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6 Attorneys for Defendant  
INTERNET CORPORATION FOR ASSIGNED  
7 NAMES AND NUMBERS

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 DOTCONNECTAFRICA TRUST,

12 Plaintiff,

13 v.

14 INTERNET CORPORATION FOR  
15 ASSIGNED NAMES AND NUMBERS,  
16 *et al.*,

17 Defendant.

**CASE NO. BC607494**

Assigned for all purposes to  
Hon. Howard L. Halm

**DECLARATION OF AMANDA  
PUSHINSKY IN SUPPORT OF  
MOTION FOR PROTECTIVE  
ORDER**

DATE: December 13, 2017  
TIME: 8:30 a.m.  
DEPT: 53

Complaint Filed: January 20, 2016  
Bench Trial Date: February 28, 2018  
Jury Trial Date: June 20, 2018



1           6.       During the course of this litigation, the parties have engaged in extensive  
2 discovery efforts, including requests for production of documents, interrogatories, requests for  
3 admission, and depositions. In particular, DCA has served extensive requests for production to  
4 which ICANN has responded in good faith. Attached hereto as **Exhibit C** is a true and correct  
5 copy of Plaintiff's Amended First Set of Requests for Production of Documents to Defendant  
6 Internet Corporation For Assigned Names and Numbers, served on June 22, 2016.

7           7.       Mr. Silber was one of the custodians from whom ICANN collected, reviewed, and  
8 produced documents if deemed responsive and not privileged.

9           8.       DCA included in its Deposition Notice twenty-five individual requests for  
10 production. Of the twenty-five individual requests for production DCA requested here, twenty-  
11 two are either entirely duplicative of, or encompassed by, prior requests DCA propounded on  
12 ICANN. *Compare Exhibit A* Request Nos. 1, 2, 4, 5, 7-9, 11-25 with **Exhibit C**, Request Nos.  
13 1-4, 7-9, 11-13, 23, 30, 35-37.

14           9.       I met and conferred with counsel for DCA in an attempt to resolve the issues with  
15 the Deposition Notice. Specifically, on October 23, 2017, I alerted counsel for DCA of the  
16 defects in the deposition notice, and provided an explanation as to ICANN's position that Mr.  
17 Silber does not possess any information relevant to DCA's remaining causes of action. Attached  
18 hereto as **Exhibit D** is a true and correct copy of my October 23, 2017 letter to DCA.

19           10.      Counsel for DCA responded on November 1, 2017, acknowledging that the notice  
20 was defective and stating that it would re-notice the deposition at an appropriate location.  
21 However, DCA's counsel alleged that Mr. Silber's testimony was relevant because of his alleged  
22 conflict of interest regarding DCA's .Africa application. Attached hereto as **Exhibit E** is a true  
23 and correct copy of DCA's November 1, 2017 letter.

24           11.      In an effort to continue meeting and conferring, I responded on November 10,  
25 2017, reiterating that Mr. Silber's alleged conflict of interest has no relation to DCA's remaining  
26 causes of action for fraud, rendering any deposition of Mr. Silber unreasonable, and stating  
27 ICANN's intention to seek a protective order should DCA pursue the deposition. Attached hereto  
28 as **Exhibit F** is a true and correct copy of my November 10, 2017 letter to DCA.

1           12.     DCA responded on November 16, 2017, confirming that it intended to pursue Mr.  
2 Silber's deposition. Attached hereto as **Exhibit G** is a true and correct copy of DCA's November  
3 16, 2017 letter. Unable to resolve these differences, ICANN filed the instant Motion.

4           13.     Attached hereto as **Exhibit H** is a true and correct copy of the relevant portions of  
5 ICANN's Bylaws.

6           14.     Attached hereto as **Exhibit I** is a true and correct copy of the relevant portions of  
7 ICANN's Applicant Guidebook.

8           15.     Attached hereto as **Exhibit J** is a true and correct copy of the relevant portions of  
9 the IRP Panel's June 9, 2015 Final Declaration.

10          16.     Attached hereto as **Exhibit K** is a true and correct copy of the December 9, 2016  
11 Declaration of Akram Atallah filed in conjunction with ICANN's Opposition to Plaintiff's  
12 Motion for Preliminary Injunction.

13          17.     Attached hereto as **Exhibit L** is a true and correct copy of the December 8, 2016  
14 Declaration of Christine Willett filed in conjunction with ICANN's Opposition to Plaintiff's  
15 Motion for Preliminary Injunction.

16                 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct.

18                 Executed November 17, 2017, in Los Angeles, California.

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21 Amanda Pushinsky

22 NAI-1503196961

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# Exhibit A

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*Attorneys for Plaintiff*  
DOTCONNECTAFRICA TRUST

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL**

DOTCONNECTAFRICA TRUST, a Mauritius  
Charitable Trust,

Plaintiff,

v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS, a  
California Corporation; ZA CENTRAL  
REGISTRY, a South African non-profit  
company; and DOES 1-50, inclusive;

Defendant.

[Assigned for all purposes to:  
Hon. Howard L. Halm Dep't 53]

Case No.: BC607494

**NOTICE OF DEPOSITION OF MIKE  
SILBER; REQUEST FOR PRODUCTION  
OF DOCUMENTS**

Date: November 28, 2017  
Time: 10:00 a.m.  
Location: Brown Neri Smith & Khan, LLP  
11601 Wilshire Blvd., Ste. 2080  
Los Angeles, CA 90025

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that pursuant to California Code of Civil Procedure  
3 (“CCP”) section 2025.010, *et seq.*, Plaintiff DotConnectAfrica Trust (“DCA”) will take the  
4 deposition, upon oral examination, of Mike Silber, on November 28, 2017 at 10:00 a.m., at the  
5 offices of Brown, Neri, Smith, & Khan, LLP – 11601 Wilshire Blvd., Ste. 2080, Los Angeles,  
6 CA 90025. If for any reason the deposition is not completed on the date set forth above, it will  
7 continue from day-to-day thereafter, weekends and holidays excepted, at the same place until  
8 completed. The deposition will take place before a notary public or other person authorized to  
9 administer oaths in the State of California.

10 **PLEASE TAKE FURTHER NOTICE** that pursuant to CCP section 2025.220(a)(5),  
11 Plaintiff intends to record the proceedings both stenographically and by video recording.  
12 Plaintiff intends to use the videotaped deposition at trial and reserves the right to utilize the  
13 deposition at trial in lieu of or in addition to live testimony, as permitted by CCP section  
14 2025.620.

15 **PLEASE TAKE FURTHER NOTICE** that pursuant to CCP section 2025.220(a)(4),  
16 the deponent must produce at the deposition the documents responsive to the requests for  
17 production as set forth in Exhibit “A” to the extent not already produced.

18  
19 DATED: October 4, 2017

**BROWN NERI SMITH & KHAN, LLP**

20  
21  
22 By: Sara C. Colón // n.y.  
23 Sara C. Colón  
24 Attorneys for Plaintiff DotConnectAfrica Trust  
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1 EXHIBIT A

2 DEFINITIONS

3 1. "DOCUMENT" or "DOCUMENTS" shall mean and refer to any writing within the  
4 mean of Section 2031 of the California Code of Civil Procedure and includes all of the matters  
5 defines in Section 250 of the California Evidence Code, including but not limited to: anything  
6 in written form or that is a tangible recording or speech, sounds, pictures, words or symbols,  
7 however produced or reproduced, whether writings, papers, correspondence, memoranda,  
8 facsimile transmissions, electronic e-mail, notes, schedules, reports, compilations, computer  
9 printouts, computer disks, minutes or records of meetings, invoices, financial statements,  
10 financial calculations, diaries, jobs diaries, reports of telephone or other conversations,  
11 calendars, appointment books, photographs, videotapes, films, motion pictures, tape  
12 recordings, electronic media, and all other writings and recordings of any kind. The term  
13 "DOCUMENTS" also includes "Electronically Stored Information" as defined in Section  
14 2016.020(e) of the California Code of Civil Procedure, including information stored by  
15 computer or on a computer disk, diskette, tape or card, as well as any electronic recording, tape  
16 recording, photograph, video file, microfilm, or similar recording of words, images, sounds,  
17 pictures or information of any kind.

18 2. "RELATED TO" shall include referring to, constituting, compromising, setting forth,  
19 summarizing, reflecting, stating, describing, recording, noting, embodying, mentioning,  
20 studying, discussing, or evaluating, directly or indirectly.

21 3. "YOU" and/or "YOUR" shall mean and refer to Mike Silber, and any representative,  
22 agents, attorneys, partners, accountants, employees, assigns or any other person or entity  
23 authorized and/or purporting to act on YOUR behalf.

24 4. "DCA" shall mean and refer to Plaintiff DotConnectAfrica Trust ("DCA") and any  
25 representative, agents, attorneys, partners, accountants, employees, assigns or any other person  
26 or entity authorized and/or purporting to act on DCA's behalf.

27 5. "ICANN" shall mean and refer to Defendant Internet Corporation for Assigned Names  
28 and Numbers and any representative, agents, attorneys, partners, accountants, employees,

1 assigns or any other person or entity authorized and/or purporting to act on behalf of ICANN.

2 6. "ZACR" as used herein, means and refers to ZA Central Registry and any representative,  
3 agents, attorneys, partners, accountants, employees, assigns or any other person or entity  
4 authorized and/or purporting to act on behalf of ZACR.

5 7. "COMMUNICATIONS" shall mean any oral, written, or electronic transmission or  
6 information, including, without limitation, meetings, discussions, conversations, telephone calls,  
7 memoranda, letters, e-mails, text messages, electronic communications, facsimiles, conferences,  
8 or seminars.

9 8. "GAC" is defined as ICANN's Governmental Advisory Committee and any  
10 representative, agents, attorneys, partners, accountants, employees, assigns or any other person  
11 or entity authorized and/or purporting to act on behalf of GAC.

12 9. "ICC" is defined as InterConnect Communications and any representative, agents,  
13 attorneys, partners, accountants, employees, assigns or any other person or entity authorized  
14 and/or purporting to act on behalf of ICC.

15 10. "UNECA" is defined as the United Nations Economic Commission for Africa and any  
16 representative, agents, attorneys, partners, accountants, employees, assigns or any other person  
17 or entity authorized and/or purporting to act on behalf of UNECA.

18 11. "AUC" is defined as the African Union Commission and any representative, agents,  
19 attorneys, partners, accountants, employees, assigns or any other person or entity authorized  
20 and/or purporting to act on behalf of AUC.

21 12. "ZADNA" is defined as the .za Domain Name Authority and any representative agents,  
22 attorneys, partners, accountants, employees, assigns or any other person or entity authorized  
23 and/or purporting to act on behalf of ZADNA.

24 13. "AFRICAN TASK FORCE" is defined as the task force established by the AUC to make  
25 recommendations on relevant issues regarding the .Africa fTLD, and  
26 any members, representatives, agents, attorneys, partners, accountants, employees, assigns or any  
27 other person or entity authorized and/or purporting to act on behalf of the AFRICAN TASK  
28 FORCE.

1 14. "ICANN AFRICA STRATEGY WORKING GROUP" and/or ICANN-ASWG is  
2 defined as the volunteer, nine-member group whose mission is to develop an African strategy  
3 established during the October 2011 ICANN Dakar meeting, and any members, representatives,  
4 agents, attorneys, partners, accountants, employees, assigns or any other person or entity  
5 authorized and/or purporting to act on behalf of ICANN-ASWG.

6 15. "NGPC" is defined as the New gTLD Program Committee and any members,  
7 representatives, agents, attorneys, partners, accountants, employees, assigns or any other person  
8 or entity authorized and/or purporting to act on behalf of NGPC.

9 **INSTRUCTIONS**

10 1. YOU are instructed to produce all DOCUMENTS that are responsive to these requests  
11 that are in YOUR possession, custody, or control. A DOCUMENT is in YOUR "possession,  
12 custody, or control" if it is in YOUR physical possession or if, as a practical matter, YOU have  
13 the ability, upon request, to obtain possession of the DOCUMENT or a copy thereof from  
14 another person or entity that has physical possession of the DOCUMENT including, but not  
15 limited to, YOUR attorneys, agents, representatives, or employees, regardless of their location.

16 2. If any DOCUMENT or category of DOCUMENTS is not produced in full, please state  
17 with particularity the reason or reasons it is being withheld in full and describe, to the best of  
18 YOUR knowledge, information and belief, and with as much particularity as possible, the  
19 DOCUMENT or portions of the DOCUMENT that are not being produced.

20 3. Each DOCUMENT is to be produced as it is kept in the usual course of business,  
21 including but not limited to, all file folders, binders, notebooks, and other devices by which such  
22 DOCUMENTS may be organized or separated.

23 4. All DOCUMENTS requested must be produced (along with any draft(s) thereof) in their  
24 entirety, without abbreviation, expurgation, or redaction.

25 5. If a DOCUMENT has been prepared in several copies that are not identical, or if  
26 additional copies have been made that are no longer identical, or if original identical copies are  
27 no longer identical by reason of subsequent notation or other modification of any kind  
28 whatsoever including, but not limited to, notations on the front or back of pages thereto, each

1 non-identical copy is a separate DOCUMENT and must be produced.

2 6. When any part of a DOCUMENT is responsive to any individual request, YOU must  
3 produce the DOCUMENT in its entirety including, but not limited to, attachments, cover,  
4 memorandum, exhibits, and appendices.

5 7. If YOU withhold any DOCUMENT, or portion of a DOCUMENT, on the grounds that it  
6 is protected from discovery by the attorney-client privilege, work-product doctrine, or other  
7 privilege or immunity from discovery, please set forth for each DOCUMENT or a portion of a  
8 DOCUMENT withheld:

- 9 a. The place, approximate date, and manner of recording, creating or otherwise  
10 preparing the document;
- 11 b. The names and organization position, if any, of each author, send, and recipient of  
12 the DOCUMENT;
- 13 c. A general description of the subject matter of the DOCUMENT;
- 14 d. The basis of any claim of privilege; and
- 15 e. If work product is asserted, the proceeding, if any, for which the DOCUMENT  
16 was created.

