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I would like to analyse the response of Mr. Mohammad Reza Mousavi of the Information Technology Organization of Iran (see attached e-mail); jurisdiction questionnaire responses page: <https://community.icann.org/display/WEIA/Jurisdiction+Questionnaire>

## **Summary of the responses**

### **Question 1**

Essential services in domain name and numbering are banned because of sanctions (e.g. U.S. sanctions). Such political conflicts should not affect domain name related services, e.g. ICANN should neutralise such conflicts in the domain name business.

### **Question 4a**

Some registrars have cancelled domain name registrants in Iran subject to U.S. sanctions. Some registrars (both American and non-American) may stop providing services to countries under sanctions of the OFAC (Office of Foreign Assets Control). Sometimes no prior notice is given. No details or documentary evidence are provided.

ICANN did not approve several applications submitted by Iranian entities. No details or documentary evidence are provided.

Mr. Mousavi still considers the seizure of the Iran's internet domain (.ir and ایران), IP addresses and domain names used by the Iranian Government a major risk; although U.S. courts have refused to seize Iranian ccTLDs.

*Note:* The United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT decided on August 2, 2016, the case initiated by a group of plaintiffs for seizure of the ccTLD of the Islamic Republic of Iran (.IR) against ICANN (Weinstein et al vs Islamic Republic of Iran). The court dismissed the appeal and said interests of ICANN and other entities have to be protected and those interests would be impaired with a seizure.

## **Analysis**

Most countries participate in the FATF regime (<http://www.fatf-gafi.org/>); the U.S. implementation via the OFAC regime is only one but maybe the best example of strict rules concerning money laundering and terrorism financing.

As an U.S. based non-for-profit corporation, ICANN is subject to sanctions regimes of the U.S., in particular trade sanctions and blocking of financial transactions (OFAC).

Whereas ICANN should also follow the rules of the FATF regime, it remains unclear if the implementation regime of the territorial state was balanced and proportional. More research is required.

In the Weinstein case, U.S. courts accepted sufficient immunities of ICANN, however, under a quite special reasoning. Without sufficient immunities accepted by all countries ICANN is

operating, pieces of the ICANN regime are threatened by national jurisdiction. Fears are relevant and should be closely monitored if realised.

However, there seem to be indications that territorial states consider ICANN as something “special”, e.g. an organisation *sui generis*, and accepting appropriate immunities, however not under this concept.