



August 18, 2015

SPECIAL COMMUNICATION BY EMAIL

Senator John Thune
Chairman of the US Senate Committee on
Commerce, Science, and Transportation
114th United States Congress
Washington, D.C. 20510 6125

Senator Marco Rubio
Member of the US Senate Committee on
Commerce, Science, and Transportation
114th United States Congress
Washington, D.C. 20510 6125

Dear Chairman Thune and Senator Marco Rubio,

Subject: Update on DCA Trust vs. ICANN IRP on .Africa new gTLD following the July 9, 2015 Final IRP Panel Ruling

We hereby write to provide you with a general update regarding the DCA Trust vs. ICANN IRP that was recently decided by an Independent Review Process (IRP) Panel that was convened under the auspices of the International Center for Dispute Resolution (ICDR) of the American Arbitration Association (AAA), New York.

In October 2013, DCA Trust had taken ICANN to the IRP Panel under the administration of the ICDR-AAA to challenge a wrong decision that had been taken by the ICANN Board regarding our application for the .Africa new gTLD name.

On July 9 2015, the DCA Trust vs. ICANN IRP Panel declared 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. The Panel declared DCA Trust to be the prevailing party in the IRP and further declared that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of the IRP and the totality of the costs of the IRP Provider. The entire IRP Declaration [PDF, 1.04 MB] may be found [here](#).

The recent IRP Panel decision has great precedential value. The IRP Panel also found that ICANN generally discriminated against DCA Trust in the matter of the .Africa new gTLD, coupled with various violations and irregularities that amount to serious wrongdoing on the part of ICANN – **that is, to the extent that ICANN's Bylaws and Articles of Incorporation were broken by the ICANN Board.**

During the IRP, DotConnectAfrica Trust clearly **established three key points**: that ZA Central Registry lacked any valid endorsements for the .Africa string that it applied for; and that the purported Governmental Advisory Committee Objection Advice against our .Africa application was not by consensus; and that the ICANN Board had seriously erred in accepting the GAC Advice.

On a related issue, we believe that you are also probably aware that the IANA Transition process has been directly linked to broader ICANN accountability improvements. It is a widely shared belief within the Global Internet Governance community that ICANN needs to be more accountable as it serves the global public interest; and that such additional accountability safeguards should be implemented first before any IANA Transition deal is approved by US public authorities.

Moreover, the fact that our organization prevailed against ICANN – who lost an IRP process - that is largely based on ICANN's own accountability mechanism is quite profound; since this largely illustrates that an organization such as ICANN which was deemed by a juridical panel to have violated its own Bylaws and Articles of Incorporation cannot be trusted by the US Congress to act independently and regulate itself on matters of Global Internet Governance. We think that some continuing governmental oversight should be imposed on ICANN even after the IANA Transition is approved by Congress.

Furthermore, we also wish to note the following key developments by the US Congress on ICANN regarding the new gTLDs, Governmental Advisory Committee (GAC), and the IANA Transition process:

- **October 24 2013,** We filed for an Independent Review Process ("IRP") with ICANN and described in the Amended Notice of the IRP submitted to ICANN on 10 January 2014, that it arises out of: (1) *ICANN's breaches of its Articles of Incorporation, Bylaws, international and local law, and other applicable rules in the administration of applications for the .AFRICA top--level domain name in its 2012 General Top--Level Domains ("gTLD") Internet Expansion Program (the " New gTLD Program"); and (2) ICANN's wrongful decision that DCA's application for .AFRICA should not proceed*
- **March 29, 2014,** DCA Trust reported our progress and submitted the status on our Independent Review Process ("IRP") with ICANN to the House Judiciary Subcommittee in accordance with the request of the Subcommittee's staff request. At the time they were looking for comments in light of the NTIA announcement regarding ICANN. We informed that the IRP is being managed by the International Center for Dispute Resolution (ICDR) and a proceedings provided for in Article IV, Section 3 of the ICANN Bylaw, which states that any person materially affected by a decision or action of the ICANN Board may request that decision or action be reviewed by an independent third party for consistency with the ICANN Bylaws and/or Articles of Incorporation. DCA is such a party affected by ICANN's wrongful decision.¹
- **June 10, 2015** Where 11 members of the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet led by Congressman Blake Farenthold wrote to urge the Internet Corporation for Assigned Names and Numbers (ICANN) to address concerns that it may become susceptible to governmental interference without due consideration of policies developed through the multistakeholder process under its current structure. ICANN's Governmental Advisory Committee (GAC) appears to have overridden several community-developed policies in recent years. Such an outcome is incompatible with the bottom-up, multi-