17 8. For any DOCUMENT or category of DOCUMENTS that was, but no longer is, in YOUR  
18 possession, custody, or control, please describe each such DOCUMENT as completely as  
19 possible and provide the following information:

- 20 a. The reason the DOCUMENT is no longer in YOUR possession, custody, or  
21 control;
- 22 b. The person or entity, if any, who has possession, custody or control, or if  
23 unknown, so state;
- 24 c. If the DOCUMENT was destroyed or otherwise disposed of, state:
  - 25 i. The manner of disposal (i.e., destruction, loss, discarding or other means  
26 of disposal);
  - 27 ii. The date of disposal;
  - 28 iii. The reason for disposal;

- iv. The person authorizing disposal;
- v. The person disposing of the DOCUMENT; and
- vi. The name and address of the most recent custodian of the DOCUMENT.

9. Unless otherwise stated, each request seeks (a) DOCUMENTS dated, created, or received from January 2011 through the present; and (b) documents, whenever dated, created, or received, that refer to or concern events or facts occurring during the period from January 2011 through the present.

10. As used herein, the terms “and” as well as “or” shall be construed disjunctively as well as conjunctively as necessary in order to bring within the scope of the following requests all information which might otherwise be construed to be outside their scope. Similarly, references to the singular shall include the plural and vice versa; references to the masculine shall include references to the feminine gender and vice versa; and use of the present tense shall also be read to include the past tense and vice versa.

**REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:**

All DOCUMENTS and COMMUNICATIONS RELATED TO DCA’s .africa gTLD application.

**REQUEST FOR PRODUCTION NO. 2:**

All DOCUMENTS and COMMUNICATIONS RELATED TO ZACR’s .africa gTLD application.

**REQUEST FOR PRODUCTION NO. 3:**

All DOCUMENTS and COMMUNICATIONS RELATED TO the gTLD Applicant Guidebook Version 2012-06-04.

**REQUEST FOR PRODUCTION NO. 4:**

All DOCUMENTS and COMMUNICATIONS by, between, or among YOU and ICC RELATED TO DCA’s .africa gTLD application.

1 **REQUEST FOR PRODUCTION NO. 5:**

2 All DOCUMENTS and COMMUNICATIONS by, between, or among YOU and ICC  
3 RELATED TO ZACR's .africa gTLD application.

4 **REQUEST FOR PRODUCTION NO. 6:**

5 All DOCUMENTS and COMMUNICATIONS RELATING TO the 60% rule as referred  
6 to in the gTLD Applicant Guidebook Version 2012-06-04, Section 2.2.1.4.2.

7 **REQUEST FOR PRODUCTION NO. 7:**

8 All DOCUMENTS and COMMUNICATIONS RELATING TO DCA's satisfaction of  
9 the 60% rule as referred to in the gTLD Applicant Guidebook Version 2012-06-04, Section  
10 2.2.1.4.2.

11 **REQUEST FOR PRODUCTION NO. 8:**

12 All DOCUMENTS and COMMUNICATIONS RELATING TO ZACR's satisfaction of  
13 the 60% rule as referred to in the gTLD Applicant Guidebook Version 2012-06-04, Section  
14 2.2.1.4.2.

15 **REQUEST FOR PRODUCTION NO. 9:**

16 All DOCUMENTS and COMMUNICATIONS by, between or among YOU, Chris  
17 Disspain, Ray Plzak, Bill Graham, Vika Mpisane, Fadi Chehade, or Cherine Chalaby RELATED  
18 TO DCA's .africa gTLD application.

19 **REQUEST FOR PRODUCTION NO. 10:**

20 All DOCUMENTS and COMMUNICATIONS by, between or among YOU, Chris  
21 Disspain, Ray Plzak, Bill Graham, Vika Mpisane, Fadi Chehade, or Cherine Chalaby RELATED  
22 TO DCA's .africa gTLD application RELATED TO the 60% rule as referred to in the gTLD  
23 Applicant Guidebook Version 2012-06-04, Section 2.2.1.4.2.

24 **REQUEST FOR PRODUCTION NO. 11:**

25 All DOCUMENTS and COMMUNICATIONS by, between or among YOU, Chris  
26 Disspain, Ray Plzak, Bill Graham, Vika Mpisane, or Cherine Chalaby RELATED TO DCA's  
27 .africa gTLD application RELATED TO ZACR's .africa gTLD Application.  
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1 **REQUEST FOR PRODUCTION NO. 12:**

2 All DOCUMENTS and COMMUNICATIONS by, between or among YOU, Chris  
3 Disspain, Ray Plzak, Bill Graham, Vika Mpisane, or Cherine Chalaby RELATED TO DCA's  
4 .africa gTLD application RELATED TO endorsements of ZACR as an applicant for the .africa  
5 gTLD.

6 **REQUEST FOR PRODUCTION NO. 13:**

7 All DOCUMENTS and COMMUNICATIONS RELATED TO UNECA and the .africa  
8 gTLD.

9 **REQUEST FOR PRODUCTION NO. 14:**

10 All DOCUMENTS and COMMUNICATIONS RELATED TO AUC and the .africa  
11 gTLD.

12 **REQUEST FOR PRODUCTION NO. 15:**

13 All DOCUMENTS and COMMUNICATIONS RELATED TO endorsements of DCA as  
14 an applicant for the .africa gTLD.

15 **REQUEST FOR PRODUCTION NO. 16:**

16 All DOCUMENTS and COMMUNICATIONS RELATED TO endorsements of ZACR  
17 as an applicant for the .africa gTLD.

18 **REQUEST FOR PRODUCTION NO. 17:**

19 All DOCUMENTS and COMMUNICATIONS RELATED TO ICANN'S 2012 conflicts  
20 of interest investigation of YOU.

21 **REQUEST FOR PRODUCTION NO. 18:**

22 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and the  
23 AUC RELATED TO the .africa gTLD.

24 **REQUEST FOR PRODUCTION NO. 19:**

25 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and the  
26 AUC RELATED TO DCA's application for the .africa gTLD.

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1 **REQUEST FOR PRODUCTION NO. 20:**

2 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and the  
3 AUC RELATED TO ZACR's application for the .africa gTLD.

4 **REQUEST FOR PRODUCTION NO. 21:**

5 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and the  
6 AFRICAN TASK FORCE RELATED TO the .africa gTLD.

7 **REQUEST FOR PRODUCTION NO. 22:**

8 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and  
9 ICANN-ASWG RELATED TO the .africa gTLD.

10 **REQUEST FOR PRODUCTION NO. 23:**

11 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and  
12 NGPC RELATED TO the decision to fail DCA's .africa gTLD application.

13 **REQUEST FOR PRODUCTION NO. 24:**

14 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and  
15 ICANN, including ICANN's Board Chair and Vice Chair, RELATED TO the .africa gTLD.

16 **REQUEST FOR PRODUCTION NO. 25:**

17 All DOCUMENTS and COMMUNICATIONS by, between or among YOU and  
18 Convergence Partners RELATED TO the .africa gTLD.

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# Exhibit B

## [ICANN Ombudsman Blog](#)

**December 9, 2012**

### [DotAfrica Complaint](#)

Filed under: [Uncategorized](#) — Chris LaHatte @ 12:00 pm

**Office of the Ombudsman**

**Case 12-00241**

**In a matter of a Complaint by Sophia Bekele for DotAfrica**

**Report dated 10 December 2012**

#### **Introduction**

This complaint began with a letter in relation to allegations of conflict of interest on the part of 2 members of the board of ICANN. The complaint was made by Sophia Bekele on behalf of DotAfrica, which is one of 2 applications for the new generic top-level domain .africa. By way of background, the new gTLD program is probably the most significant change to the domain name system for many years. There are over 2000 different applications for approximately 1100 names, and this application (.africa) like many others, has several applicants. There is a considerable amount at stake both financially and for other reasons and therefore the applicants are watching the process very closely.

#### **Facts**

The essence of the complaint is a complaint about a conflict of interest with members of the ICANN board in considering issues about new gTLDs applications. This was first raised by DotConnectAfrica which sent 2 separate letters dated July 9, 2012 to report a matter of Conflict of Interest on .Africa new gTLD applications regarding Mr. Mike Silber, a member of the ICANN Board from South Africa, and Mr. Chris Disspain, a member of the ICANN Board from Australia. Subsequently a complaint was made to the office of the ombudsman in relation to the issue on October 2012.

There has been considerable amount of discussion on blogs, Twitter and other sites and in comments on the ICANN website in relation to the new .africa gTLDs applications. Regrettably much of the discussion has been intemperate. I discuss this further in this report.

To examine the complaint it is necessary to see what the Board has discussed about the gTLD programme.

ICANN has set up a process for managing the new gTLD applications, appointed staff and for the purpose of governance the ICANN board established a specific committee for the purpose of considering issues with regard to the new gTLDs program.

The committee was established on the 10<sup>th</sup> April 2012, when the ICANN Board resolved to set up a New gTLD Program Committee with the voting members of the Committee to be Rod Beckstrom, Cherine Chalaby, Chris Disspain, Bill Graham, Erika Mann, Gonzalo Navarro, Ray Plzak, R. Ramaraj, George Sadowsky, Mike Silber, and Kuo-Wei Wu; with liaisons to the Committee Thomas Roessler; and the Chair of the Committee Cherine Chalaby. At the same time resolutions were passed about conflict of interests policies.

*“Resolved (2012.04.10.03), all members of the New gTLD Program Committee reinforce their commitment to the 8 December 2011 Resolution of the Board (Resolution 2011.12.08.19) regarding Board member conflicts, and specifying in part: “Any and all Board members who approve any new gTLD application shall not take a contracted or employment position with any company sponsoring or in any way involved with that new gTLD for 12 months after the Board made the decision on the application.”*

*Resolved (2012.04.10.04), the Board directs the CEO to prepare a document setting forth a process for the creation of Board Committees to address future situations where there may be multiple Board members with perceived, potential or actual conflicts of interest on an issue.”*

The starting point for conflict of interest policy is the policy adopted in December 2011. The purpose of this policy is to identify conflicts of interest but also to ensure that any such conflicts are identified. The Board Governance Committee of ICANN is responsible for administering policy and requires board members to complete statements of position on an annual basis.

[Http://www.icann.org/en/groups/board/governance/coi/coi-policy-08dec11-en.htm](http://www.icann.org/en/groups/board/governance/coi/coi-policy-08dec11-en.htm)

Under this policy regular statements of interest are lodged with the secretary for ICANN. The latest relevant to this is 12 March 2012- from the ICANN Website:-

“Summary of ICANN Board Statements of Interests

Mike Silber – Director and treasurer of ccTLD .za domain name authority and member of the Management Committee and treasurer of Internet Service provider Association (ISPA) South Africa.

Chris Disspain – Director and CEO of .au Domain Administration Limited, the .au ccTLD manager; .au has sponsorship agreement with ICANN under which .au pays ICANN a yearly amount based on the amount of names under management. Former Officer of ICANN, Paul Levins, has been named as a Director of .au Domain Administration Limited.”

I have asked the complainant to specifically identify the actual conflicts and asked “I would like to have explained the precise details of the conflict of interest which you say exists with these two board members.” I have not received any more detail than the letters, which identify connections, said to be the conflicts of interest.

### **Investigation**

To conduct this investigation it has been necessary to look at the board meeting minutes to analyse whether there have been any decisions made at the new gTLDs subcommittee which actually affect the complainant. It is of course quite possible that there would be issues which affect these 2 applications, but virtually all of the minutes of the committee are available online and available to be read. In addition, I have called for material from Sophia Bekele, discussed the issue with her, and also had discussions with both Chris Disspain and Mike Silber. The secretary to the ICANN board and counsel to ICANN, John Jeffrey, has the responsibility for identifying matters such as conflict of interest and I therefore discussed the matter with him. There is also a considerable amount of material discussing the .africa applications on a number of different blogs and other sites which discuss the applications and the merits. Clearly both parties seeking the .africa gTLD are passionate about their respective applications, but some of the writers appear to have failed to restrain themselves in criticism. For the purpose of this investigation it has not been necessary for me to consider the level of acrimony and accusations, except to say that it is unfortunate.

Specifically, the purpose of the investigation is to analyse whether in fact there has been any actual conflict of interest with the 2 board members in considering issues in relation to the .Africa applications. For this purpose I have looked at the minutes of the committee to determine whether there has been any discussion recorded on the .africa applications. That is of course not the only venue where such matters are discussed, and the minutes of the full board meeting would also be relevant. I have therefore also checked those minutes. They also do not have any mention of the issue. That is perhaps not surprising, considering that individual details of the new gTLDs applications are unlikely to be discussed by the board until very much later in the process. It is clear that the discussions at the board level are at a higher level of policy and process to be put into place to handle program and the applications.

The letters of complaint identify connections between the 2 board members and the competing application. It is however necessary to identify the appropriate standard required for a conflict of interest to exist, and for the conflict to be an issue requiring those board members to recuse themselves on any issues. As part of my investigation I have therefore taken advice on the appropriate test for conflict, in the context of a non-profit company incorporated in California.

### **Jurisdiction**

This is a matter where I clearly have jurisdiction. If there is a conflict of interest then this would result in unfairness, which under Bylaw V, is a matter that I can investigate.

### **Reasoning**

The complainant’s issue is of course one of considerable importance if proved. It must be said however, that the standard for conflict of interest for members of a board of directors of a company, is somewhat different from the standard required for arbitrators or judges. There is of course an important distinction between actual bias and apparent bias. But underlying this is the need for some action by the

members of the board which would offend against principles of conflict of interest. However it is clearly apparent when the records are examined, that the 2 board members have not participated in any decision-making about .africa, and indeed there has been little discussion other than at a higher level about the program in general. It is in my view premature to consider whether there can even be apparent bias, because it is too remote to link the suggested connections with the very generic discussions which have taken place, and in addition, where the actual decisions about the applications are still some distance from being made.

