



20 February, 2013

The Honorable Senator John 'Jay' Rockefeller IV
Chairman of the United States Senate Committee on
Commerce, Science and Transportation
113th United States Congress
531 Hart Senate Office Building
Washington D.C. 20510
USA

The Honorable Greg Walden
Chairman of the House Sub-Committee on Communications and Technology
United States House of Representatives
113th United States Congress
Rayburn House Office Building 2125
Washington D.C. 20510
USA

Dear Senator Rockefeller, Honorable Chairman Walden and Congressional Leaders,

Subject: *New generic Top-Level Domain Program (gTLD) for Global Internet Expansion - Need for Direct Congressional Oversight & Recommendation for the Appointment of an Independent Counsel as Congressional new gTLD Ombudsman to Investigate & Report to Congress on Matters of Illegality and Irregularities in new gTLD Program of ICANN*

We begin by extending our congratulations to you Senator Rockefeller, Chairman Walden, and other honorable senators, distinguished congressional leaders and representatives on their recent re-election and commencement of the very important duties of state and selfless public service as Leaders and Members of the 113th United States Congress. We note with profound pride and appreciation that Congress continues to be the very foundation of the American Republic, and remains as the enduring citadel of freedom and bulwark of democratic governance for nearly 250 years; and the present crop of leaders, as represented by your esteemed selves, have continued in the same tradition of the Founding Fathers of the United States. In this day and age, the U.S. Congress not only serves ordinary Americans, but, as a guarantor of human rights and democratic freedoms, also serves people of good will all over the world.

DotConnectAfrica Trust ('DCA Trust') is an independent, non-profit and non-partisan organization that is constituted under the Laws of the Republic of Mauritius, and its main charitable objects are: (a) for the advancement of education in information technology to the African society; and (b) in connection with (a) to



provide the African society with a continental Internet domain name to have access to Internet services for the people of Africa as a purpose beneficial to the public in general.

Again, we note with a deep sense of thankfulness that many international development assistance programs for education, health sector improvements and general trade competitiveness; including bilateral aid grants given by the United States Government to different African countries often include a significant Internet and ICT component, plus much-needed funds for computerization and staff training. Many Africans continue to benefit from these significant life-changing initiatives that underscore America's enduring role as a force for good in the world.

DCA Trust has participated in the new gTLD program of the Internet Corporation for Assigned Names and Numbers (ICANN) during the application window that opened on 12th January 2012, and closed on 30th May 2012. **We have submitted an application (ID: 1-1165-42560) for the .Africa new generic Top-Level Domain.** The other competing applicant for the same .Africa new gTLD name string is UniForum ZA Central Registry from South Africa (Application ID: ID: 1-1243-89583).

The evaluations of the applications is currently in progress and submitted applications are now being reviewed by the various Evaluation Panels constituted by ICANN prior to final approval and gTLD delegation decisions that would be made by the ICANN new gTLD Program Committee and the ICANN Board.

Our organization has been a huge supporter of ICANN as it undertakes the onerous task of fulfilling its purpose, mission and strategic mandate of the technical management and administration of the Internet; its multi-stakeholder model of Global Internet Governance, and the ICANN new gTLD program.

However, we now strongly believe that the program is fraught with certain conceptual difficulties that have made it rather impossible for us to seek redress and accountability by relying solely on the mechanisms that are available to applicants within the new gTLD program. Nevertheless, as the new gTLD decision milestones draw inexorably closer, and as **our issues remain unaddressed and unresolved**, we are now compelled to escalate our matter to Congress hoping that a solution may be found at the very top echelon of U.S. leadership.



Why we are escalating to Congress

If any aspect of the new gTLD program has become prone to irregularities for whatever reason; or if an applicant has been found or suspected to be the beneficiary of an act (or acts) of illegality, there is no means to demand thorough accountability within the new gTLD program. The program has been designed in such a way that an applicant (participating in the program) cannot sue ICANN on the basis of its application or matters relating to the new gTLD program, thus constricting any possible avenues of legal redress for any aggrieved applicant. Since applicants are constrained to work only within the confines of the limited accountability mechanisms in-built into the new gTLD program, and to pursue dispute resolution within the prescribed (or what one would term as circumscribed) procedures; **it is even more difficult to commence legal proceedings in matters of corruption and ethical transparency since these are not recognized within the new gTLD program, thus making it possible for any applicant that has committed any acts of illegality to go scot-free**, if ICANN fails to demand accountability from the erring/miscreant applicant. Indeed, it is quite troubling to note that an aggrieved new gTLD applicant has no guarantee of justice or legal avenues to seek justice and redress under these circumstances.

