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11 DOTCONNECTAFRICA TRUST

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES - CENTRAL**

14 DOTCONNECTAFRICA TRUST, a Mauritius  
15 Charitable Trust;

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR  
19 ASSIGNED NAMES AND NUMBERS, a  
20 California corporation;

21 Defendants.

Case No. BC607494

Assigned for all purposes to the Honorable  
Howard L. Halm

**EVIDENTIARY OBJECTIONS TO  
DECLARATION OF AKRAM ATALLAH  
IN SUPPORT OF ICANN'S OPPOSITION  
TO PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

DATE: December 22, 2016

TIME: 8:30 a.m.

DEPT: 53

**Objections to Declaration of Akram Atallah**

<b>Atallah Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
<p>¶2: ICANN is a California not-for-profit public benefit corporation. ICANN oversees the technical coordination of the Internet’s domain name system (“DNS”) on behalf of the Internet community, ensuring the DNS’s continued security, stability, and integrity. As set forth in the version of ICANN’s Bylaws relevant to this dispute (“Bylaws”), ICANN’s mission “is to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems,” including the DNS. Declaration of Sophia Bekele Eshete (“Bekele Decl.”), Ex. 4 (Bylaws, Art. I, § 1). ICANN’s amended Bylaws became effective October 1, 2016, and DCA does not contend that the amended Bylaws are relevant to this dispute.</p>	<p>1. Lacks Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Best Evidence Rule (Evid. Code § 1520)</p>		

Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶3: The essential function of the DNS is to convert numeric IP addresses into easily-remembered domain names that permit users to find specific websites, such as “USCOURTS.GOV” and “ICANN.ORG.” The “.GOV” and “.ORG” in these addresses, just like the more well-known “.COM,” are referred to as top-level domains (“TLDs”). ICANN is solely responsible for evaluating potential TLD operators and recommending that TLDs be added to the DNS. No government entity or regulatory scheme governs ICANN’s decisions in that respect.</p>	<p>1. Lacks Foundation (Evid. Code § 403)</p> <p>2. Lacks Personal Knowledge (Evid. Code § 702)</p> <p>3. Improper Opinion Testimony (Evid. Code §720)</p>		
Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶4: Throughout its history, ICANN has sought to expand the number of accessible TLDs in the DNS in order to promote consumer choice and competition. The New gTLD Program (“Program”), launched in 2012, constitutes ICANN’s most ambitious expansion of the</p>	<p>1. Lacks Foundation (Evid. Code § 403)</p> <p>2. Lacks Personal Knowledge (Evid. Code § 702)</p> <p>3. Improper Opinion Testimony (Evid. Code §702)</p>		

<p>Internet’s naming system. The Program’s goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new generic TLDs (“gTLDs”), including both new ASCII gTLDs and new non-ASCII, internationalized domain name gTLDs. It resulted in the submission of 1,930 applications for new gTLDs, including DCA’s and ZA Central Registry’s (“ZACR’s”) applications for the .AFRICA gTLD.</p>	<p>4. Speculation (Evid. Code § 702)</p>		
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<b>Atallah Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
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<p>¶5: A number of “Advisory Committees” advise ICANN’s Board on various topics described in the ICANN Bylaws. The Governmental Advisory Committee (“GAC”) has members composed of national governments and distinct economies as recognized in international fora, including the Unites States, and its purpose is to “consider and provide advice on the activities of</p>	<p>1. Lacks Foundation (Evid. Code § 403) 2. Lacks Personal Knowledge (Evid. Code § 702) 3. Speculation (Evid. Code § 702) 4. Best Evidence Rule (Evid. Code § 1520)</p>		
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<p>1 ICANN as they relate to concerns  2 of governments, particularly  3 matters where there may be an  4 interaction between ICANN’s  5 policies and various laws and  6 international agreements or where  7 they may affect public policy  8 issues.” Bekele Decl., Ex. 4  9 (Bylaws, Art. XI, § 2.1).</p>			
<p>10 <b>Atallah Declaration ¶¶</b></p>	<p><b>DCA Objection</b></p>	<p><b>Sustained</b></p>	<p><b>Overruled</b></p>
<p>11 ¶¶6: ICANN’s Bylaws provide for  12 several accountability mechanisms  13 to ensure that ICANN operates in  14 accordance with its Articles of  15 Incorporation, Bylaws, policies  16 and procedures. <i>See</i> Bekele Decl.,  17 Ex. 4 (Bylaws, Arts. IV-V). For  18 example, an aggrieved applicant  19 can file a “request for  20 reconsideration,” which is a  21 mechanism that asks the ICANN  22 Board to reevaluate certain Board  23 or staff actions or inactions that  24 the applicant believes have harmed  25 it. <i>Id.</i> (Bylaws, Art. IV, § 2). In  26 addition, an aggrieved applicant  27 can file a “request for independent  28 review,” a unique process set forth</p>	<p>1. Best Evidence Rule (Evid.  Code § 1520)  2. Lacks Foundation (Evid.  Code § 403)  3. Lacks Personal  Knowledge (Evid. Code §  702)  4. Speculation (Evid. Code §  702)  5. Improper Opinion  Testimony (Evid. Code  §702)</p>		