## Result

As a result of this investigation, I consider that no disqualifying conflict of interest, or indeed any conflict of interest at all, is present in the actions of both Chris Disspain and Mike Silber. It is likely this complaint has led to increased awareness of the possibilities of conflict of interest, which the Board will carefully consider in terms of the existing policy about conflict, when the issue arises. I consider this should continue to be a matter for consideration in gTLD decision making by the Board.

An aspect of this application has been the unfortunate tone of much of the debate on various websites blogs and other places. During the course of this investigation I discussed this with Sophia Bekele (at the Toronto meeting) and suggested that perhaps a less aggressive approach would be appropriate. She readily agreed to this. The discussion and debate continues to be fairly vigorous, but I would suggest to the competing parties for .africa that they should pay attention to the ICANN rules about respectful communication. No doubt feelings are deep and passions strong. However I would urge the parties to consider the ground rules for such debate.

Chris LaHatte

Ombudsman

## [Comments \(1\)](#)

### 1 Comment »



thanks for the post, i will read it thanks

*Comment by [erken rezervasyon](#) — January 31, 2013 @ [12:15 am](#)*

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# Exhibit C

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10 *Attorneys for Plaintiff*  
11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST, a  
15 Mauritius Charitable Trust  
16 Plaintiff,  
17 v.  
18 INTERNET CORPORATION FOR  
19 ASSIGNED NAMES AND NUMBERS,  
20 a California corporation; ZA Central  
21 Registry, a South African non-profit  
22 company; DOES 1 through 50, inclusive;  
23 Defendants.

Case No. 2:16-cv-00862-RGK-JC  
**PLAINTIFF’S AMENDED FIRST  
SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS  
TO DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS**

24  
25 PROPOUNDING PARTY: Plaintiff DOTCONNECTAFRICA TRUST  
26 RESPONDING PARTY: Defendant Internet Corporation for Assigned  
27 Names and Numbers  
28 Set No.: One (Amended)

DCA’S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO DEFENDANT ICANN

1 Pursuant to Federal Rules of Civil Procedure 26 & 34, Plaintiff  
2 DOTCONNECTAFRICA Trust (“DCA”) requests that Defendant Internet  
3 Corporation for Assigned Names and Numbers produce the following documents,  
4 electronically stored information, and tangible things within ICANN’s possession  
5 custody or control, set forth in the Requests below within thirty (30) days of the  
6 date of this request, or within 30 day of the Parties’ Rule 26(f) conference,  
7 whichever is later.

### 8 INSTRUCTIONS

9 1. ICANN is instructed to produce all DOCUMENTS that are responsive to  
10 these requests that are in ICANN’s possession, custody, or control. A  
11 DOCUMENT is in ICANN’S “possession, custody, or control” if it is in ICANN’s  
12 physical possession or if, as a practical matter, ICANN has the ability, upon  
13 request, to obtain possession of the DOCUMENT or a copy thereof from another  
14 person or entity that has physical possession of the DOCUMENT including, but  
15 not limited to, ICANN’s attorneys, agents, representatives, or employees,  
16 regardless of their location.

17 2. If any DOCUMENT or category of DOCUMENTS is not produced in  
18 full, please state with particularity the reason or reasons it is being withheld in full  
19 and describe, to the best of ICANN’s knowledge, information and belief, and with  
20 as much particularity as possible, the DOCUMENT or portions of the  
21 DOCUMENT that are not being produced.

22 3. Each DOCUMENT is to be produced as it is kept in the usual course of  
23 business, including but not limited to, all file folders, binders, notebooks, and other  
24 devices by which such DOCUMENTS may be organized or separated.

25 4. All DOCUMENTS requested must be produced (along with any draft(s)  
26 thereof) in their entirety, without abbreviation, expurgation, or redaction.

27 5. If a DOCUMENT has been prepared in several copies that are not  
28 identical, or if additional copies have been made that are no longer identical, or if

1 original identical copies are no longer identical by reason of subsequent notation or  
2 other modification of any kind whatsoever including, but not limited to, notations  
3 on the front or back of pages thereto, each non-identical copy is a separate  
4 DOCUMENT and must be produced.

5 6. When any part of a DOCUMENT is responsive to any individual request,  
6 ICANN must produce the DOCUMENT in its entirety including, but not limited  
7 to, attachments, cover, memorandum, exhibits, and appendices.

8 7. If ICANN withholds any DOCUMENT, or portion of a DOCUMENT, on  
9 the grounds that it is protected from discovery by the attorney-client privilege,  
10 work-product doctrine, or other privilege or immunity from discovery, please set  
11 forth for each DOCUMENT or a portion of a DOCUMENT withheld:

- 12 a. The place, approximate date, and manner of recording, creating or  
13 otherwise preparing the document;
- 14 b. The names and organization position, if any, of each author, send,  
15 and recipient of the DOCUMENT;
- 16 c. A general description of the subject matter of the DOCUMENT;
- 17 d. The basis of any claim of privilege; and
- 18 e. If work product is asserted, the proceeding, if any, for which the  
19 DOCUMENT was created.

20 8. For any DOCUMENT or category of DOCUMENTS that was, but no  
21 longer is, in ICANN's possession, custody, or control, please describe each such  
22 DOCUMENT as completely as possible and provide the following information:

- 23 a. The reason the DOCUMENT is no longer in ICANN's possession,  
24 custody, or control;
- 25 b. The person or entity, if any, who has possession, custody or control,  
26 or if unknown, so state;

27 9. If the DOCUMENT was destroyed or otherwise disposed of, state:  
28

1 The manner of disposal (i.e., destruction, loss, discarding or other means of  
2 disposal);

- 3 a. The date of disposal;
- 4 b. The reason for disposal;
- 5 c. The person authorizing disposal;
- 6 d. The person disposing of the DOCUMENT; and
- 7 e. The name and address of the most recent custodian of the  
8 DOCUMENT.

9 10. Unless otherwise stated, each request seeks (a) DOCUMENTS dated,  
10 created, or received from January 2011 through the present; and (b) documents,  
11 whenever dated, created, or received, that refer to or concern events or facts  
12 occurring during the period from January 2011 through the present.

13 11. As used herein, the terms “and” as well as “or” shall be construed  
14 disjunctively as well as conjunctively as necessary in order to bring within the  
15 scope of the following requests all information which might otherwise be  
16 construed to be outside their scope. Similarly, references to the singular shall  
17 include the plural and vice versa; references to the masculine shall include  
18 references to the feminine gender and vice versa; and use of the present tense shall  
19 also be read to include the past tense and vice versa.

#### 20 DEFINITIONS

21 1. “DOCUMENTS” shall mean and refer to any writing within the mean of  
22 FRCP 34, including but not limited to: anything in written form or that is a tangible  
23 recording or speech, sounds, pictures, words or symbols, however produced or  
24 reproduced, whether writings, papers, correspondence, memoranda, facsimile  
25 transmissions, electronic e-mail, notes, schedules, reports, compilations, computer  
26 printouts, computer disks, minutes or records of meetings, invoices, financial  
27 statements, financial calculations, diaries, jobs diaries, reports of telephone or other  
28 conversations, calendars, appointment books, photographs, videotapes, films,

1 motion pictures, tape recordings, electronic media, and all other writings and  
2 recordings of any kind.

3 2. "RELATED TO" shall include referring to, constituting, compromising,  
4 setting forth, summarizing, reflecting, stating, describing, recording, noting,  
5 embodying, mentioning, studying, discussing, or evaluating, directly or indirectly.

6 3. "DCA" shall mean and refer to Plaintiff DOTCONNECTAFRICA Trust  
7 and any representative, agents, attorneys, partners, accountants, employees, assigns  
8 or any other person or entity authorized and/or purporting to act on behalf of DCA.

9 4. "ICANN" shall mean and refer to Defendant Internet Corporation for  
10 Assigned Names and Numbers and any representative, agents, attorneys, partners,  
11 accountants, employees, assigns or any other person or entity authorized and/or  
12 purporting to act on behalf of ICANN.

13 5. "ZACR" as used herein, means and refers to ZA Central Registry and any  
14 representative, agents, attorneys, partners, accountants, employees, assigns or any  
15 other person or entity authorized and/or purporting to act on behalf of ZACR.

16 6. "COMMUNICATIONS" shall mean any oral, written, or electronic  
17 transmission or information, including, without limitation, meetings, discussions,  
18 conversations, telephone calls, memoranda, letters, e-mails, text messages,  
19 electronic communications, facsimiles, conferences, or seminars.

20 7. "GAC" is defined as ICANN's Governmental Advisory Committee and  
21 any representative, agents, attorneys, partners, accountants, employees, assigns or  
22 any other person or entity authorized and/or purporting to act on behalf of GAC.

23 8. "ICC" is defined as InterConnect Communications and any representative,  
24 agents, attorneys, partners, accountants, employees, assigns or any other person or  
25 entity authorized and/or purporting to act on behalf of ICC.

26 9. "UNECA" is defined as the United Nations Economic Commission for  
27 Africa and any representative, agents, attorneys, partners, accountants, employees,  
28

1 assigns or any other person or entity authorized and/or purporting to act on behalf  
2 of UNECA.

3 10. "AUC" is defined as the African Union Commission any representative,  
4 agents, attorneys, partners, accountants, employees, assigns or any other person or  
5 entity authorized and/or purporting to act on behalf of AUC.

6 11. "IRP PROCESS" is defined as Case #50 2013001083 in the International  
7 Centre for Dispute Resolution between DCA and ICANN.

8 12. The "RELEASE" means and refers to paragraph 6 of Module 6 (pg. 6-4)  
9 in ICANN's gTLD Applicant Guidebook ["Applicant hereby releases ICANN and  
10 the ICANN Affiliated Parties from any and all claims by applicant that arise out of,  
11 are based upon, or are in any way related to, any action, or failure to act, by  
12 ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN  
13 Affiliated Party's review of this application, investigation or verification, any  
14 characterization or description of applicant or the information in this application,  
15 any withdrawal of this application or the decision by ICANN to recommend, or not  
16 to recommend, the approval of applicant's gTLD application. APPLICANT  
17 AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL  
18 FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE  
19 APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR  
20 PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS  
21 OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN  
22 AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION.  
23 APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S  
24 NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL  
25 CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN  
26 COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE  
27 APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY  
28 RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN

DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY  
2 AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM  
3 THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT  
4 APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET  
5 FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY  
6 FINAL DECISION MADE BY ICANN WITH RESPECT TO THE  
7 APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN  
8 AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF  
9 THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS  
10 SECTION 6 AGAINST APPLICANT."].

11 **REQUESTS FOR PRODUCTION**

12 **REQUEST FOR PRODUCTION NO. 1:**

13 All DOCUMENTS and COMMUNICATIONS RELATED TO DCA's  
14 .Africa gTLD application.

15 **REQUEST FOR PRODUCTION NO. 2:**

16 All DOCUMENTS and COMMUNICATIONS RELATED TO ZACR's  
17 .Africa gTLD application.

18 **REQUEST FOR PRODUCTION NO. 3:**

19 All DOCUMENTS AND COMMUNICATIONS of any ICANN  
20 committees, organizations, groups, boards, panels, or commissions and their  
21 respective members, employees, and/or agents regarding DCA's .Africa gTLD  
22 application.

23 **REQUEST FOR PRODUCTION NO. 4:**

24 All DOCUMENTS AND COMMUNICATIONS of any ICANN  
25 committees, organizations, groups, boards, panels, or commissions and their  
26 respective members, employees, and/or agents regarding ZACR's .Africa gTLD  
27 application.

28 //

DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 **REQUEST FOR PRODUCTION NO. 5:**

2 All DOCUMENTS and COMMUNICATIONS RELATED TO the drafting  
3 history of the RELEASE contained in ICANN's Guidebook, Module 6, ¶6,  
4 including but not limited to prior versions, drafts, comments, and communications  
5 regarding the RELEASE.

6 **REQUEST FOR PRODUCTION NO. 6:**

7 All DOCUMENTS and COMMUNICATIONS by, between, or among  
8 ICANN and the GAC RELATED TO DCA's .Africa gTLD application.

9 **REQUEST FOR PRODUCTION NO. 7:**

10 All DOCUMENTS and COMMUNICATIONS by, between, or among the  
11 ICC and ICANN RELATED TO DCA's .Africa gTLD application.

12 **REQUEST FOR PRODUCTION NO. 8:**

13 All DOCUMENTS and COMMUNICATIONS by, between, or among any  
14 ICANN and the AUC RELATED TO DCA's .Africa gTLD application.

15 **REQUEST FOR PRODUCTION NO. 9:**

16 All DOCUMENTS and COMMUNICATIONS by, between, or among  
17 ICANN and UNECA RELATED TO DCA's .Africa gTLD application.

18 **REQUEST FOR PRODUCTION NO. 10:**

19 All DOCUMENTS and COMMUNICATIONS by, between, or among  
20 ICANN and the GAC RELATED TO ZACR's .Africa gTLD application.

21 **REQUEST FOR PRODUCTION NO. 11:**

22 All DOCUMENTS and COMMUNICATIONS by, between, or among the  
23 ICC and ICANN RELATED TO ZACR's .Africa gTLD application.

24 **REQUEST FOR PRODUCTION NO. 12:**

25 All DOCUMENTS and COMMUNICATIONS by, between, or among any  
26 ICANN and the AUC RELATED TO ZACR's .Africa gTLD application.