Before going ahead to submit our recommendation to Congress, we believe that it is pertinent to highlight the salient points of our case against UniForum ZA Central Registry, the other competing applicant for .Africa gTLD, **whom we believe is the beneficiary of wholesale illegality in the process of winning the endorsement of the African Union (AU) Commission for the .Africa geographic Top-Level Domain name**. The AU Commission is the inter-governmental political organization that has the African countries as its member states.

The Bases of Our Complaints and Grievances against UniForum

Our multifarious complaints against UniForum are indeed very profound, and are all fundamentally related to ethical transparency and accountability, especially regarding their purported endorsement for the .Africa gTLD, and how they misrepresented their application in a manner that we really believe is fraudulently deceptive and manifestly misleading; **to the extent that UniForum contrived to obtain a highly valuable endorsement for a geographic name string under the pretext that it would be submitting an application on behalf of the African Community, but after obtaining the endorsement from the African Union Commission, not only failed to prepare and submit a Community TLD application for .Africa, but also failed, rather deliberately, to acknowledge the same African Community in its application that was submitted to ICANN for**



the .Africa gTLD name. DCA Trust believes that this was a very serious infraction on the part of UniForum ZA Central Registry.

The way the new gTLD program process has been designed only gives room for public comments that have to be made on submitted applications; for such issues to be taken into account by the ICANN Evaluation panels evaluating the new gTLD applications, and formal objections to be filed – on only four (4) different and specific grounds - against an application with a Dispute Resolution Service Provider.

Thus, apart from the public comments and the formal Objection filing, there is no mechanism within the ICANN new gTLD program to address grievances that are related to what one would consider lack of ethical transparency and accountability or illegality in the process of winning an endorsement; and how an aggrieved party such as DCA Trust would seek redress or ensure that an applicant such as UniForum that has actually submitted a fraudulent application can be truly held accountable by the authorities.

Honorable Senators & Congressional Leaders,

DCA Trust has already raised its issues through official communications to ICANN and the African Union Commission a few months ago, but as at the time of writing this particular letter, no indication has been received to reassure us that our legitimate complaints have been taken into proper consideration towards either disqualifying the application that was submitted by UniForum ZA Central Registry; or whether any process of accountability has been set-up by the African Union Commission or the African Internet Community to demand official accountability from UniForum ZA Central Registry regarding why it failed to submit an application for the .Africa gTLD on behalf of the African Community as it was supposed to; based on its supposed endorsement and letter of appointment from the AU Commission. **The matter has been further complicated by the fact that the African Union has mainstreamed itself as part of the ‘structure’ that is also applying for the .Africa new gTLD** (based on the UniForum application) thus making it both an endorser and, quite presumptuously, *albeit* unjustifiably so, a co-applicant for the same new gTLD name that it is endorsing, any apparent ethical conflicts and moral incongruities notwithstanding.

Therefore, our thinking at this stage is that the AU Commission and the African Internet Community have not tried to hold UniForum accountable simply because they are in collusion with them in the apparent subversion of due process and unlawful assistance that created room for (or led to) UniForum receiving the endorsement



under corrupt circumstances. For example, the AU official Communiqué in late March 2012 notes, *inter alia*, that:

“The Task Force and the assigned consultants provided the needed support to the ISD to launch the dotAfrica tender process to select a competent Registry Operator. Accordingly, the AU Commission selected UniForum SA (the ZA Central Registry Operator or ZACR), to administer and operate dotAfrica gTLD on behalf of the African community. The endorsement of the ZACR is the only formal endorsement provided by the African Union and its member’s states. The endorsement follows the evaluation of proposals submitted in December 2011, which attracted local and international registries interested in managing dotAfrica gTLD. The evaluation was conducted by a team of experts selected by the African Union.”

