbach-v-icann/touton-decl-16may02-en.pdf) [PDF, 5.33 MB]
	+ [Separate Statement of Undisputed Material Facts](https://www.icann.org/en/news/litigation/auerbach-v-icann/icann-separate-statement-17may02-en.pdf) [PDF, 55 KB]
* [ICANN's Reply Memorandum](https://www.icann.org/en/news/litigation/auerbach-v-icann/icann-reply-memo-15jul02-en.pdf) (15 July 2002) [PDF, 52 KB]
* [Advisory on Court Ruling in Auerbach v. ICANN Lawsuit](https://www.icann.org/en/news/announcements/advisory-29jul02-en.htm) (29 July 2002)
* [Advisory on Documents Provided to Karl Auerbach](https://www.icann.org/en/news/announcements/advisory-04aug02-en.htm) (4 August 2002)
* [Additional Documents Provided](https://www.icann.org/en/news/litigation/auerbach-v-icann/documents-provided-08aug02-en.htm) (8 August 2002)
 |

1. Show each party and their status (Plaintiff (P), Defendant (D), or other). Please list any non-party participants, such as Amicus Curiae (AC). [↑](#footnote-ref-1)
2. For example, breach of contract, tortious interference with contract, violation of antitrust laws, etc. (state which laws) [↑](#footnote-ref-2)
3. For example, was there a challenge to venue, challenge to change of venue, challenge to governing law, challenge to application of “choice of law” provision. Please describe the outcome as well as the challenge. [↑](#footnote-ref-3)
4. Indicate whether the case had, will have or could have an effect on ICANN’s accountability mechanisms or the operation of ICANN’s policies. [↑](#footnote-ref-4)