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DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 **REQUEST FOR PRODUCTION NO. 13:**

2 All DOCUMENTS and COMMUNICATIONS by, between, or among  
3 ICANN and UNECA RELATED TO ZACR's .Africa gTLD application.

4 **AMENDED REQUEST FOR PRODUCTION NO. 14:**

5 Any drafts or superseding versions of ICANN's Articles of Incorporation,  
6 By-Laws, new gTLD Applicant Guidebook, which reflect differences from the  
7 current versions with respect to Articles I (Mission and Core Values), II (Powers),  
8 III (Transparency), IV (Accountability and Review), VI (Board of Directors), and  
9 XI (Advisory Committees); Article 4 of the Articles of Incorporation; Attachment  
10 to Module 2, Module 5.4.2, and Module 6 of the Guidebook.

11 **REQUEST FOR PRODUCTION NO. 15:**

12 All DOCUMENTS and COMMUNICATIONS RELATING TO ICANN's  
13 position on whether IRP proceedings are binding.

14 **AMENDED REQUEST FOR PRODUCTION NO. 16:**

15 All DOCUMENTS and COMMUNICATIONS RELATED TO the scope of  
16 review of an IRP proceeding.

17 **AMENDED REQUEST FOR PRODUCTION NO. 17:**

18 All DOCUMENTS AND COMMUNICATIONS regarding drafting history  
19 on any provision in the gtld Applicant Guidebook, ICANN's bylaws, or its Articles  
20 of Incorporation RELATED TO the IRP.

21 **REQUEST FOR PRODUCTION NO. 18:**

22 All DOCUMENTS and COMMUNICATIONS reflecting any and all  
23 financial transactions between ICANN or any ICANN committee, organization,  
24 groups, boards, panels, and/or commissions and/or their respective members,  
25 employees, or agents, on the one hand, and ZACR on the other hand.

26 **REQUEST FOR PRODUCTION NO. 19:**

27 All DOCUMENTS and COMMUNICATIONS reflecting any and all  
28 financial transactions between ICANN or any ICANN committee, organization,

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DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 groups, boards, panels, and/or commissions and/or their respective members,  
2 employees, or agents, on the one hand, and the AUC on the other hand.

3 //

4 //

5 **REQUEST FOR PRODUCTION NO. 20:**

6 All DOCUMENTS and COMMUNICATIONS RELATING TO the  
7 clarifying questions issued to DCA after July 9, 2015.

8 **REQUEST FOR PRODUCTION NO 21:**

9 All DOCUMENTS and COMMUNICATIONS RELATED TO any board  
10 resolutions ICANN made regarding the .Africa gTLD in or after June 2015

11 **REQUEST FOR PRODUCTION NO. 21:**

12 All DOCUMENTS AND COMMUNICATIONS RELATED TO any board  
13 resolution ICANN made regarding .Africa gTLD in February 2016.

14 **REQUEST FOR PRODUCTION NO. 22:**

15 All DOCUMENTS and COMMUNICATIONS RELATED TO .Africa and  
16 the ICANN triannual meeting that occurred on March 5-10, 2016 in Marrakech,  
17 Morocco.

18 **REQUEST FOR PRODUCTION NO. 23:**

19 All DOCUMENTS AND COMMUNICATIONS, including internal  
20 COMMUNICATIONS, among, by or between ICANN board members RELATED  
21 TO .Africa, DCA, and ZACR.

22 **REQUEST FOR PRODUCTION NO. 24:**

23 The DOCUMENTS bates stamped as ICANN\_AFRICA00000416;  
24 ICANN\_AFRICA00000424; ICANN\_AFRICA00000430, which were withheld  
25 from ICANN's production to DCA during the IRP.

26 **REQUEST FOR PRODUCTION NO. 25:**

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28  
DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 All DOCUMENTS and COMMUNICATIONS RELATED TO the AUC's  
2 attempt to have the .Africa gTLD added to ICANN's list of Reserved Names for  
3 New gTLDs.

4 **REQUEST FOR PRODUCTION NO. 26:**

5 All DOCUMENTS and COMMUNICATIONS RELATED TO how the  
6 AUC became a member of the GAC.

7 **REQUEST FOR PRODUCTION NO. 27:**

8 All DOCUMENTS and COMMUNICATIONS RELATED TO how GAC  
9 members could affect the outcome of application for the .Africa gTLD.

10 **REQUEST FOR PRODUCTION NO. 28:**

11 All COMMUNICATIONS RELATED TO ICANN's commitment to  
12 delegate the .Africa gTLD to ZACR.

13 **REQUEST FOR PRODUCTION NO. 29:**

14 All DOCUMENTS AND COMMUNICATIONS RELATED TO the  
15 contract signed and history of the contract between ZACR and ICANN regarding  
16 any rights to the .Africa gTLD.

17 **REQUEST FOR PRODUCTION NO. 30:**

18 All COMMUNICATIONS between, among, or by ICANN and the AUC  
19 RELATED TO the .Africa gTLD

20 **REQUEST FOR PRODUCTION NO. 31:**

21 All DOCUMENTS RELATED TO ICANN's response to DCA's October  
22 29, 2008 letter raising concerns about COMMUNICATIONS with Anne Rachel  
23 Inne on the subject of the .Africa gTLD.

24 **REQUEST FOR PRODUCTION NO. 32:**

25 All DOCUMENTS RELATED TO objections to GAC advice on .Africa.

26 **REQUEST FOR PRODUCTION NO. 33:**

27 All COMMUNICATIONS between ICANN and the AUC RELATED TO  
28 the IRP PROCESS dating from October 2013 to the present.

DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 **REQUEST FOR PRODUCTION NO. 34:**

2 All COMMUNICATIONS between ICANN and ZACR RELATING TO the  
3 IRP process dating from October 2013 to the present.

4 **REQUEST FOR PRODUCTION NO. 35:**

5 All DOCUMENTS RELATED TO the AUC's endorsement of ZACR.

6 //

7 **REQUEST FOR PRODUCTION NO. 36:**

8 All DOCUMENTS RELATED TO endorsements of ZACR as an applicant  
9 for the .Africa gTLD.

10 **REQUEST FOR PRODUCTION NO. 37:**

11 All DOCUMENTS RELATED TO the evaluation of ZACR's endorsements  
12 by ICANN, or any ICANN committee or panel.

13 **REQUEST FOR PRODUCTION NO. 38:**

14 All COMMUNICATIONS between ICANN and ZACR that constituted a  
15 request for clarification regarding any part of ZACR's application for the .Africa  
16 gTLD..

17 **AMENDED REQUEST FOR PRODUCTION NO. 39:**

18 The version(s) of ICANN's contract with the ICC regarding the geographic  
19 names analysis of gTLD applicants, in operation when the ICC reviewed DCA's  
20 .Africa gTLD application.

21 **REQUEST FOR PRODUCTION NO. 40:**

22 All DOCUMENTS from the Kenyan government to ICANN between  
23 February and April 2013 concerning the status of Mr. Sammy Buruchara as  
24 Kenya's GAC advisor.

25 **REQUEST FOR PRODUCTION NO. 41:**

26 All DOCUMENTS and COMMUNICATIONS between the GAC members  
27 referenced in paragraph 11 of the February 7, 2014 Declaration of Heather Dryden,  
28 submitted with ICANN's response to DCA's Amended Notice of IRP.

DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 **AMENDED REQUEST FOR PRODUCTION NO. 42:**

2 The charter or initiating document of all ICANN affiliated boards and  
3 committees, including the GAC, which dealt with .Africa.

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6 **AMENDED REQUEST FOR PRODUCTION NO. 43:**

7 All DOCUMENTS showing the role of all ICANN affiliated boards,  
8 committees, vendors and sub-contractors in reviewing the applications for the  
9 .Africa gTLD.

10 **REQUEST FOR PRODUCTION NO. 44:**

11 All DOCUMENTS relied on in the preparation of the Declaration of Akram  
12 Atallah, Docket No. 36.

13 **REQUEST FOR PRODUCTION NO. 45:**

14 All DOCUMENTS relied on in the preparation of the Declaration of Akram  
15 Atallah, Docket No. 36.

16 **REQUEST FOR PRODUCTION NO. 46:**

17 All DOCUMENTS relied on in the preparation of the Declaration of Akram  
18 Atallah, Docket No. 36.

19 **REQUEST FOR PRODUCTION NO. 47:**

20 All DOCUMENTS where ICANN asserts that IRP panel declarations are not  
21 binding.

22 **REQUEST FOR PRODUCTION NO. 48:**

23 All DOCUMENTS relied on in the preparation of the Declaration of Kevin  
24 Espinola, Docket No. 37.

25 **REQUEST FOR PRODUCTION NO. 49:**

26 All DOCUMENTS relied on in the preparation of the Declaration of  
27 Geoffrey LeVee, Docket No. 38

28 **REQUEST FOR PRODUCTION NO. 50:**

DCA'S AMENDED FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO DEFENDANT ICANN

1 All DOCUMENTS relied on in the preparation of the Declaration of  
2 Christine Willet, Docket No. 39.

3 **REQUEST FOR PRODUCTION NO. 51:**

4 All DOCUMENTS and COMMUNICATIONS regarding the delegation of  
5 .Africa to ZACR.

6 **REQUEST FOR PRODUCTION NO. 52:**

7 All DOCUMENTS relied on in the preparation of the Declaration of Moctar  
8 Yedaly, Docket No. 40.

9 **REQUEST FOR PRODUCTION NO. 53:**

10 All DOCUMENTS regarding the “Development Fund” referenced in  
11 paragraph 13 of the Yedaly Declaration. .

12 **REQUEST FOR PRODUCTION NO. 54:**

13 All DOCUMENTS regarding any registry agreement between ICANN and  
14 ZACR.

15 **REQUEST FOR PRODUCTION NO. 55:**

16 All DOCUMENTS regarding any public comments on the RELEASE or  
17 prior versions of the RELEASE.

18 **REQUEST FOR PRODUCTION NO. 56:**

19 All DOCUMENTS supporting ICANN’s position, as reflected in paragraph  
20 10 of the Espinola Declaration that “ICANN...lacks the resources to defend against  
21 potentially numerous lawsuits in jurisdictions all over the world initiated by  
22 applicants that might want to challenge the results of the community-designed new  
23 gTLD application process.”

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1 Dated: June 22, 2016

**BROWN NERI & SMITH, LLP**

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3 By: *Sara C. Colón*  
4 Sara C. Colón

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6 Attorneys for Plaintiff,  
7 DOTCONNECTAFRICA TRUST

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

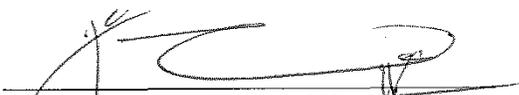
I am employed in Los Angeles County, California. I am over the age of 18 and not a party to this action; my business address is 11766 Wilshire Blvd., Suite 1670, Los Angeles, California 90025. On June 22, 2016, I caused the following **DOTCONNECTAFRICA TRUST'S AMENDED RESPONSE TO INTERNET CORPORATION FOR ASSIGEND NAMES AND NUMBERS' FIRST SET OF REQUESTS FOR PRODUCTION**, to be served by email and mail pursuant to Fed. R. Civ. Proc. 5(b) to the addresses below:

Jeffrey LeVee, Esq.; Charlotte Wasserstein, Esq.; Rachel Gezerseh, Esq.  
Jones Day  
555 South Flower Street  
Fiftieth Floor  
Los Angeles, CA 90071  
jleee@jonesday.com  
cwasserstein@jonesday.com  
rgezerseh@jonesday.com

- X (VIA U.S. MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party as set forth in the service list. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Brown, Neri & Smith LLP, Los Angeles, California. I am readily familiar with Brown, Neri & Smith LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.
- X (VIA E-MAIL) A copy of the document(s) was/were served via email upon the parties listed using their email addresses as shown in the service list.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 22, 2016, at Los Angeles, California.

By:   
James F. Warren IV

**PROOF OF SERVICE**

# Exhibit D

# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071.2300

TELEPHONE: +1.213.489.3939 • FACSIMILE: +1.213.243.2539

DIRECT NUMBER: (213) 243-2353  
APUSHINSKY@JONESDAY.COM

October 23, 2017

## ***VIA EMAIL***

Kete Barnes, Esq.  
Brown Neri Smith & Khan LLP  
11766 Wilshire Blvd., Suite 1670  
Los Angeles, CA 90025  
kete@bnsklaw.com

Re: *DotConnectAfrica Trust v. Internet Corporation for Assigned Names and Numbers*,  
Los Angeles Superior Court (Case No. BC607494)

Dear Kete:

We write to you regarding the deposition notices served on Steve Crocker, Mike Silber, and Pierre Dandjinou on October 4, 2017.

As an initial matter, each of these deposition notices are defective on their face. DCA has noticed each deposition at your offices here in Los Angeles. However, California Code of Civil Procedure provides that a deposition must take place within 75 miles of the deponent's residence or within the county where the action is pending and within 150 miles of the deponent's residence. Cal. Code Civ. P. § 2025.250(a). Dr. Crocker resides in Washington, D.C., Mr. Silber resides in South Africa, and Mr. Dandjinou resides in Benin, Africa. Accordingly, the notices fail to conform to the requirements of California's Code of Civil Procedure. For this reason, and for those discussed below, ICANN does not consider the deposition notices valid, effective, or enforceable and will not produce Dr. Crocker on November 14, 2017, Mr. Silber on November 28, 2017, or Mr. Dandjinou on December 12, 2017.

### **Deposition Notice of Pierre Dandjinou**

California Code of Civil Procedure provides that a deposition notice "is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party" to attend a deposition and produce any requested documents. Cal. Code Civ. P. § 2025.280(a) (emphasis added). Mr. Dandjinou is a nonparty to this litigation and does not fall within any of those categories; he is an independent contractor, not an employee. As such, if DCA wishes to take Mr. Dandjinou's deposition, it must subpoena him as it would any other nonparty to the action who is located outside of the United States.

