

1 Ethan J. Brown (SBN 218814)  
2 [ethan@bnsklaw.com](mailto:ethan@bnsklaw.com)  
3 Sara C. Colón (SBN 281514)  
4 [sara@bnsklaw.com](mailto:sara@bnsklaw.com)  
5 **BROWN NERI SMITH & KHAN LLP**  
6 11766 Wilshire Boulevard, Suite 1670  
7 Los Angeles, California 90025  
8 Telephone: (310) 593-9890  
9 Facsimile: (310) 593-9980

10 *Attorneys for Plaintiff*  
11 DOTCONNECTAFRICA TRUST

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES - CENTRAL**

14 DOTCONNECTAFRICA TRUST,  
15 Plaintiff,  
16 v.  
17 INTERNET CORPORATION FOR  
18 ASSIGNED NAMES AND NUMBERS, et al.  
19 Defendants.

Case No. BC607494

[Assigned for all purposes to Hon. Howard L. Halm, Dept. 53]

**DECLARATION OF SOPHIA BEKELE  
ESHETE IN SUPPORT OF DCA'S  
OPPOSITION TO DEFENDANT  
ICANN'S MOTION FOR SUMMARY  
JUDGMENT**

Date: August 9, 2017  
Hearing: 8:30 a.m.  
Dept.: 53

[Filed concurrently: Opposition to Motion for Summary Judgment; Separate Statement of Material Disputed Facts and Additional Undisputed Material Facts; Declaration of Sara C. Colón; and Evidentiary Objections to Declaration of Jeffrey LeVee]

1 **DECLARATION OF SOPHIA BEKELE ESHETE**

2 I, Sophia Bekele Eshete, hereby declare as follows:

3 1. I am the founder and executive director of DotConnectAfrica Trust (“DCA”) and I  
4 coordinated DCA’s application for the .Africa generic Top-level Domain (“gTLD”). The matters  
5 referred to in this declaration are based upon my personal knowledge, and if called as a witness, I  
6 could and would testify competently thereto.

7 2. I believe that DCA submitted a well-qualified and compelling application for  
8 .Africa, which was undermined at each stage of the application process by Defendant the Internet  
9 Corporation for Assigned Names and Numbers’ (“ICANN”) through breaches of its Bylaws,  
10 Articles of Incorporation, and the New gTLD Guidebook due to its improper cooperation with the  
11 African Union Commission (“AUC”). Pursuant to an agreement with DCA’s only competitor,  
12 UniForum S.A., now known as Defendant/Intervenor ZA Central Registry (“ZACR”), the AUC  
13 has obtained “all rights relating to the dotAfrica TLD.”

14 3. DCA planned to execute its mission of providing a continental Internet domain  
15 name to provide access to internet services for the people of Africa by acting as the registry for the  
16 .Africa gTLD.

17 4. DCA paid \$185,000, the fee required to all applicants, to ICANN for processing of  
18 its application.

19 5. Attached hereto as **Exhibit 1** is a true and correct copy of the Internet Corporation  
20 for Assigned Names and Numbers (“ICANN”) Independent Review Process (“IRP”) Final  
21 Declaration dated July 9, 2015.

22 6. Attached hereto as **Exhibit 2** is a true and correct copy, as I obtained it from  
23 ICANN, of relevant excerpts of the ICANN Applicant Guidebook (the “Guidebook”) DCA  
24 referred to when preparing and filing its application for .Africa. A complete version of the  
25 Guidebook was attached to my Declaration in Support of DCA’s Motion for Preliminary  
26 Injunction, dated November 10, 2016.  
27  
28

1           7.       ICANN required DCA to agree to the terms and conditions in the Guidebook upon  
2 submitting its application for the .Africa gTLD.

3           8.       ICANN did not afford DCA the opportunity to negotiate any terms in the  
4 Guidebook, including the covenant not to sue.   Neither I nor DCA contributed to any of the  
5 language in Module 6 of the new gTLD guidebook including the terms and conditions of  
6 participating in the program.

7           9.       In fact, Module 6 of the Guidebook states that the applicant must agree to the terms  
8 and conditions “without modification.”

9           10.      DCA did not consult with an attorney regarding the provisions of the Guidebook  
10 before it signed, nor did ICANN encourage it to do so.

11          11.      The Guidebook represented that the IRP provided actual redress to applicants.  
12 ICANN’s Bylaws contained representations that ICANN would (1) “make decisions by applying  
13 documented policies neutrally and objectively, with integrity and fairness;” (2) that ICANN would  
14 “operate the maximum extent feasible in an open and transparent manner and consistent with  
15 procedures designed to ensure fairness;” and (3) that ICANN would “be accountable to the Internet  
16 community for operating in a manner that is consistent with these Bylaws, and with due regard to  
17 the core values set forth in Article 1 of [its] Bylaws.” The Articles of Incorporation represented  
18 that ICANN would carry out its activities in conformity with relevant principles of international  
19 law and application of international conventions and local law.

20          12.      ICANN also represented to me that the application process would be fair and  
21 transparent through various representatives in presentations about the application process before  
22 DCA applied and at meetings of the Generic Names Supporting Organization, an ICANN  
23 committee of which I was a member, dedicated to keeping gTLD operation fair.

24          13.      DCA believed these representations and accordingly believed that it would be  
25 subject to the fair and unbiased application processing that ICANN promised.  
26

1           14.     DCA would not have applied for the .Africa gTLD, paid the non-refundable fee,  
2 and would not have spent years campaigning for the endorsements and preparing an application,  
3 if it had known that ICANN would favor ZACR throughout the process.

4           15.     Attached hereto as **Exhibit 3** are a true and correct copies of excerpts of ICANN's  
5 Bylaws, as posted at <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>. A complete  
6 version of the Bylaws was attached to my Declaration in Support of DCA's Motion for Preliminary  
7 Injunction, dated November 10, 2016.