¹January 10 2014: DCA Trust to ICANN Amended Notice of Independent Review Process - See more at:
<http://www.dotconnectafrica.org/icann-related-2/independent-review-process-dca-vs-icann/#sthash.YtOFYPK.dpuf>,
<http://www.dotconnectafrica.org/wp-content/uploads/2014/01/DotConnectAfrica-Trust-Amended-Notice-of-Independent-Review-Process.pdf>

stakeholder model reflected in ICANN's Articles of Incorporation and By-Laws.²

- **June 19, 2015**, The co-chairs of the Congressional Trademark Caucus, Rep. Randy Forbes [R-VA4] and Rep. Suzan DelBene [D-WA1] wrote a letter regarding ICANN and GAC concerning the .Amazon new gTLD application where they noted that "ICANN can demonstrate to Congress that it is accountable to the global community, independent of governmental interference, and respectful of international trademark law; such a demonstration is crucial before the IANA functions transition."³
- **June 23, 2015**, The House of Representatives approved H.R. 805, the Domain Openness Through Continued Oversight Matters (DOTCOM) Act, bipartisan legislation authored by Rep. John Shimkus (R-IL). The DOTCOM Act aims to protect the future of the Internet by ensuring that Congressional oversight of the administration's transition of the Domain Name System to the global Internet community.⁴

Before closing, we would like you to kindly note that this is the first Independent Review Panel (IRP) process that was instituted under the ICANN new gTLD Program. **As a new generic top-level domain name applicant, our organization has had a firsthand opportunity to utilize one of ICANN's accountability mechanisms, the Independent Review Process (IRP) process.** Therefore, as we have conveyed in our various letters in the past, our case will carry enormous precedence value as a veritable test of the efficacy of the Independent Review Process under ICANN's accountability mechanisms. Now that the final ruling has been made by the IRP Panel and DCA Trust has been declared the prevailing party; **how our case will be processed and decided going forward will be telling about the overall integrity, accountability and transparency of the decision-making processes and associated policy instruments of the ICANN new gTLD program.**

Finally, please permit me to update you again with the entire IRP documents which is available [at our web site](#). and media and press coverage post IRP ICANN.

The link to [DCA Trust's press statement on the IRP decision](#) may be found [here](#). I have also shared an [article on the wrongdoings of ICANN that was covered by the Register](#) a respected media organization that is based in the United Kingdom which I think might be of interest to you.

Once again, we thank you for your continued engagement and public service leadership.

Most respectfully yours,

Sbekele

Ms. Sophia Bekele, BS, MBA, CISA, CCS, CGEIT
Executive Director, DotConnectAfrica Trust
Former Policy Advisor to ICANN gNSO Policy Council
For and on Behalf of: DotConnectAfrica Trust & CBS International, USA

² http://farenthold.house.gov/uploadedfiles/icann_letter.pdf

³ Letter from J. Randy Forbes Co-Chair and Suzan DelBene Co-Chair to Fadi Chehadé and Steve Crocker <https://www.icann.org/en/system/files/correspondence/forbes-delbene-to-chehade-crocker-19jun15-en.pdf>

⁴ House Passes Bipartisan Legislation to Protect the Internet <http://energycommerce.house.gov/press-release/recordofsuccess-grows-dotcom-approval>