

JURISDICTION SUBGROUP ICANN LITIGATION SUMMARY v2.1

Reviewed by:	David McAuley
Name of Case:	Economic Solutions, Inc. (ESI) v. ICANN
Parties: ¹	Economic Solutions, Inc. (P); ICANN (D)
Citizenship of Parties:	ICANN – California; ESI – possibly in the U.S. State of Missouri as the case was filed there but this citizenship is uncertain based on documents filed on ICANN litigation page.
Court/Venue:	U.S. Federal District Court, Eastern District of Missouri
Was a contract involved? Did it have a Choice of Law provision; if so, which jurisdiction?:	N/A – not a contract claim.
Law used to determine conflict of laws issues (i.e., to determine which substantive law applies):	N/A
Substantive Law Governing the Dispute (i.e., which law applies to the dispute and/or interpretation of contracts):	N/A
Date Case Began:	Indeterminate; this is a very early case on ICANN’s litigation page. The page has links to only two case documents: (1) a Nov. 11, 2000, declaration by ICANN general counsel, and (2) a court order denying ESI’s request for a temporary restraining order (TRO) to keep ICANN from

¹ Show each party and their status (Plaintiff (P), Defendant (D), or other). Please list any non-party participants, such as Amicus Curiae (AC).

	establishing a new generic TLD of ".biz," ".ebiz" or any other designation which would be confusingly similar to the ".bz" ccTLD.
Date Case Ended:	Indeterminate. The court order denying the TRO was on Nov. 13, 2000. It is unclear from this webpage how case developed after this order.
Causes of Action: ²	Not stated. The court order makes it appear the cause of action had three claims: a Lanham Act (trademark) violation claim; an unfair competition claim; and a "tortious interference" claim. In brief, the two documents make it appear that ESI feared that ICANN would delegate .biz as a gTLD while ESI was trying to arrange to operate (and commercialize) .bz for the government of Belize.
Issues Presented/Brief Summary of Case:	One issue was noted in both documents – the existence, or not, of personal jurisdiction over ICANN in a court in Missouri. A second issue, the appropriateness of a temporary restraining order against ICANN, was discussed in the order (with further background about how ICANN operated at the time in the declaration).
Was Preliminary Relief Requested (and if so, was it granted)?:	Yes, the request for a TRO – it was denied.
Relief Requested by Plaintiff:	All we see from these documents is the request for the TRO.
Outcome of Case and Relief Granted (if any):	There are no further documents linked on the ICANN litigation page after the denial of the TRO.
Was Jurisdiction Contested, and if so, what was the outcome?: ³	Yes. Indeterminate.

² For example, breach of contract, tortious interference with contract, violation of antitrust laws, etc. (state which laws)

³ For example, was there a challenge to venue, challenge to change of venue, challenge to governing law, challenge to application of "choice of

Relevance of the case to the Jurisdiction Subgroup mandate:	The declaration by the ICANN general counsel provides insight into ICANN's thinking in 2000 about it being subject to personal jurisdiction in a state in which it had no physical presence. He also spoke against the idea that ICANN's website was possibly relevant to personal jurisdiction.
Impact of case on ICANN accountability/operations: ⁴	Indeterminate.
Impact if case were decided for the other party?:	Too attenuated given lack of documents developing each party's theory of the case.
Did the Court comment on any jurisdiction-related matters?:	<p>Yes. First some background. In the declaration document, ICANN general counsel Louis Touton noted, "ICANN has no assets in the State of Missouri. It does not solicit any business in Missouri. It does not sell any goods or services in Missouri. It does not have a bank account in Missouri. In fact, I am unaware that anybody associated with ICANN has ever been to Missouri in connection with ICANN's business. Nobody from ICANN has met personally with any of plaintiff's representatives, in Missouri or elsewhere." Touton also described the ICANN website, essentially saying it was not interactive and did not sell items.</p> <p>The court, in its order, said this, among other things: "The bulletin-board function of defendant's website does not create full-fledged interactivity and does not strongly establish any particularized Missouri contact, much less a purposeful contact by defendant ... relating to this litigation."</p>
Did the Court comment on the merit, lack of merit and/or frivolity	No, other than saying that ESI had not submitted sufficient information on which to demonstrate that it would probably succeed on the merits of its claims considering ICANN's declaration. (This is, of course, a pre-transition case - among other things, the ICANN

law" provision. Please describe the outcome as well as the challenge.

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.

of the plaintiff's claims?:	declaration said that the U.S. Commerce Department would have to approve of the .biz delegation and issue instructions to add it to the root zone file.) The court also questioned ESI's showing that it would suffer irreparable harm absent a TRO.
Key Documents:	Linked above.