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Kete Barnes, Esq.  
October 23, 2017  
Page 2

### **Deposition Notice of Steve Crocker**

We fail to understand the relevance of any testimony Dr. Crocker will offer or any documents he may provide. Dr. Crocker is the Chairman of ICANN's Board of Directors. Any action that may have been taken by ICANN's Board in relation to DCA's application for .Africa is not relevant to the remaining claims in this case. The Board's decision in 2013 to accept the consensus advice from the Governmental Advisory Committee (GAC) regarding DCA's application was rendered moot when DCA prevailed at the IRP, and the Board elected to follow the IRP Declaration and place DCA's application back into processing. Moreover, the Court's August 9, 2017 Order on ICANN's Motion for Summary Judgment dismissed the only causes of action that could arguably make Dr. Crocker's testimony relevant. The Court dismissed DCA's first cause of action for breach of contract, which contained the only allegations specific to Dr. Crocker. The Court also dismissed DCA's sixth cause of action for negligence, as well as DCA's claims for declaratory relief.<sup>1</sup> Dr. Crocker has no personal knowledge that is relevant to the remaining fraud claims.

DCA also has failed to establish any grounds to conduct an apex deposition of Dr. Crocker, the Chairman of ICANN's Board of Directors. ICANN is an international corporation with approximately 400 staff members across the world and, as the Chairman, Dr. Crocker maintains the lead position of its Board. As such, while he may possess high-level knowledge of ICANN's operations, there is no indication that he has any "unique or superior personal knowledge" of the facts at issue in this litigation (even ignoring the relevance objections referenced above) that cannot be obtained through less intrusive means, such as through depositions of lower level employees. *See Liberty Mutual Ins. Co. v. Superior Court*, 10 Cal. App. 4th 1282, 1289 (Cal. Ct. App. 1992).

### **Deposition Notice of Mike Silber**

Mr. Silber's testimony likewise bears no relevance to the remaining claims in this case. Mr. Silber is a member of ICANN's Board and, as such, is subject to the same apex deposition concerns discussed above. There are no allegations in DCA's complaint naming Mr. Silber and, as described above, any action or inaction by the ICANN Board has been mooted by the IRP and is no longer relevant to this case. As with Dr. Crocker, Mr. Silber has no personal knowledge that is relevant to any of the claims remaining in this case.

Our positions regarding the three deposition notices are set forth above, and we are happy to meet and confer regarding these issues. We ask that DCA provide us an explanation as to the

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<sup>1</sup> As you are aware, there is an open issue as to whether DCA's tenth cause of action for declaratory relief remains in the case following the Court's ruling. However, this has no bearing on the relevance of Dr. Cocker's or any other Board Member's testimony.

Kete Barnes, Esq.  
October 23, 2017  
Page 3

purported relevance of any testimony Dr. Crocker or Mr. Silber may offer. Please provide your response by October 27, 2017 so that we can adequately consider your response and continue to meet and confer on any remaining issues prior to deadlines for motion practice, if necessary.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Amanda Pushinsky', with a long horizontal flourish extending to the right.

Amanda Pushinsky

# Exhibit E



November 1, 2017

**VIA EMAIL**

Amanda Pushinsky, Esq.  
Jones Day  
555 S. Flower Street, 31st Fl.  
Los Angeles, CA 90071  
[apushinsky@jonesday.com](mailto:apushinsky@jonesday.com)

**Re: DCA v. ICANN [LASC Case No. BC607494] – Depositions of Steve Crocker, Mike Silber, and Pierre Dandjinou**

We write in response to your letter dated October 23, 2017. It is our intent to take the depositions of Steve Crocker, Mike Silber, and Pierre Dandjinou. The defect of the locations can and will easily be remedied. However, we are willing to work with ICANN for dates that are convenient and hope that all other issues can be resolved.

**Deposition of Pierre Dandjinou**

DCA requests that ICANN produce some proof (whether a redacted 1099) or other document, demonstrating that Mr. Dandjinou is an independent contractor. Although not determinative of the fact, ICANN's website lists Mr. Dandjinou under its staff. (*see* <https://www.icann.org/profiles/sagbo-pierre-dandjinou>.) If DCA is required to subpoena Mr. Dandjinou, DCA will do so. To resolve the issue of Mr. Dandjinou's location, DCA would like to be informed if Mr. Dandjinou is at ICANN's office in Los Angeles, to perform the deposition in Los Angeles. If you will not notify us of his visit, we will consider conducting Mr. Dandjinou's deposition by videoconference. (Rule of Court 3.1010(a).)

**Deposition of Steve Crocker**

Among other things, Dr. Crocker was communicating with the AUC with respect to the processing of the .Africa applications. After Dr. Crocker communicated with the AUC, the AUC joined the GAC, created identical early warnings for the African governments to submit against DCA's application, and was part of the GAC when consensus advice was issued against DCA's application. The fact that DCA "prevailed" at the IRP, does not negate the decision of the ICANN board to accept advice from the GAC that was flawed on its face. If ICANN intended to obstruct and deny DCA's application from the start, Dr. Crocker can testify to such. As chairman of the ICANN board, Dr. Crocker's knowledge is superior to all others. That personal knowledge, is not only relevant, but directly on point.

11601 Wilshire Blvd., Suite 2080, Los Angeles, California 90025  
tel. (310) 593-9890 fax (310) 593-9980

701 Palomar Airport Rd., Suite 300, Carlsbad, California 92011  
tel. (619) 326-0611 fax (310) 593-9980

[BNSKLAW.COM](http://BNSKLAW.COM)



Dr. Crocker's deposition will be noticed accordingly, and DCA intends to complete it. Please provide a date that is convenient for Dr. Crocker's deposition.

**Deposition of Mike Silber**

ICANN's main contention as to the relevance of Mr. Silber's deposition, is again, the incorrect belief that redress by the IRP negates ICANN's prior actions and motive. The issues with Mr. Silber were raised throughout the processing of the .Africa applications. Mr. Silber was (and is) a board member of ICANN, was a member of the board of directors of ZADNA (who has significant ties with ZACR), and was a former director of ZACR. Mr. Silber has the most knowledge as to his connections with those groups. That superior knowledge (which no one else possesses), among the other topics that DCA intends to examine Mr. Silber on, justifies the deposition of Mr. Silber. With respect to Mr. Silber's location, DCA would like to be informed if Mr. Silber is at ICANN's office in Los Angeles, to perform the deposition in Los Angeles. If you will not notify us of his visit, DCA will consider conducting DCA the deposition by video. (Rule of Court 3.1010(a).)

For the reasons stated above, DCA disagrees with ICANN's analysis of the depositions of these individuals. Discovery does not permit one party to unilaterally decide what information is relevant. "Whether [information] is discoverable, turns in the first instance on whether the request for it is 'reasonably calculated to lead to the discovery of admissible evidence.'" Under the legislature's 'very liberal and flexible standard of relevancy,' any 'doubts as to relevance should generally be resolved in favor of permitting discovery.'" *Williams v. Superior Court* (2017) 3 Cal.5th 531, 542. Taking the liberal standard of relevancy in mind, DCA does not believe ICANN's arguments are acceptable.

DCA intends on deposing these individuals and will seek court intervention if ICANN refuses to make them available. Please let us know no later than November 9, 2017.

Sincerely,  
  
Kete Barnes

# Exhibit F

# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071.2300

TELEPHONE: +1.213.489.3939 • FACSIMILE: +1.213.243.2539

DIRECT NUMBER: (213) 243-2353  
APUSHINSKY@JONESDAY.COM

November 10, 2017

## ***VIA EMAIL***

Kete Barnes, Esq.  
Brown Neri Smith & Khan LLP  
11766 Wilshire Blvd., Suite 1670  
Los Angeles, CA 90025  
kete@bnsklaw.com

Re: *DotConnectAfrica Trust v. Internet Corporation for Assigned Names and Numbers*,  
Los Angeles Superior Court (Case No. BC607494)

Dear Kete:

We write to you in response to your November 1, 2017 letter.

### **Deposition of Pierre Dandjinou**

As stated in our prior letter, Mr. Dandjinou is an independent contractor. DCA must subpoena him in accordance with the laws of Benin, Africa, should DCA seek to take his deposition. ICANN will agree, assuming you do not pursue the deposition, that ICANN will not call Mr. Dandjinou at trial (indeed, we fail to see any relevance his testimony has to the remaining claims in this case). Should that change, we would of course immediately notify you and make Mr. Dandjinou available for deposition.

### **Deposition of Steve Crocker**

Nothing in your letter alters our view that any testimony Dr. Crocker could provide is irrelevant to DCA's remaining fraud claims. Your letter also completely fails to address our position that, as the former Chairman of ICANN's Board of Directors, Dr. Crocker is an apex deponent, which requires a higher showing that Dr. Crocker has unique or superior knowledge of the allegedly relevant facts. The bare claim that "Dr. Crocker's knowledge is superior to all others" is insufficient to meet this burden.

In the spirit of compromise, we will agree to make Dr. Crocker available for a two-hour deposition on the sole topic of his letter to the AUC dated March 8, 2012. The location of the deposition can be decided at a later date; however, it may need to take place near Dr. Crocker's residence in the Washington, D.C. area.

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Kete Barnes, Esq.  
November 10, 2017  
Page 2

**Deposition of Mike Silber**

Your letter provides no reasonable basis to pursue this deposition. DCA's allegations regarding Mr. Silber's supposed conflict of interest were not only examined and found baseless in 2012, but also bear no relevance to DCA's remaining claims for fraud. If DCA insists on pursuing this deposition, ICANN intends to file a motion for a protective order.

\* \* \* \* \*

As stated in our prior letter, each of the above deposition notices is defective on its face for the reasons we have stated previously, including the fact that the three individuals noted above do not reside in Los Angeles county. As such, we do not consider any of the deposition notices to be valid. Even so, we are willing to continue meeting and conferring regarding these issues in an effort to avoid motion practice. Please let us know by November 14, 2017 how you intend to proceed.

**Deposition of Akram Atallah**

We can offer January 12 and January 19 for the deposition of Akram Atallah. Please let us know by November 14 if either of these dates is acceptable.

Very truly yours,



Amanda Pushinsky

NAI-1503175458

# Exhibit G



November 16, 2017

***VIA EMAIL***

Amanda Pushinsky, Esq.  
Jones Day  
555 S. Flower Street, 31st Fl.  
Los Angeles, CA 90071  
[apushinsky@jonesday.com](mailto:apushinsky@jonesday.com)

**Re: *DCA v. ICANN* [LASC Case No. BC607494] – Depositions of Steve Crocker, Mike Silber, and Pierre Dandjinou**

As requested, DCA responds to your November 10, 2017 letter.

**Deposition of Pierre Dandjinou**

The positions of the parties have been stated and DCA will subpoena Pierre Dandjinou to take his deposition.

**Deposition of Steve Crocker**

With respect to Dr. Crocker, DCA has established both that his testimony is relevant and that his knowledge is superior to other individuals. As Chairman of the Board, Dr. Crocker would have been intimately involved in the decision to accept the GAC's flawed advice, and deny DCA's application, among other things. DCA stated that Dr. Crocker's knowledge as to that topic, was one of the reasons justifying his deposition.

ICANN also admits that Dr. Crocker's knowledge is relevant as to the issue of the March 8, 2012 letter to the AUC, but DCA will not limit its examination to that topic. DCA intends to examine Dr. Crocker on all of the topics noticed and will oppose any protective order if filed. Please provide a date for Dr. Crocker's deposition.

**Deposition of Mike Silber**

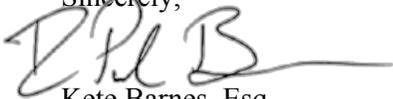
ICANN again bases all relevance of the deposition of Mike Silber, on its own internal investigation of DCA's previous complaints. ICANN has stated before that its investigation found no wrongdoing, but DCA will not base its discovery in this case on ICANN's self-serving decisions. If Mike Silber had a conflict of interest he should have been removed from the application evaluation - that is an issue that DCA is entitled to examine. DCA will re-notice the deposition of Mike Silber, and will oppose any protective order ICANN files.

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tel. (619) 326-0611 fax (310) 593-9980



If ICANN agrees to a full deposition of Dr. Crocker in Washington D.C., please provide a date. DCA will proceed accordingly as to Mr. Dandjinou and Mr. Silber. As to Akram Attalah, DCA is available on January 19.

Sincerely,  
  
Kete Barnes, Esq.

# Exhibit H



Resources

[About ICANN](#)

[Board](#)

[Accountability](#)

[Governance](#)

[Governance Documents](#)

[Guidelines](#)

[Articles of Incorporation](#)

[Bylaws](#)

[Archive](#)

[Board Code of Conduct](#)

[Board Conflicts of Interest Policy](#)

[Board Statements of Interest](#)

[Lobbying Disclosures & Contribution Reports](#)

[Summary of Conflicts of Interest and Ethics Practices](#)

# BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 11 February 2016

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- ARTICLE V: [OMBUDSMAN](#)
- ARTICLE VI: [BOARD OF DIRECTORS](#)
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- ARTICLE VIII: [ADDRESS SUPPORTING ORGANIZATION](#)
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- ANNEX C: [THE SCOPE OF THE ccNSO](#)

1. The Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.

These periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board. Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group.

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all members of the Board.

2. The Governmental Advisory Committee shall provide its own review mechanisms.

## ARTICLE V: OMBUDSMAN

### Section 1. OFFICE OF OMBUDSMAN

1. There shall be an Office of Ombudsman, to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.
2. The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.
3. The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.
4. The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and

without change in the general ICANN budget recommended by the ICANN President to the Board. Nothing in this Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

## **Section 2. CHARTER**

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article IV](#) or the Independent Review Policy set forth in [Section 3 of Article IV](#) have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

## **Section 3. OPERATIONS**

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;
2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;
3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject

only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);

4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;
5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and
6. comply with all ICANN conflicts-of-interest and confidentiality policies.

#### **Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES**

1. No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.
2. ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.
3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.
4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.
5. The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not institute, join, or support in any way any legal actions challenging ICANN structure, procedures, processes, or any conduct by the ICANN Board, staff, or constituent bodies.

