



October 14, 2015

Dr. Stephen D. Crocker
The Chairman of the Board
Internet Corporation for Assigned Names and Numbers (ICANN)
Los Angeles
California
United States of America

Copy to: **Mr. Thomas Schneider, Chair, ICANN Governmental Advisory Committee**

Dear Chairman Stephen Crocker,

Subject: DotConnectAfrica Trust (DCA) v. ICANN Independent Review Process (IRP) Proceedings – Matters Arising

The attention of DotConnectAfrica Trust (DCA Trust) has been drawn to [a letter that you have sent on behalf of the ICANN Board to the Chairman of the ICANN Governmental Advisory Committee](#) (GAC), Dr. Thomas Schneider, on issues that appertain to DCA Trusts' .Africa new gTLD application, on 29 September 2015

The purpose of your letter is to request the ICANN GAC to clarify, or refine the earlier GAC Objection Advice that had been previously issued in April 2013 against DCA Trust's .Africa application. As a directly affected party, DCA Trust is now compelled to write to the ICANN Board, to convey its serious concerns on this matter.

You may recall that DCA Trust had sent you a letter dated July 17, 2015 in which we **not only stated our official position on the Post-IRP issues, but also expressed our disagreement with the Post-IRP engagement process which includes amongst other things further ICANN Board-ICANN GAC interactions on DCA Trust's .Africa application.** We emphasized that the process which the ICANN Board had instituted to resolve this matter was profoundly flawed to the extent that there is still no guaranteed redress for wrongdoing DCA Trust even though ICANN lost the IRP.

Item No 14 of our earlier letter to you reads as follows:

*"We disagree with the present attempts by the ICANN Board based on its [Resolution 2015.07.16.04](#) to send the issue back to the Governmental Advisory Committee to enable the ICANN GAC body **"refine that GAC Advice and/or provide the Board with further information regarding that advice and/or otherwise address the concerns raised in the Declaration"** ([See ICANN announcement of July 16, 2015](#)); which would wittingly give DCA's competitors an opportunity to muster a new threat of Community Objection or GAC Objection Advice against DCA's application.*

We are therefore surprised that the ICANN Board has now gone ahead to implement these same steps that we have previously disagreed post-IRP.

Your letter to the ICANN GAC Chairman Mr. Schneider has emphasized four points, namely:

- i. GAC did not act with transparency or in a manner to insure fairness (Declaration 102).*
- ii. The GAC did not provide a rationale for the consensus objection (Declaration 104, 110)*
- iii. DCA Trust was not given any notice or an opportunity to make its position known or defend its own interests before the GAC reached consensus advice (Declaration 109)*
- iv. The GAC reached advice without any discussion of the substance behind the reasons for each country's objections (Declaration 110).*

Based on the above four points, you had then asked the GAC to consider refining its advice concerning DCA's application for .Africa, and/or provide the board with further information regarding that advice and/or otherwise address the concerns raised in the Declaration.

Your letter to the GAC seems to convey the notion that the failures of the ICANN GAC necessarily caused the ICANN Board to lose the IRP against DCA Trust. We wish to disagree with such assumptions. DCA Trust instituted an IRP against ICANN in order to challenge the wrongful decisions that had been taken by the ICANN Board against DCA Trust's .Africa application. We did not institute an IRP against the ICANN GAC.

Even though you had cited different declarations in your letter to the ICANN GAC Chairman, the main declaration of the IRP Panel is: ***"that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN"***¹.

We therefore think that if the ICANN Board accepts its responsibility in this matter, then it can rightfully provide the type of adequate redress that DCA Trust believes it is entitled to as the prevailing party in the IRP. **We believe that the ICANN Board can act without involving the ICANN GAC in this process.**

You may recall that DCA Trust had submitted a detailed and well-argued response to the GAC Objection Advice for the ICANN Board to consider before a decision was taken. Notwithstanding, the ICANN Board had taken a summary decision to deny our application without giving any thorough consideration to the pertinent issues that we had articulated and presented in our GAC Advice Response. Another fault that we identified on the part of the ICANN Board was the failure to send our GAC Advice Response to an independent third-party expert for review as per the Applicant Guidebook stipulations. **As a matter of fact, the ICANN Board, in accepting the GAC Advice and resolving not to approve DCA Trust's .Africa application, had decided that its position was consistent with the position of the GAC.** We therefore think that the implications of wrongful actions/inactions that emanated from wrongful decision-making should be on the ICANN Board and not on the ICANN GAC. We went to IRP because of the ICANN Board actions and inactions against our application and we prevailed.

Consequently, we believe that the ICANN GAC should not be made the scapegoat for any wrong and inequitable decision that was previously taken by the ICANN Board. On this major pivot therefore, we think that the ICANN Board is presently trying to shift blame and abdicate its responsibilities on this matter by choosing to take DCA Trust's .Africa application back to the ICANN GAC – to pose further challenges to our application.