However, information that is now available to DCA Trust indicates that there **was actually no tender process as such that attracted local and international registries which led to a transparent process of endorsing and selecting UniForum as registry operator**, since UniForum was simply recommended by the African Top-Level Domains (AfTLD) organization; in other words, the name of UniForum was simply put forward to the AU Commission for consideration as the registry operator for .Africa. This assertion is buttressed by the information that we have excerpted from a document circulated by Ms. Rebecca Wanjiku, a member of the .Africa Registry Project Committee who is involved on the side of UniForum and has been attempting to write an ‘official history’ of .Africa, which witnesses that:

“The AUC RFP made it clear that AUC wanted African ccTLDs to play a crucial role in implementing .Africa. The AUC wanted .Africa run by an African operator using an African technology. This forced AfTLD to do an immediate review of its bid. Mpisane says that it was out of this reality that he personally (in his capacity as AfTLD Chairman at the time) lobbied the AfTLD Directors, key AfTLD members African community to find a suitable registry partner and investor from Africa. There was only one African registry operator that had a registry technology that met ICANN's registry requirements. That is how, with the support of the African Internet Community, the ZA Central Registry (UniForum SA), which runs an EPP registry system, was put forward to work with the community, especially AfTLD, to send a



proposal to the AUC. The ZACR bid, which had the express backing of individual African ccTLDs, AfTLD and key African community members, got the approval of the AUC.”

Mr. Vika Mpisane was reportedly interviewed by Ms. Rebecca Wanjiku on August 14, 2012. It was during this interview that the above revelation was made. Even though the document that we have referred to is not yet unpublished, a draft version of it has been made available to a cross section of people in the AfrICANN Community for review.

Clearly, there is a very manifest discrepancy between the official claim conveyed in the AU Communiqué regarding a supposititious tender process that local and international registries had participated in, and the apparent intervention of Mr. Vika Mpisane (then Chairman of AfTLD) and Chairperson of the South African Domain Names Authority (ZADNA) who actively lobbied on behalf of, and for the name of UniForum ZA Central Registry to be put forward in a proposal to the African Union Commission in the illegal subversion of what was supposed to be an open and competitive tender process.

Therefore, we also make bold to assert that abuse of office, influence-peddling and jingoism have also played a huge, yet very unpalatable, role in this matter, since Mr. Vika Mpisane, as a South African official, had acted, *albeit* rather injudiciously, to project the interest and benefit of UniForum ZA Central Registry as a South African organization.

DCA Trust is indeed scandalized by these things that have happened, and most Africans would also feel quite embarrassed by the occurrence of such pervasive irregularities and the *‘dirty linen of illegality’* that is now being aired unfortunately.

The Need for Accountability

Therefore, from what we now know based on the above, the entire process that led to the selection and appointment of UniForum by the AU Commission was fraught with lack of ethical transparency and accountability, and we boldly declare that the process was actually corrupted by the involvement of the AfTLD and the members of the AU Task Force on DotAfrica. **There is preponderant evidence to now suggest that UniForum ZA Central Registry was not appointed by the African Union Commission based on the outcome of a truly transparent and accountable RFP-based tender process.** DCA Trust has always maintained that the



entire process was fraught with illegality, and this has been further vindicated by what we now know regarding the subversion of the process by Mr. Vika Mpisane, and his cohorts in the African Internet Community.

The subsequent appointment received by UniForum through a process that we believe was corrupted provided UniForum with further advantages that also allowed it to obtain additional letters of endorsement from different African Countries to enable it satisfy the requirement of governmental support necessary for applying for a geographical TLD. We therefore believe that if UniForum is not held accountable for its actions, as the beneficiary of a corrupt process, that enabled it win unfair advantages in the new gTLD program; then an applicant that has benefitted from a willfully corrupt process, that has also submitted a misleading and fraudulent application will also, having reneged on the commitment implicit in its endorsement, would, in the full view of the entire world, also win the mandate for the management, administration and operation of the .Africa gTLD from the Internet Corporation for Assigned Names and Numbers, a U.S.-based organization.