#### **Section 5. ANNUAL REPORT**

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual report should include a description of any trends or common elements of complaints received during

# Exhibit I

# gTLD Applicant Guidebook

Version 2012-06-04



4 June 2012



# gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

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# Module 3

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## Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

### 3.1 GAC Advice on New gTLDs

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ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
- II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

# Exhibit J

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION  
Independent Review Panel**

**CASE #50 2013 001083**

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**FINAL DECLARATION**

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**In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation For Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* (ICDR Rules) and the *Supplementary Procedures for ICANN Independent Review Process* of the International Centre for Dispute Resolution (ICDR),**

**Between: DotConnectAfrica Trust;**  
("Claimant" or "DCA Trust")

Represented by Mr. Arif H. Ali, Ms. Meredith Craven, Ms. Erin Yates and Mr. Ricardo Ampudia of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 2005, U.S.A.

**And**

**Internet Corporation for Assigned Names and Numbers (ICANN);**  
("Respondent" or "ICANN")

Represented by Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

**IRP Panel**

**Prof. Catherine Kessedjian  
Hon. William J. Cahill (Ret.)  
Babak Barin, *President***

## I. BACKGROUND

1. DCA Trust is non-profit organization established under the laws of the Republic of Mauritius on 15 July 2010 with its registry operation – DCA Registry Services (Kenya) Limited – as its principal place of business in Nairobi, Kenya.
2. DCA Trust was formed with the charitable purpose of, among other things, advancing information technology education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa and not for the public good.
3. In March 2012, DCA Trust applied to ICANN for the delegation of the .AFRICA top-level domain name in its 2012 General Top-Level Domains (“gTLD”) Internet Expansion Program (the “New gTLD Program”), an internet resource available for delegation under that program.
4. ICANN is a non-profit corporation established on 30 September 1998 under the laws of the State of California, and headquartered in Marina del Rey, California, U.S.A. According to its Articles of Incorporation, ICANN was established for the benefit of the Internet community as a whole and is tasked with carrying out its activities in conformity with relevant principles of international law, international conventions and local law.
5. On 4 June 2013, the ICANN Board New gTLD Program Committee (“NGPC”) posted a notice that it had decided not to accept DCA Trust’s application.
6. On 19 June 2013, DCA Trust filed a request for reconsideration by the ICANN Board Governance Committee (“BGC”), which denied the request on 1 August 2013.
7. On 19 August 2013, DCA Trust informed ICANN of its intention to seek relief before an Independent Review Panel under ICANN’s Bylaws. Between August and October 2013, DCA Trust and ICANN participated in a Cooperative Engagement Process (“CEP”) to try and resolve the issues relating to DCA Trust’s application. Despite several meetings, no resolution was reached.
8. On 24 October 2013, DCA Trust filed a Notice of Independent Review Process with the ICDR in accordance with Article IV, Section 3 of ICANN’s Bylaws.

46. On the last day of the hearing, DCA Trust was asked by the Panel to clearly and explicitly articulate its prayers for relief. In a document entitled Claimant's Final Request for Relief which was signed by the Executive Director of DCA Trust, Ms. Sophia Bekele and marked at the hearing as Hearing Exhibit 4, DCA Trust asked the Panel to:

Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB) by:

Discriminating against DCA and wrongfully assisting the AUC and ZACR to obtain rights to the .AFRICA gTLD;  
Failing to apply ICANN's procedures in a neutral and objective manner, with procedural fairness when it accepted the GAC Objection Advice against DCA; and  
Failing to apply its procedures in a neutral and objective manner, with procedural fairness when it approved the BGC's recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice against DCA;

And to declare that:

DCA is the prevailing party in this IRP and, consequently, shall be entitled to its costs in this proceeding; and  
DCA is entitled to such other relief as the Panel may find appropriate under the circumstances described herein.

Recommend, as a result of each of these violations, that:

ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR;  
ICANN permit DCA's application to proceed through the remainder of the new gTLD application process and be granted a period of no less than 18 months to obtain Government support as set out in the AGB and interpreted by the Geographic Names Panel, or accept that the requirement is satisfied as a result of the endorsement of DCA Trust's application by UNECA; and  
ICANN compensate DCA for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

47. In its response to DCA Trust's Final Request for Relief, ICANN submitted that, "the Panel should find that no action (or inaction) of the ICANN Board was inconsistent with the Articles of Incorporation or Bylaws, and accordingly none of DCA's requested relief is appropriate."

48. ICANN also submitted that:

DCA urges that the Panel issue a declaration in its favor...and also asks that the Panel declare that DCA is the prevailing party and entitled to its costs. Although ICANN believes that the evidence does not support the

declarations that DCA seeks, ICANN does not object to the form of DCA's requests.

At the bottom of DCA's Final Request for Relief, DCA asks that the Panel recommend that ICANN cease all preparations to delegate the .AFRICA gTLD to ZACR, and that ICANN permit DCA's application to proceed and give DCA no less than 18 additional months from the date of the Panel's declaration to attempt to obtain the requisite support of the countries in Africa. ICANN objects to that appropriateness of these requested recommendations because they are well outside the Panel's authority as set forth in the Bylaws.

[...]

Because the Panel's authority is limited to declaring whether the Board's conduct was inconsistent with the Articles or the Bylaws, the Panel should limit its declaration to that question and refrain from recommending how the Board should then proceed in light of the Panel's declaration. Pursuant to Paragraph 12 of that same section of the Bylaws, the Board will consider the Panel's declaration at its next meeting, and if the Panel has declared that the Board's conduct was inconsistent with the Articles or the Bylaws, the Board will have to determine how to act upon the opinion of the Panel.

By way of example only, if the Panel somehow found that the unanimous NGPC vote on 4 June 2013 was not properly taken, the Board might determine that the vote from that meeting should be set aside and that the NGPC should consider the issue anew. Likewise, if the Panel were to determine that the NGPC did not adequately consider the GAC advice at [the] 4 June 2013 meeting, the Board might require that the NGPC reconsider the GAC advice.

In all events, the Bylaws mandate that the Board has the responsibility of fashioning the appropriate remedy once the Panel has declared whether or not it thinks the Board's conduct was inconsistent with ICANN's Articles of Incorporation and Bylaws. The Bylaws do not provide the Panel with the authority to make any recommendations or declarations in this respect.

49. In response to ICANN's submissions above, on 15 June 2015, DCA Trust advanced that the Panel had already ruled that its declaration on the merits will be binding on the Parties and that nothing in ICANN's Bylaws, the Supplementary Procedures or the ICDR Rules applicable in these proceedings prohibits the Panel from making a recommendation to the ICANN Board of Directors regarding an appropriate remedy. DCA Trust also submitted that:

According to ICANN's Bylaws, the Independent Review Process is designed to provide a remedy for "any" person materially affected by a decision or action by the Board. Further, "in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation. Indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself suggested that DCA could seek relief through ICANN's accountability

process, the GAC issued consensus advice opposing DCA's application and the NGPC properly accepted the consensus GAC Advice.

88. According to ICANN:

13. DCA's first purported basis for Independent Review is that ICANN improperly responded to a 21 October 2011 communiqué issued by African ministers in charge of Communication and Information Technologies for their respective countries ("Dakar Communiqué"). In the Dakar Communiqué, the ministers, acting pursuant to the Constitutive Act of the African Union, committed to continued and enhanced participation in ICANN and the GAC, and requested that ICANN's Board take numerous steps aimed at increasing Africa's representation in the ICANN community, including that ICANN "include ['Africa'] and its representation in any other language on the Reserved Names List in order [for those strings] to enjoy [] special legislative protection, so [they could be] managed and operated by the structure that is selected and identified by the African Union."

14. As DCA acknowledges, in response to the request in the Dakar Communiqué that .AFRICA (and related strings) be reserved for a operator of the African ministers' own choosing, ICANN advised that .AFRICA and its related strings could not be placed on the Reserved Names List because ICANN was "not able to take actions that would go outside of the community-established and documented guidelines of the program." Instead, ICANN explained that, pursuant to the Guidebook, "protections exist that w[ould] allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain name strings."

15. It was completely appropriate for ICANN to point the AU member states to the publicly-stated Guidebook protections for geographic names that were put in place to address precisely the circumstance at issue here—where an application for a string referencing a geographic designation did not appear to have the support of the countries represented by the string. DCA argues that ICANN was giving "instructions . . . as to how to bypass ICANN's own rules," but all ICANN was doing was responding to the Dakar Communiqué by explaining the publicly-available rules that ICANN already had in place. This conduct certainly did not violate ICANN's Bylaws or Articles.

16. In particular, ICANN explained that, pursuant to the Guidebook, "Africa" constitutes a geographic name, and therefore any application for .AFRICA would need: (i) documented support from at least 60% of the national governments in the region; and (ii) no more than one written statement of objection . . . from "relevant governments in the region and/or from public authorities associated with the continent and region." Next, ICANN explained that the Guidebook provides an opportunity for the GAC, whose members include the AU member states, to provide "Early Warnings" to ICANN regarding specific gTLD applications. Finally, ICANN explained that there are four formal objection processes that can be initiated by the public, including the Community Objection process, which may be filed where there is "substantial opposition to the gTLD application from a significant

portion of the community to which the gTLD string may be explicitly or implicitly targeted. Each of these explanations was factually accurate and based on publicly available information. Notably, ICANN did not mention the possibility of GAC consensus advice against a particular application (and, of course, such advice could not have occurred if even a single country had voiced its disagreement with that advice during the GAC meeting when DCA's application was discussed).

17. DCA's objection to ICANN's response to the Dakar Communiqué reflects nothing more than DCA's dissatisfaction with the fact that African countries, coordinating themselves through the AUC, opposed DCA's application. However, the African countries had every right to voice that opposition, and ICANN's Board acted properly in informing those countries of the avenues the Guidebook provided them to express that opposition.

18. In another attempt to imply that ICANN improperly coordinated with the AUC, DCA insinuates that the AUC joined the GAC at ICANN's suggestion. ICANN's response to the Dakar Communiqué does not even mention this possibility. Further, in response to DCA's document requests, ICANN searched for communications between ICANN and the AUC relating to the AUC becoming a voting member of the GAC, and the search revealed no such communications. This is not surprising given that ICANN has no involvement in, much less control over, whether the GAC grants to any party voting membership status, including the AUC; that decision is within the sole discretion of the GAC. ICANN's Bylaws provide that membership in the GAC shall be open to "multinational governmental organizations and treaty organizations, on the invitation of the [GAC] through its Chair." In any event, whether the AUC was a voting member of the GAC is irrelevant to DCA's claims. As is explained further below, the AUC alone would not have been able to orchestrate consensus GAC Advice opposing DCA's application.

19. DCA's next alleged basis for Independent Review is that ICANN's NGPC improperly accepted advice from the GAC that DCA's application should not proceed. However, nearly all of DCA's Memorial relates to conduct of the AUC, the countries of the African continent, and the GAC. None of these concerns is properly the subject of an Independent Review proceeding because they do not implicate the conduct of the ICANN Board or the NGPC. The only actual decision that the NGPC made was to accept the GAC Advice that DCA's application for .AFRICA should not proceed, and that decision was undoubtedly correct, as explained below.

20. Although the purpose of this proceeding is to test whether ICANN's Board (or, in this instance, the NGPC) acted in conformance with its Bylaws and Articles, ICANN addresses the conduct of third parties in the next few sections because that additional context demonstrates that the NGPC's decision to accept the GAC Advice—the only decision reviewable here—was appropriate in all aspects.

21. After DCA's application was posted for public comment (as are all new gTLD applications), sixteen African countries—Benin, Burkina Faso, Comoros, Cameroon, Democratic Republic of Congo, Egypt, Gabon, Ghana, Kenya, Mali, Morocco, Nigeria, Senegal, South Africa, Tanzania and Uganda—submitted GAC Early Warnings regarding DCA's application.

Early Warnings are intended to “provid[e] [] applicant[s] with an indication that the[ir] application is seen as potentially sensitive or problematic by one or more governments.” These African countries used the Early Warnings to notify DCA that they had requested the AUC to conduct an RFP for .AFRICA, that ZACR had been selected via that RFP, and that they objected to DCA’s application for .AFRICA. They further notified DCA that they did not believe that DCA had the requisite support of 60% of the countries on the African continent.

22. DCA minimizes the import of these Early Warnings by arguing that they did not involve a “permissible reason” for objecting to DCA’s application. But DCA does not explain how any of these reasons was impermissible, and the Guidebook explicitly states that Early Warnings “may be issued for any reason.” DCA demonstrated the same dismissive attitude towards the legitimate concerns of the sixteen governments that issued Early Warnings by arguing to the ICANN Board and the GAC that the objecting governments had been “teleguided (or manipulated).”

23. In response to these Early Warnings, DCA conceded that it did not have the necessary level of support from African governments and asked the Board to “waive th[e] requirement [that applications for geographic names have the support of the relevant countries] because of the confusing role that was played by the African Union.” DCA did not explain how the AUC’s role was “confusing,” and DCA ignored the fact that, pursuant to the Guidebook, the AUC had every right to promote one applicant over another. The AUC’s decision to promote an applicant other than DCA did not convert the AUC’s role from proper to improper or from clear to confusing.

24. Notably, long before the AUC opposed DCA’s application, DCA itself recognized the AUC’s important role in coordinating continent-wide technology initiatives. In 2009, DCA approached the AUC for its endorsement prior to seeking the support of individual African governments. DCA obtained the AUC’s support at that time, including the AUC’s commitment to “assist[] in the coordination of [the] initiative with African Ministers and Governments.”