1 in ICANN’s Bylaws that asks  
 2 independent panelists to evaluate  
 3 whether an action of ICANN’s  
 4 Board was consistent with  
 5 ICANN’s Articles of  
 6 Incorporation and Bylaws. *Id.*  
 7 (Bylaws, Art. IV, § 3).

<b>Atallah Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
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<p>9 ¶7: The Bylaws provide for the          10 IRP panel to issue a written          11 determination “declar[ing]          12 whether an action or inaction of          13 the Board was inconsistent with          14 the Articles of Incorporation or          15 Bylaws” and “recommend[ing]          16 that the Board stay any action or          17 decision, or that the Board take          18 any interim action, until such time          19 as the Board reviews and acts          20 upon the opinion of the IRP.”          21 Bekele Decl., Ex. 4 (Bylaws, Art.          22 IV, § 3.11). The ICANN Board          23 then considers and acts on the          24 determination. <i>Id.</i> (Bylaws, Art.          25 IV, § 3.21).          26          27          28</p>	<p>1. Best Evidence Rule (Evid.          Code § 1520)          2. Lacks Foundation (Evid.          Code § 403)          3. Lacks Personal          Knowledge (Evid. Code §          702)          4. Speculation (Evid. Code §          702)          5. Improper Opinion          Testimony (Evid. Code          §702)</p>		
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Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶8: I am informed and believe that prior to the opening of the New gTLD Program application period, only one IRP had resulted in a written determination <i>ICM Registry, LLC v. ICANN</i>. The <i>ICM</i> Panel declared that the determinations of IRP panels were not binding on ICANN’s Board. Attached hereto as <b>Exhibit E</b> is a true and correct copy of an excerpt of the Final Declaration of the <i>ICM</i> Panel.</p>	<ol style="list-style-type: none"> <li>1. Improper Opinion Testimony (Evid. Code §702)</li> <li>2. Lacks Foundation (Evid. Code § 403)</li> <li>3. Lacks Personal Knowledge (Evid. Code § 702)</li> <li>4. Lack of Completeness (Evid. Code § 356)</li> <li>5. Best Evidence Rule (Evid. Code § 1520)</li> </ol>		
Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶9: To my knowledge, ICANN has never represented that IRPs are binding. Instead, ICANN has consistently argued that IRP declarations are not binding.</p>	<ol style="list-style-type: none"> <li>1. Improper Opinion Testimony (Evid. Code §702)</li> <li>2. Lacks Foundation (Evid. Code § 403)</li> <li>3. Hearsay (Evid. Code § 1200, et seq.)</li> </ol>		
Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶10: In the case of the <i>DCA</i> IRP, the <i>DCA</i> Panel declared that its decision would be binding on ICANN’s Board. But the question</p>	<ol style="list-style-type: none"> <li>1. Lacks Foundation (Evid. Code § 403)</li> <li>2. Best Evidence Rule (Evid. Code § 1520)</li> </ol>		