¹ Cf. No. 148 on page 61 of IRP Final Declaration

So far, DCA Trust has suffered many harms and injuries that are directly related and causally connected to the ICANN Board's violation of the Bylaws or the Articles of Incorporation.² **The course of remediation that has been embarked upon by the ICANN Board since the IRP was decided by the Panel has failed to consider the vital need and importance of protecting DCA Trust's rights and privileges as the prevailing party in the IRP, even though it is quite evident that the ICANN Board's evident wrongdoing has materially harmed and injured DCA Trust.** Therefore, we do not think that taking our application back to the GAC will address the injustice that DCA Trust suffered because of ICANN Board violations.

Accordingly, we wish to emphasize that we completely disapprove of the two-pronged strategy that has been designed by the ICANN Board to deny our .Africa application: based on obstacles that have been placed against the resumed GNP evaluation of our application; and sending back our application to the GAC. The intentions of the ICANN Board are clearly demonstrated in Resolution No. 2015.07.16.05 which states inter alia:

Resolved (2015.07.16.05), in the event that DCA's application for .AFRICA successfully passes the remainder of the evaluation process, at that time or before, the Board will consider any further advice or information received from the GAC, and proceed as necessary, balancing all of the relevant information and circumstances.

Another provision in the [ICANN Board Resolution of July 16, 2015](#), that we disagreed with is:

"Parties affected by these resolutions have had, and may continue to have, the ability to challenge or otherwise question DCA's application through the evaluation and other processes."³

When put side by side with Resolution No. 2015.07.16.05 this also reveals without any shadow of doubt, that the ICANN Board is already acting in concert with our competitors to ensure that our application will fail the resumed GNP evaluation; or, in the event that our application passes the resumed evaluation, to use the GAC process to create further difficulties to ensure that our application is unsuccessful.

As we have stated in an earlier communication to you, this method that you have chosen to implement following the Final IRP Declaration, opens the way for our competitors to pose further challenges against our .Africa application. **Therefore, we think that this two-pronged pre-meditated strategy is quite unfair, unjust and inequitable, and does not in any way demonstrate good faith on the part of ICANN.** This would also constitute further violations by the ICANN Board of the principles enshrined in the Bylaws and Articles of Incorporation of ICANN.

You are also most probably aware [the letter that was sent by the AUC Commissioner for Infrastructure and Energy to the ICANN Geographic Names Panel](#). Even though we see this as inappropriate interference on the work of the ICANN GNP by the AUC Infrastructure and Energy Department, **we also think that the actions that have been taken by the ICANN Board since the Final IRP Declaration was issued has enabled our competitors to challenge the DCA Trust .Africa application through the evaluation in violation of the rules – since there is no provision in the new gTLD Applicant Guidebook for this type of exercise.**

² Cf. No. 128 and No. 129 on page 56 – 57 of IRP Final Declaration

³ See <https://www.icann.org/resources/board-material/resolutions-2015-07-16-en>

Risk of Further Irregularities

We think that sending the DCA Trust application file back to the GAC would create room for irregularities to occur, like what happened during the last episode.

For example, the last GAC Objection Advice that was procured against DCA Trust's .Africa application with the involvement of certain people whose **GAC Accreditation was no longer regular at the time of the ICANN Beijing Meeting**. DCA Trust has always maintained even in its GAC Advice Response that the role played by Ms. Alice Munyua in the procurement of that GAC Objection Advice will always leave a question mark on those proceedings. It is a well known fact that Ms. Munyua's GAC tenure as Representative of Kenya had ended at the ICANN Toronto GAC Meeting in the Fall of 2012, but she attended the ICANN Beijing GAC meeting during the Spring of 2013 – at a time that new GAC Advisors and GAC Representatives had already been appointed for Kenya – and as such Ms. Munyua no longer had any formal GAC accreditation; but had been allowed to attend and actively participate in the process to push for GAC Objection Advice against DCA Trust's application. It is also a well-known fact that Ms. Alice Munyua is a Board Auxiliary of the ZA Central Registry, and she is also a Consultant to the AUC Infrastructure and Energy Division. In a nutshell, a GAC Objection Advice was contrived against DCA Trust's application by a competitor – who not only sits on the ZACR Board on matters of .Africa; but also attended a GAC Meeting without proper accreditation to help achieve a pre-meditated objective against a competing application.

Conclusion

As far as we are concerned, this invitation to the GAC to refine/clarify and provide further information on our application is to re-open an issue that we have already overcome. Therefore, the new moves are designed to reintroduce additional obstacles on the path of our application.

There is no provision in the new gTLD Guidebook for this extraordinary approach that you have commenced. **The new GTLD Program is a structured process that is based on a fixed time table. The time for GAC Advice and Objections on applications has already passed.** Therefore, the process that the ICANN Board has commenced with the ICANN GAC is quite irregular and will cause further violations of policy and existing governing/legal instruments (Bylaws, Articles of Incorporation, etc.).

We think that the entire process is highly prejudiced and will not resolve this matter, but would rather create further complications over .Africa new gTLD.

We therefore request you to use your good offices to stop any further engagements that you have started with the ICANN GAC regarding our .Africa new gTLD application.

Thanking you in anticipation of your kind and positive cooperation in this and related matters.

Respectfully yours,

Sbekele

Sophia Bekele
Executive Director/CEO
DotConnectAfrica Trust
Application ID: 1-1165-42560

cc: Mr. Fadi Chehadé, President/CEO, Internet Corporation for Assigned Names and Numbers (ICANN)