25. The AUC, however, then had a change of heart (which it was entitled to do, particularly given that the application window for gTLD applications had not yet opened and would not open for almost two more years). On 7 August 2010, African ministers in charge of Communication and Information Technologies for their respective countries signed the Abuja Declaration. In that declaration, the ministers requested that the AUC coordinate various projects aimed at promoting Information and Communication Technologies projects on the African continent. Among those projects was “set[ting] up the structure and modalities for the [i]mplementation of the DotAfrica Project.”

26. Pursuant to that mandate, the AUC launched an open RFP process, seeking applications from private organizations (including DCA) interested in operating the .AFRICA gTLD. The AUC notified DCA that “following consultations with relevant stakeholders . . . [it] no longer endorse[d] individual initiatives [for .AFRICA].” Instead, “in coordination with the Member States . . . the [AUC] w[ould] go through [an] open [selection]

process”—hardly an inappropriate decision (and not a decision of ICANN or its Board). DCA then refused to participate in the RFP process, thereby setting up an inevitable clash with whatever entity the AUC selected. When DCA submitted its gTLD application in 2012 and attached its 2009 endorsement letter from the AUC, DCA knew full well (but did not disclose) that the AUC had retracted its support.

27. In sum, the objecting governments' concerns were the result of DCA's own decision to boycott the AUC's selection process, resulting in the selection of a different applicant, ZACR, for .AFRICA. Instead of addressing those governments' concerns, and instead of obtaining the necessary support of 60% of the countries on the African continent, DCA asked ICANN to re-write the Guidebook in DCA's favor by eliminating the most important feature of any gTLD application related to a geographic region—the support of the countries in that region. ICANN, in accordance with its Bylaws, Articles and Guidebook, properly ignored DCA's request to change the rules for DCA's benefit.

28. At its 10 April 2013 meeting in Beijing, the GAC advised ICANN that DCA's application for .AFRICA should not proceed.<sup>40</sup> As noted earlier, the GAC operates on the basis of consensus: if a single GAC member at the 10 April 2013 meeting (from any continent, not just from Africa) had opposed the advice, the advice would not have been considered “consensus.”<sup>41</sup> As such, the fact that the GAC issued consensus GAC Advice against DCA's application shows that not a single country opposed that advice. Most importantly, this included Kenya: Michael Katundu, the GAC Representative for Kenya, and Kenya's only official GAC representative, was present at the 10 April 2013 Beijing meeting and did not oppose the issuance of the consensus GAC Advice.

29. DCA attempts to argue that the GAC Advice was not consensus advice and relies solely on the purported email objection of Sammy Buruchara, Kenya's GAC advisor (as opposed to GAC representative). As a preliminary matter (and as DCA now appears to acknowledge), the GAC's Operating Principles require that votes on GAC advice be made in person. Operating Principle 19 provides that:

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organisation is not represented at that meeting. Any decision made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

Similarly, Operating Principle 40 provides:

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

25. DCA argues that Mr. Buruchara objected to the GAC Advice via email, but even if objections could be made via email (which they cannot), Mr. Katundu, Kenya's GAC representative who was in Beijing at the GAC

meeting, not Mr. Buruchara, Kenya's GAC advisor, was authorized to speak on Kenya's behalf. Accordingly, under the GAC rules, Mr. Buruchara's email exchanges could not have constituted opposition to the GAC Advice.

26. Moreover, the full text of Mr. Buruchara's emails (only a small portion of which DCA included in its IRP Notice) demonstrate that he withdrew any opposition to the issuance of the consensus GAC Advice against DCA's application. And, tellingly, DCA did not submit a declaration from Mr. Buruchara, which might have provided context or support for DCA's argument.

27. The complete email chain discussing the proposed advice included several branches and a number of drafts of, and revisions to, the proposed GAC advice. Mr. Buruchara's last email on the topic was made in response to Michel Tchongang, Cameroon's GAC representative. Mr. Tchongang had written to express his disagreement with Mr. Buruchara's earlier-expressed opposition to the proposed GAC advice. Mr. Tchongang reminded Mr. Buruchara that Kenya had previously agreed to the Abuja Declaration, and that Kenya's ICT minister had written a letter supporting the RFP process for .AFRICA. Mr. Buruchara responded that he "did not object to the AUC's position," and that while Kenya "support[ed] the AUC's preferred candidate," ZACR, he would prefer that the GAC "support/endorse the preferred candidate and leave the rest of the process to the Evaluation committee." Mr. Tchongang responded: "We are a team, let us have a unified voice." At this, Mr. Buruchara responded that "[c]ertainly as AUC, we are united on this one and I am glad my position is clarified."

28. Notably, immediately prior to becoming Kenya's GAC advisor, Mr. Buruchara had served as the chairman of DCA's Strategic Advisory Board. But despite Mr. Buruchara's close ties with DCA and with Ms. Bekele, the Kenyan government had: (i) endorsed the Abuja Declaration; (ii) supported the AUC's processes for selecting the proposed registry operator; and (iii) issued an Early Warning objecting to DCA's application.

In other words, the Kenyan government was officially on record as supporting ZACR's application and opposing DCA's application, regardless of what Mr. Buruchara was writing in emails.

29. Furthermore, correspondence produced by DCA in this proceeding (but not referenced in either of DCA's briefs) shows that, despite Ms. Bekele's and Mr. Buruchara's efforts to obtain the support (or at least non-opposition) of the Kenyan government, the Kenyan government had rescinded its earlier support of DCA in favor of ZACR. For example, in February 2013, Ms. Bekele emailed a Kenyan government official asking that Kenya issue an Early Warning regarding ZACR's application. The official responded that he would have to escalate the matter to the Foreign Ministry because the Kenyan president "was part of the leaders of the AU who endorsed AU to be the custodian of dot Africa." On 10 April 2013, Ms. Bekele emailed Mr. Buruchara, asking him to make further points objecting to the proposed GAC advice. Mr. Buruchara responded that he was unable to do so because the Kenyan government had been informed (erroneously informed, according to Mr. Buruchara), that Mr. Buruchara was "contradict[ing] the Heads of State agreement in Abuja." On 8 July 2013,

Mr. Buruchara explained to Ms. Bekele that he “stuck [his] neck out for DCA inspite [sic] of lack of Govt support.”

30. Because DCA did not submit a declaration from Mr. Buruchara (and because Ms. Bekele’s declaration is, of course, limited to her own interpretation of email correspondence drafted by others), the Panel is left with a record demonstrating that: (i) Mr.

Buruchara was not authorized by the Kenyan government to oppose the GAC Advice; (ii) even if he had been so authorized, Mr. Buruchara withdrew his initial purported opposition to the GAC Advice; and (iii) the actual GAC representative from Kenya (Mr. Katundu) attended the 10 April 2013 meeting in Beijing and did not oppose the issuance of the consensus GAC Advice that DCA’s application for .AFRICA should not proceed.

31. In short, DCA’s primary argument in support of this Independent Review proceeding—that the GAC should not have issued consensus advice against DCA’s application—is not supported by any evidence and is, instead, fully contradicted by the evidence. And, of course, Independent Review proceedings do not test whether the GAC’s conduct was appropriate (even though in this instance there is no doubt that the GAC appropriately issued consensus advice).

32. As noted above, pursuant to the Guidebook, GAC consensus advice that a particular application should not proceed creates a “strong presumption for the ICANN Board that the application should not be approved.” The ICANN Board would have been required to develop a reasoned and well-supported rationale for not accepting the consensus GAC Advice; no such reason existed at the time the NGPC resolved to accept that GAC Advice (5 June 2013), and no such reason has since been revealed. The consensus GAC Advice against DCA’s application was issued in the ordinary course, it reflected the sentiment of numerous countries on the African continent, and it was never rescinded.

33. DCA’s objection to the Board’s acceptance of the GAC Advice is twofold. First, DCA argues that the NGPC failed to investigate DCA’s allegation that the GAC advice was not consensus advice. Second, DCA argues that the NGPC should have consulted an independent expert prior to accepting the advice. DCA also argued in its IRP Notice that two NGPC members had conflicts of interest when they voted to accept the GAC Advice, but DCA does not pursue that argument in its Memorial (and the facts again demonstrate that DCA’s argument is incorrect).

34. As to the first argument, the Guidebook provides that, when the Board receives GAC advice regarding a particular application, it publishes that advice and notifies the applicant. The applicant is given 21 days from the date of the publication of the advice to submit a response to the Board. Those procedures were followed here. Upon receipt of the GAC Advice, ICANN posted the advice and provided DCA with an opportunity to respond. DCA submitted a lengthy response explaining “[w]hy DCA Trust disagree[d]” with the GAC Advice. A primary theme was that its application had been unfairly blocked by the very countries whose support the Guidebook required DCA to obtain, and that the AUC should not have been allowed to endorse an applicant for .AFRICA. DCA argued that it had been

111. The Panel understands that the GAC provides advice to the ICANN Board on matters of public policy, especially in cases where ICANN activities and policies may interact with national laws or international agreements. The Panel also understands that GAC advice is developed through consensus among member nations. Finally, the Panel understands that although the ICANN Board is required to consider GAC advice and recommendations, it is not obligated to follow those recommendations.

112. Paragraph IV of ICANN's Beijing, People's Republic of China 11 April 2013 Communiqué [Exhibit C-43] under the heading "GAC Advice to the ICANN Board" states:

**IV. GAC Advice to the ICANN Board**

**1. New gTLDs**

**a. GAC Objections to the Specific Applications**

**i. The GAC Advises the ICANN Board that:**

i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:

1. The application for .africa (Application number 1-1165-42560)

[...]

Footnote 3 to Paragraph IV.1. (a)(i)(i) above in the original text adds, "Module 3.1: The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved." A similar statement in this regard can be found in paragraph 5 of Ms. Dryden's 7 February 2014 witness statement.

113. In light of the clear "Transparency" obligation provisions found in ICANN's Bylaws, the Panel would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting DCA Trust's application.

114. The Panel would have had a similar expectation with respect to the NGPC Response to the GAC Advice regarding .AFRICA which was expressed in ANNEX 1 to NGPC Resolution No. 2013.06.04.NG01 [Exhibit C-45]. In that document, in response to DCA Trust's application, the NGPC stipulated:

The Panel finally would like to take this opportunity to fondly remember its collaboration with the Hon. Richard C. Neal (Ret. and now Deceased) and to congratulate both Parties' legal teams for their hard work, civility and responsiveness during the entire proceedings. The Panel was extremely impressed with the quality of the written work presented to it and oral advocacy skills of the Parties' legal representatives.

**This Final Declaration has sixty-three (63) pages.**

**Date: Thursday, 9 July 2015.**

**Place of the IRP, Los Angeles, California.**



Professor Catherine Kessed



Hon. William J. Cahill (Ret.)



Babak Barin, President

# Exhibit K

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INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12  
13 DOTCONNECTAFRICA TRUST,

14 Plaintiff,

15 v.

16 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS, *et*  
17 *al.*,

18 Defendants.

**CASE NO. BC607494**

Assigned to Hon. Howard L. Halm

**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



1 (“gTLDs”), including both new ASCII gTLDs and new non-ASCII, internationalized domain  
2 name gTLDs. It resulted in the submission of 1,930 applications for new gTLDs, including  
3 DCA’s and ZA Central Registry’s (“ZACR’s”) applications for the .AFRICA gTLD.

4 5. A number of “Advisory Committees” advise ICANN’s Board on various topics  
5 described in the ICANN Bylaws. The Governmental Advisory Committee (“GAC”) has  
6 members composed of national governments and distinct economies as recognized in  
7 international fora, including the United States, and its purpose is to “consider and provide advice  
8 on the activities of ICANN as they relate to concerns of governments, particularly matters where  
9 there may be an interaction between ICANN’s policies and various laws and international  
10 agreements or where they may affect public policy issues.” Bekele Decl., Ex. 4 (Bylaws, Art. XI,  
11 § 2.1).

12 **ICANN’s Accountability Mechanisms**

13 6. ICANN’s Bylaws provide for several accountability mechanisms to ensure that  
14 ICANN operates in accordance with its Articles of Incorporation, Bylaws, policies and  
15 procedures. *See* Bekele Decl., Ex. 4 (Bylaws, Arts. IV-V). For example, an aggrieved applicant  
16 can file a “request for reconsideration,” which is a mechanism that asks the ICANN Board to re-  
17 evaluate certain Board or staff actions or inactions that the applicant believes have harmed it. *Id.*  
18 (Bylaws, Art. IV, § 2). In addition, an aggrieved applicant can file a “request for independent  
19 review,” a unique process set forth in ICANN’s Bylaws that asks independent panelists to  
20 evaluate whether an action of ICANN’s Board was consistent with ICANN’s Articles of  
21 Incorporation and Bylaws. *Id.* (Bylaws, Art. IV, § 3).

22 7. The Bylaws provide for the IRP panel to issue a written determination “declar[ing]  
23 whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or  
24 Bylaws” and “recommend[ing] that the Board stay any action or decision, or that the Board take  
25 any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.”  
26 Bekele Decl., Ex. 4 (Bylaws, Art. IV, § 3.11). The ICANN Board then considers and acts on the  
27 determination. *Id.* (Bylaws, Art. IV, § 3.21).

28 8. I am informed and believe that prior to the opening of the New gTLD Program

1 application period, only one IRP had resulted in a written determination, *ICM Registry, LLC v.*  
2 *ICANN*. The *ICM* Panel declared that the determinations of IRP panels were not binding on  
3 ICANN’s Board. Attached hereto as **Exhibit E** is a true and correct copy of an excerpt of the  
4 Final Declaration of the *ICM* Panel.

5 9. To my knowledge, ICANN has never represented that IRPs are binding. Instead,  
6 ICANN has consistently argued that IRP declarations are not binding.

7 10. In the case of the *DCA* IRP, the *DCA* Panel declared that its decision would be  
8 binding on ICANN’s Board. But the question of whether the Panel’s declaration was or was not  
9 legally binding became a moot issue once ICANN’s Board elected to adopt all of the *DCA*  
10 Panel’s recommendations, contrary to the representations in Plaintiff’s Motion for Preliminary  
11 Injunction.