<p>1 of whether the Panel’s declaration  2 was or was not legally binding  3 became a moot issue once  4 ICANN’s Board elected to adopt  5 all of the DCA Panel’s  6 recommendations, contrary to the  7 representations in Plaintiff’s  8 Motion for Preliminary Injunction.</p>	<p>3. Improper Opinion  Testimony (Evid. Code  §702)  4. Hearsay (Evid. Code §  1200, et seq.)</p>		
<p>9 <b>Atallah Declaration ¶</b></p>	<p><b>DCA Objection</b></p>	<p><b>Sustained</b></p>	<p><b>Overruled</b></p>
<p>10 ¶11: Specifically, on July 9, 2015,  11 the <i>DCA</i> Panel issued its Final  12 Declaration. Bekele Decl., Ex. 1.  13 The <i>DCA</i> Panel determined that  14 ICANN’s Board had violated  15 ICANN’s Articles of  16 Incorporation and Bylaws by  17 accepting the GAC’s consensus  18 advice that Plaintiff’s application  19 for .AFRICA (“Application”)  20 should not proceed. The <i>DCA</i>  21 Panel therefore recommended that  22 “ICANN continue to refrain from  23 delegating the .AFRICA gTLD  24 and permit [Plaintiff]’s application  25 to proceed through the remainder  26 of the new gTLD application  27 process.” Bekele Decl., Ex. 1 ¶  28 149.</p>	<p>1. Best Evidence Rule (Evid.  Code § 1520)  2. Lacks Personal  Knowledge (Evid. Code §  720)</p>		



Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶12: ICANN’s Board promptly considered and adopted each of the DCA Panel’s recommendations. On July 16, 2015, the Board resolved to “continue to refrain from delegating the .AFRICA gTLD,” “permit [Plaintiff’s] application to proceed through the remainder of the new gTLD application process,” and “reimburse DCA for the costs of the IRP.” Attached hereto as <b>Exhibit F</b> is a true and correct copy of ICANN Board Resolutions 2015.07.16.01-05, adopting the DCA Panel’s recommendations.</p>	<ol style="list-style-type: none"> <li>1. Improper Opinion Testimony (Evid. Code §702)</li> <li>2. Lacks Foundation (Evid. Code § 403)</li> <li>3. Best Evidence Rule (Evid. Code § 1520)</li> </ol>		
Atallah Declaration ¶	DCA Objection	Sustained	Overruled
<p>¶13: In the event ICANN is permitted to delegate the .AFRICA gTLD to ZACR, a transfer or assignment of the gTLD in the future would still be possible, feasible and consistent with ICANN’s previous conduct. In fact, over forty gTLDs have had their registry contracts transferred</p>	<ol style="list-style-type: none"> <li>1. Improper Opinion Testimony (Evid. Code §702)</li> <li>2. Lacks Foundation (Evid. Code § 403)</li> <li>3. Speculation (Evid. Code § 702)</li> </ol>		

<p>1 from one registry operator to a  2 different registry operator, <i>i.e.</i>,  3 transferred for operation by a  4 different registry operator than the  5 operator when the registry contract  6 was initially executed. These  7 transfers have occurred for a  8 number of reasons, and transfers  9 are not limited to situations where  10 a registry’s contract with ICANN  11 was expiring.</p>	<p>4. Lacks Personal  Knowledge (Evid. Code §  702)</p>		
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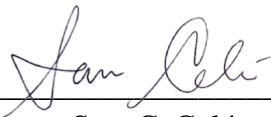
<b>Atallah Declaration ¶</b>	<b>DCA Objection</b>	<b>Sustained</b>	<b>Overruled</b>
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<p>13 ¶14: Nor is there any truth to  14 DCA’s argument in its Motion (at  15 p. 12) that “the U.S. government’s  16 ties with ICANN ceased” and  17 therefore “the current procedure  18 for gTLD redelegation is  19 uncertain.” In fact, nothing about  20 the recent transition of the Internet  21 Assigned Numbers Authority  22 (“IANA”) functions from the  23 United States government to  24 ICANN has any effect whatsoever  25 upon the fact that it is possible to  26 transfer the rights to operate a new  27 gTLD from one registry operator  28 to another, post-delegation.</p>	<p>1. Improper Opinion  Testimony (Evid. Code  §702)  2. Lacks Foundation (Evid.  Code § 403)  3. Speculation (Evid. Code §  702)  4. Lacks Personal  Knowledge (Evid. Code §  702)  5. Best Evidence Rule (Evid.  Code §1520)</p>		
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Dated: December 15, 2016

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