

JURISDICTION SUBGROUP ICANN LITIGATION SUMMARY v2

Reviewed by:	Raphael Beauregard-Lacroix
Name of Case:	Eric Bord v Banco de Chile
Parties: ¹	Eric Bord (Plaintiff) ; Banco de Chile, US DoC (Defendants)
Citizenship of Parties:	Eric Bord: USA Banco de Chile: Chile US DoC: USA (Gov't agency)
Court/Venue:	US District Court (Eastern District of Virginia)
Choice of Law provision in contract; if so, which jurisdiction?:	No contract, but: Banco de Chile (Chilean entity) accepted jurisdiction of the court; Court (Eastern District of Virginia specifically) has jurisdiction over US DoC by virtue of location of the "property subject of the action"
Law used to determine conflict of laws issues (i.e., which law applies)	Not applicable in this case
Substantive Law Governing the Dispute:	US Law
Date Case Began:	27 December 2001
Date Case Ended:	15 May 2002 (As far as DoC is concerned)
Causes of Action:	(Plaintiff had its domain name bancodechile.com taken away after UDRP process initiated by the Bank of Chile) Against DoC: -Legal wrong pursuant gov't agency action (5 USC 702): "DOC's promulgation of the UDRP through ICANN was not in accordance with law, and Mr. Bord was adversely affected and aggrieved thereby; The adjudicatory decision rendered by DOC / ICANN delegates under the UDRP awarding the Domain Name to Banco De Chile was not in accordance with law, and Mr. Bord was adversely affected and aggrieved thereby" -Unlawful delegation to a private entity of the "authority to make policy and exert control over protected property" -Requiring an arbitration procedure without authorization (5 USC 575)
Issues Presented:	A general challenge of UDRP and DoC's alleged "delegation of powers" to ICANN in light of US

¹ Indicate whether each party is Plaintiff (P) or Defendant (D), or other status. Please also list non-party participants, such as Amicus Curiae (AC).

	administrative law
Preliminary Relief?:	None
Relief Requested by Plaintiff	Injunction against DoC's "delegation," declaration stating that plaintiff is "entitled to possession of domain name," damages of more than 1M USD+attorney fees
Outcome/Relief Granted:	Against DoC: Dismissal of Plaintiff's claims
Was Jurisdiction Contested? ²	No
Relevance to WG mandate	Plaintiff's cause of action was based on a topic that has been discussed since the creation of ICANN and the UDRP. Considering that more than 15 years have elapsed since that case, such challenges against ICANN are not new, and given the successful completion of the IANA Transition, most likely not relevant anymore.
Impact on ICANN accountability/operations: ³	None
Impact if case were decided for the other party?	Had UDRP and the delegation of powers to ICANN been deemed illegal in light of US administrative law, then the impact could have been large, but such matters now belong to the past.
Did the Court comment on the merit, lack of merit and/or frivolity of the plaintiff's claim?	The Court dismissed plaintiff's claim on the basis of lack of standing. The Court uses a cumulative three-pronged test and the plaintiff fails on all counts
Key Documents:	First amended complaint (27 December 2001) Opinion dismissing claims (15 May 2002)

² For example, 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.

³ Indicate whether the case had or will have an effect on ICANN's accountability mechanisms or the operation of ICANN's policies..