12 11. Specifically, on July 9, 2015, the *DCA* Panel issued its Final Declaration. Bekele  
13 Decl., Ex. 1. The *DCA* Panel determined that ICANN’s Board had violated ICANN’s Articles of  
14 Incorporation and Bylaws by accepting the GAC’s consensus advice that Plaintiff’s application  
15 for .AFRICA (“Application”) should not proceed. The *DCA* Panel therefore recommended that  
16 “ICANN continue to refrain from delegating the .AFRICA gTLD and permit [Plaintiff]’s  
17 application to proceed through the remainder of the new gTLD application process.” Bekele  
18 Decl., Ex. 1 ¶ 149.

19 12. ICANN’s Board promptly considered and adopted each of the *DCA* Panel’s  
20 recommendations. On July 16, 2015, the Board resolved to “continue to refrain from delegating  
21 the .AFRICA gTLD,” “permit [Plaintiff]’s] application to proceed through the remainder of the  
22 new gTLD application process,” and “reimburse *DCA* for the costs of the IRP.” Attached hereto  
23 as **Exhibit F** is a true and correct copy of ICANN Board Resolutions 2015.07.16.01-05, adopting  
24 the *DCA* Panel’s recommendations.

25 13. In the event ICANN is permitted to delegate the .AFRICA gTLD to ZACR, a  
26 transfer or assignment of the gTLD in the future would still be possible, feasible and consistent  
27 with ICANN’s previous conduct. In fact, over forty gTLDs have had their registry contracts  
28 transferred from one registry operator to a different registry operator, *i.e.*, transferred for

1 operation by a different registry operator than the operator when the registry contract was initially  
2 executed. These transfers have occurred for a number of reasons, and transfers are not limited to  
3 situations where a registry's contract with ICANN was expiring.

4 14. Nor is there any truth to DCA's argument in its Motion (at p. 12) that "the U.S.  
5 government's ties with ICANN ceased" and therefore "the current procedure for gTLD re-  
6 delegation is uncertain." In fact, nothing about the recent transition of the Internet Assigned  
7 Numbers Authority ("IANA") functions from the United States government to ICANN has any  
8 effect whatsoever upon the fact that it is possible to transfer the rights to operate a new gTLD  
9 from one registry operator to another, post-delegation.

10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct.

12 Executed this 9<sup>th</sup> day of December 2016, in Los Angeles, California.

13   
14 \_\_\_\_\_  
Akram Atallah

# Exhibit L

1 Jeffrey A. LeVee (State Bar No. 125863)  
Erin L. Burke (State Bar No. 186660)  
2 Rachel Tessa Gezerseh (State Bar No. 251299)  
Amanda Pushinsky (State Bar No. 267950)  
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7  
8 Attorneys for Defendant  
INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12  
13 DOTCONNECTAFRICA TRUST,  
14 Plaintiff,  
15 v.  
16 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS, *et*  
17 *al.*,  
18 Defendants.

**CASE NO. BC607494**  
Assigned for all purposes to  
Hon. Howard L. Halm  
**DECLARATION OF CHRISTINE  
WILLETT IN SUPPORT OF ICANN'S  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**  
DATE: December 22, 2016  
TIME: 8:30 a.m.  
DEPT: 53

1 **DECLARATION OF CHRISTINE WILLETT**

2 I, Christine Willett, declare the following:

3 1. I am the Vice President for Operations of the Global Domains Division of the  
4 Internet Corporation for Assigned Names and Numbers (“ICANN”), a defendant in this action. I  
5 have personal knowledge of the matters set forth herein and am competent to testify as to those  
6 matters. I make this declaration in support of ICANN’s opposition to DotConnectAfrica Trust’s  
7 (“DCA’s” or “Plaintiff’s”) Motion for a Preliminary Injunction.

8 2. In my role as Vice President for Operations, I have been responsible for  
9 overseeing the evaluation of the 1,930 gTLD applications ICANN received in 2012 as part of  
10 ICANN’s New gTLD Program. Those applications are evaluated in accordance with the  
11 procedures set forth in the New gTLD Applicant Guidebook (“Guidebook”). A copy of the  
12 Guidebook is attached as Exhibit 3 to the declaration of Sophia Bekele Eshete (“Bekele  
13 Declaration”).

14 3. In the spring of 2012, Plaintiff DCA and defendant ZA Central Registry (“ZACR”)  
15 each submitted applications to operate the .AFRICA gTLD. In doing so, they, like all new gTLD  
16 applicants, expressly accepted and acknowledged the Guidebook, including the release and  
17 covenant not to sue (“Covenant”) in paragraph 6 of Module 6.

18 4. In order to ensure the safety and stability of the domain name system, new gTLD  
19 operators are required to demonstrate that they are stable business entities that have the  
20 significant technical and financial wherewithal required to operate a gTLD registry, and pay a  
21 \$185,000 application fee.

22 5. The new gTLD application was complex and required considerable detail. A list  
23 of the information new gTLD applicants were required to submit with their applications can be  
24 found in the Guidebook. Bekele Decl., Ex. 3 at A1-46. Among other things, each applicant was  
25 required to submit an extensive, technical explanation of its plans for operating a gTLD registry,  
26 and evidence of financial support.

27 6. In addition, because DCA and ZACR had each applied for a gTLD that represents  
28 the name of a geographic region, the Guidebook requires that DCA and ZACR each provide

1 documentation of support or non-objection from at least 60% of the governments in the region.  
2 Bekele Decl. Ex. 3 § 2.2.1.4.2. The Guidebook also provides that a Geographic Names Panel  
3 operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of  
4 an applicant’s documentation of support. *Id.* §§ 2.4.2, 2.2.1.4.4. The Geographic Names Panel  
5 evaluated the support letters submitted by the applicants pursuant to the criteria set forth in the  
6 Guidebook. In particular, section 2.2.1.4.3 of the Guidebook required that letters of support for a  
7 geographic name “clearly express the government’s or public authority’s support for or non-  
8 objection to the applicant’s application and demonstrate the government’s or public authority’s  
9 understanding of the string being requested and its intended use.” It further requires that a letter  
10 of support “should demonstrate the government’s or public authority’s understanding that the  
11 string is being sought through the gTLD application process and that the applicant is willing to  
12 accept the conditions under which the string will be available, i.e., entry into a registry agreement  
13 with ICANN requiring compliance with consensus policies and payment of fees.” The  
14 Geographic Names Panel treated both of these requirements as mandatory for all applicants  
15 (including DCA and ZACR).

16 7. DCA submitted with its application for .AFRICA (“Application”) what it called a  
17 letter of support dated in 2009 (three years earlier) from the African Union Commission  
18 (“AUC”). A copy of that letter is attached as Exhibit 6 to the Bekele Declaration. I now  
19 understand that, in 2010, DCA had received a letter from the AUC that formally withdrew the  
20 AUC’s support for DCA’s Application for the .AFRICA gTLD. A copy of that letter is attached  
21 as Exhibit 7 to the Bekele Declaration. DCA did not submit to ICANN with its Application a  
22 copy of the AUC’s 2010 letter withdrawing its support for DCA.

23 8. DCA also submitted with its Application an August 2008 letter from the United  
24 Nations Economic Commission for Africa (“UNECA”). A copy of that letter is attached as  
25 Exhibit 8 to the Bekele Declaration. In September 2015, UNECA wrote in a letter that it was a  
26 “United Nations entity [that] is neither a government nor public authority and therefore is not  
27 qualified to issue a letter of support for a prospective applicant,” and that its August 2008 letter  
28 was “merely an expression of a view in relation to [DCA’s] initiatives and efforts regarding

1 internet governance . . . [and] cannot be properly considered as a ‘letter of support’ within the  
2 context of ICANN’s requirements and cannot be used as such.” A true and correct copy of  
3 UNECA’s September 2015 letter is attached as Exhibit 10 to the Bekele Declaration.

4 9. On June 5, 2013, at the time when ICANN’s Board accepted the Governmental  
5 Advisory Committee’s (“GAC’s”) advice objecting to DCA’s Application, DCA had not yet  
6 passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been  
7 in the midst of its review of DCA’s Application; it had determined that the support documentation  
8 submitted by DCA, including the letters from the AUC and UNECA, did not meet the criteria set  
9 forth in the Guidebook, and was therefore planning to send “clarifying questions” to DCA.  
10 Clarifying questions are sent where support documentation does not meet the criteria set forth in  
11 the Guidebook, and they are an accommodation to provide applicants an opportunity to  
12 explain/supplement their documentation. However, as a result of the ICANN Board’s acceptance  
13 of the GAC’s advice, DCA’s Application was removed from processing, and the clarifying  
14 questions were not sent at that time.

15 10. By July 31, 2015, following the ICANN Board’s adoption of the recommendations  
16 of the Independent Review Panel in *DCA v. ICANN* (“IRP Panel”), DCA’s Application was  
17 returned to processing as the Board directed. DCA’s Application was returned to precisely the  
18 portion of the review that was pending on the date the Application was removed from  
19 processing—the Geographic Names Panel review. As the Geographic Names Panel had been  
20 preparing to do when DCA’s Application was removed from processing, the Geographic Names  
21 Panel issued clarifying questions to DCA on September 2, 2015, regarding the documentation  
22 DCA had submitted with its Application. Those clarifying questions are attached as Exhibit 13 to  
23 the Bekele Declaration. DCA was given an opportunity to respond to those clarifying questions.  
24 Instead of supplementing its documentation, DCA wrote to ICANN on September 28, 2015,  
25 taking the position that the documentation that it had submitted with its Application in 2012 was  
26 sufficient.

27 11. On October 13, 2015, ICANN issued the Initial Evaluation Report regarding  
28 DCA’s Application. The Initial Evaluation Report noted that the Application had passed all

1 reviews except for the Geographic Names Panel review. As provided by the Guidebook, the  
2 report stated that DCA would have the opportunity to participate in “Extended Evaluation,”  
3 which offered DCA additional time to provide the requisite documentation of support or non-  
4 objection from African governments. A true and correct copy of the Initial Evaluation Report is  
5 attached hereto as **Exhibit A**.

6 12. As part of Extended Evaluation, the Geographic Names Panel again issued  
7 clarifying questions to DCA on October 30, 2015, identifying the issues with the documented  
8 support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele  
9 Declaration. DCA was given until January 28, 2016, to supplement its documentation. However,  
10 rather than supplementing its documentation, DCA submitted a letter from its counsel and again  
11 took the position that the documentation that it had submitted with its Application in 2012 was  
12 sufficient.

13 13. Notably, nearly identical clarifying questions were sent to ZACR in 2013 when  
14 ZACR’s application for .AFRICA was undergoing Geographic Name Review. True and correct  
15 copies of the clarifying questions issued to ZACR related to the AUC and UNECA letters are  
16 attached hereto as **Exhibits B and C**. Unlike DCA, ZACR submitted an updated letter from the  
17 AUC endorsing ZACR on July 3, 2013. That letter is attached as Exhibit A to Exhibit 2 of the  
18 Declaration of Sara Colón (“Colón Decl.”).

19 14. On February 17, 2016, ICANN issued an Extended Evaluation Report stating that  
20 the Geographic Names Panel had determined that DCA had failed to provide the requisite  
21 documentation of support or non-objection from relevant governments, despite the extended  
22 opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the  
23 Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing  
24 DCA’s Application. (Guidebook at 174 (§ 2.2.1.4.4).)

25 15. On March 3, 2016, ICANN’s Board adopted a resolution lifting the stay on the  
26 delegation of .AFRICA. A true and correct copy of the Board’s March 3, 2016 resolution is  
27 attached to this declaration as **Exhibit D**. ICANN is now prepared to delegate the rights to  
28 operate .AFRICA to ZACR. However, ICANN has voluntarily stayed the delegation pending the

1 Court's ruling on DCA's Motion for Preliminary Injunction. *See* Colón Decl. ¶ 2.

2 16. As described in the concurrently-filed declaration of Akram Atallah, ICANN's  
3 Bylaws provide for several accountability mechanisms to ensure that ICANN operates in  
4 accordance with its Articles of Incorporation, Bylaws, policies and procedures. For example, an  
5 aggrieved applicant can file a "request for reconsideration," which is a mechanism that asks the  
6 ICANN Board to re-evaluate certain Board or staff actions or inactions that the applicant believes  
7 have harmed it. In addition, an aggrieved applicant can file a "request for independent review," a  
8 unique process set forth in ICANN's Bylaws that asks independent panelists to evaluate whether  
9 an action of ICANN's Board was consistent with ICANN's Articles of Incorporation and Bylaws.  
10 Bekele Decl., Ex. 4 (Bylaws, Art. IV, §§ 2-3). DCA could have filed, but did not file, a  
11 reconsideration request or a request for an independent review process ("IRP") related to the  
12 clarifying questions issued to it, or to the determination that DCA had failed the Geographic  
13 Names Review.

14 I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct.

16 Executed this 8th day of December 2016, in Los Angeles, California.

17  
18 

19 \_\_\_\_\_  
Christine A. Willett

1 **PROOF OF SERVICE**

2 I, Yolanda G. Ybuan, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On  
6 November 17, 2017, I served a copy of the within document(s):

7 **DEFENDANT ICANN’S NOTICE OF MOTION AND MOTION  
8 FOR PROTECTIVE ORDER; MEMORANDUM OF POINTS AND  
9 AUTHORITIES**

10 **DECLARATION OF AMANDA PUSHINSKY IN SUPPORT OF  
11 MOTION FOR PROTECTIVE ORDER**

12 **[PROPOSED] ORDER GRANTING DEFENDANT ICANN’S NOTICE OF  
13 MOTION AND MOTION FOR PROTECTIVE ORDER**

- 14  by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- 15  by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- 16  by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below as noted.
- 17  by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 17, 2017, at Los Angeles, California.



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Yolanda G. Ybuan