Our Recommendation to Congress

Therefore, against the backdrop that the processing of new gTLD application is now going towards speedy approval and finalization, DotConnectAfrica Trust believes that UniForum should be held accountable now. **We are hereby appealing directly to the United States Senate as the Upper House of the United States Congress, its Judiciary Committee, and other important Congressional committees that have a relevant stake in a successful outcome of the new gTLD process; to give the necessary approval and official impetus for the establishment of a new gTLD Program Ombudsman that would handle and look into different forms of grievances reported by new gTLD applicants; and investigate any forms of alleged irregularities and acts of illegality committed by applicants, especially of the sort that DCA Trust has outlined against its direct competitor for the .Africa gTLD, UniForum ZA Central Registry.**

The new gTLD Ombudsman will be authorized by Congress with the powers of an Independent Counsel to investigate and adjudicate on issues of illegality that have been reported regarding new gTLD matters. This way, the United States Congress can maintain full **ethical, legal and administrative oversight** of the entire new gTLD program to ensure **that U.S. laws regarding corruption by foreign organizations are not broken whilst also ensuring that some organizations like DCA Trust are not unfairly victimized and denied because of the illegal actions perpetrated by others.**



Why Congress Must Act Now

At a time when other disaffected countries are challenging and questioning the United States' continuing role in Global Internet Governance, and asking that this responsibility should now be entrusted to the United Nations, it is important that any new Internet Expansion Initiative such as the new gTLD program be seen as an important test of mettle for ICANN, and for this organization that is under (the IANA) contract to the United States Government to deliver such a new gTLD program successfully. Any failure will be roundly seen as ICANN's inability to demonstrate to the global community of nations that it is a competent U.S.-based institution that can handle Global Internet Governance and question why this *status quo* must be preserved. Needless to re-emphasize this would cause many to also question the United States' continuing leadership role in these matters. **Therefore, we believe that this calls for the swift intervention of Congress as the only respected and empowered institution that can save the day by appointing an Independent Counsel as new gTLD Ombudsman that will look into any acts of illegality and probe any irregularities to ensure that there is thorough accountability within the new gTLD program and in the process, also ensure that an important new gTLD such as .Africa is not delegated by ICANN to an applicant that has benefitted from an RFP process that lacked openness and transparency.** The new .Africa gTLD is now generally seen by many watchers and observers as an important test case of a highly controversial domain name, and how it is decided, and to whom it is eventually delegated by ICANN shall be used as a referential touchstone in judging the overall integrity and transparency of the decision-making processes associated with the new gTLD program.

Thanking you in anticipation as we count on the esteemed intervention and the earnest acceptance of our recommendation and subsequent action by Congress.

Most respectfully yours,

Spekele

Ms. Sophia Bekele, B.S., M.B.A., C.I.S.A, C.C.S, CGEIT

For: DotConnectAfrica Trust (An Applicant for the .Africa gTLD) Application ID: 1-1165-42560

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- cc: **The Honorable Thomas C. Power**
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- cc: **Mr. Fadi Chehade**
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Other ICANN Officials copied in this Communication:

cc: Cherine Chalaby, Chair, New gTLD Program Committee
cc: Heather Dryden, Chair, Government Advisory Committee
cc: Christine Willett, General Manager, New gTLD Program
cc: The Honorable Suzanne Sene, U.S. Representative to ICANN Government Advisory Committee
cc: Dr. Olivier M.J. Crépin-Leblond, Chair, ICANN At Large Advisory Committee
cc: Mandy Carver, Global Stakeholder Engagement Executive Director
cc: Sally Costerton, Senior Advisor to the President — Global Stakeholder Engagement
cc: John Jeffrey, ICANN General Counsel
cc: Chris LaHatte, ICANN Ombudsman
cc: Professor Alain Pellet, Independent Objector for the ICANN new gTLD Program
cc: Dr. Tarek Kamel, ICANN Sr. Advisor to CEO (ICANN Africa Strategy)
cc: Pierre Dandjinou, ICANN Vice-President, Stakeholder Engagement (Africa)