8           16.     Attached hereto as **Exhibit 4** is a true and correct copy of the description of  
9 ICANN's Independent Review Process, as posted at ICANN's website at  
10 [https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review)  
11 [article-iv-accountability-and-review](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review).

12           17.     Attached hereto as **Exhibit 5** is a true and correct copy of the August 27, 2009 DCA  
13 endorsement letter from the AUC to me.

14           18.     Attached hereto as **Exhibit 6** is a true and correct copy of the April 16, 2010 letter  
15 from the AUC to me.

16           19.     Attached hereto as **Exhibit 7** is a true and correct copy of the August 8, 2008 DCA  
17 endorsement letter from the United Nations Economic Commission on Africa ("UNECA") to me.

18           20.     Attached hereto as **Exhibit 8** is a true and correct copy of the September 21, 2015  
19 letter from UNECA to Dr. Ibrahim, a representative of the AUC, on which I was copied.

20           21.     Attached hereto as **Exhibit 9** is a true and correct copy, as posted on ICANN's  
21 website at [https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf)  
22 [en.pdf](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf) of the March 8, 2012 letter from ICANN to AUC.

23           22.     Attached hereto as **Exhibit 10** is a true and correct copy of the first set of clarifying  
24 questions ICANN issued to DCA on September 2, 2015.

25           23.     Attached hereto as **Exhibit 11** is a true and correct copy of ICANN's response to  
26 DCA regarding the clarifying questions in the Initial Evaluation Results Report issued on October  
27 13, 2015.  
28

1           24. Attached hereto as **Exhibit 12** is a true and correct copy of the second set of  
2 clarifying questions ICANN issued to DCA on October 30, 2015 during the Extended Evaluation.  
3 The second set of clarifying questions from ICANN provided no further guidance or clarification  
4 to DCA on its application.

5           25. Attached hereto as **Exhibit 13** is a true and correct copy of the Extended Evaluation  
6 Report dated February 17, 2016 that DCA received from ICANN. DCA agreed to participate in  
7 an Extended Evaluation, because it was hoping to gain insight into what more it needed for its  
8 application, but ICANN gave no further guidance or clarification.

9           26. Attached hereto as **Exhibit 14** is a true and correct copy of a March 15, 2013 email  
10 from Mark McFadden of the ICC to ICANN employees, as produced to DCA by ICANN during  
11 the IRP discovery process.

12           27. The members of the AUC committee formed to choose who to endorse for the  
13 .Africa gTLD were individuals who were also members of other organizations affiliated with  
14 ZACR.  
15

16           28. Attached hereto as **Exhibit 15** are true and correct copies of relevant excerpts of  
17 ZACR's public application for the .Africa gTLD as posted on ICANN's website.

18           29. Attached hereto as **Exhibit 16** is a true and correct copy of the AUC Communique  
19 on the AUC selecting ZACR, accessible at [http://dotconnectafrica.org/wp-](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf)  
20 [content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf).

21           30. ICANN Senior Vice-President made representations that ICANN would follow the  
22 criteria set forth in the Guidebook at a presentation during a TLD conference in September 2011  
23 in Munich, Germany, where I was present. Attached hereto as **Exhibit 17** is a true and correct  
24 copy of ICANN's Frequently Asked Questions for New gTLDs, accessible at  
25 <https://newgtlds.icann.org/en/applicants/global-support/faqs/faqs-en>. The document states that  
26 third party panels will "evaluate applications against criteria and requirements outlined in the  
27

1 Applicant Guidebook” and that “There’s no provision for Party X to enter into a registry agreement  
2 with ICANN designating Party Y as the registry operator.”

3 31. After reviewing the ZACR endorsements produced to DCA, I noted that only five  
4 specifically reference ZACR by name and that many of the letters were actually endorsing AUC’s  
5 own initiative to make .Africa a “reserved” gTLD. Copies of ZACR endorsement letter were  
6 attached as Exhibit 2 to the Declaration of Sara Colón in Support of DCA’s Ex Parte Application  
7 for a Temporary Restraining Order, dated January 26, 2017.

8 32. Attached hereto as **Exhibit 18** is a true and correct copy of an October 15, 2012  
9 email from ICC to ICANN with attachment, as produced to DCA by ICANN during the IRP  
10 discovery process.

11 33. On June 25, 2013, ICANN employee Trang Nguyen prepared an endorsement letter  
12 for the AUC in relation to the endorsement of ZACR. Attached hereto as **Exhibit 19** is a true and  
13 correct copy of Trang Nguyen’s email and the letter ICANN wrote for the AUC to endorse ZACR,  
14 as produced to DCA by ICANN during the IRP discovery process.

15 34. Attached hereto as **Exhibit 20**, is a true and correct copy of a July 5, 2013, email  
16 chain between Trang Nguyen and Mark McFadden, as produced to DCA by ICANN during the  
17 IRP discovery process.

18 35. Attached hereto as **Exhibit 21**, is a true and correct copy of the June 15, 2014, letter  
19 from then President and CEO of ICANN, Fade Chedadé to the Commissioner of Infrastructure and  
20 Energy at the African Union Commission, Dr. Elham Ibrahim.

21 36. Attached hereto as **Exhibit 22**, is a true and correct copy of the September 29, 2015  
22 letter from Commissioner of Infrastructure and Energy at the African Union Commission, Dr.  
23 Elham Ibrahim, to the ICANN Geographic Names Panel, accessible from ICANN’s website at  
24 <https://www.icann.org/en/system/files/correspondence/ibrahim-to-gnp-29sep15-en.pdf>.  
25  
26  
27  
28

