

JURISDICTION SUBGROUP ICANN LITIGATION SUMMARY v2.1

Reviewed by:	Avri Doria
Name of Case:	KARL AUERBACH v. ICANN
Parties: 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

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

Date Case Ended:	August 2002
Causes of Action: 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	No
Relevance of the case to the Jurisdiction Subgroup mandate:	Case was about adherence to CA law for Director access to corporate documentation.

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

Impact of case on ICANN accountability/operations: 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:	<ul style="list-style-type: none"> • Petition (18 March 2002) [PDF, 81 KB] • Answer (17 April 2002) [PDF, 64 KB] • Amended Answer (1 May 2002) [PDF, 68 KB] • ICANN's Motion for Summary Judgment (21 May 2002): <ul style="list-style-type: none"> • Memorandum of Points and Authorities [PDF, 96 KB] • Declaration of Vinton Cerf [PDF, 430 KB] • Declaration of M. Stuart Lynn [PDF, 3.87 MB] • Declaration of Louis Touton [PDF, 5.33 MB] • Separate Statement of Undisputed Material Facts [PDF, 55 KB] • ICANN's Reply Memorandum (15 July 2002) [PDF, 52 KB]

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.

	<ul style="list-style-type: none">• Advisory on Court Ruling in Auerbach v. ICANN Lawsuit (29 July 2002)• Advisory on Documents Provided to Karl Auerbach (4 August 2002)• Additional Documents Provided (8 August 2002)
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