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 9 INTERNET CORPORATION FOR
 ASSIGNED NAMES AND NUMBERS

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**
 12 **WESTERN DIVISION**

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 14 DOTCONNECTAFRICA TRUST, a
 Mauritius Charitable Trust,

15 Plaintiff,

16 v.

17 INTERNET CORPORATION FOR
 18 ASSIGNED NAMES AND
 NUMBERS, etc., et al.,

19 Defendant.

Case No. 2:16-cv-00862-RGK
 (JCx)

Assigned for all purposes to the
 Honorable R. Gary Klausner

**ICANN'S RESPONSE TO
 PLAINTIFF'S EVIDENTIARY
 OBJECTIONS TO
 DECLARATION OF
 CHRISTINE WILLETT**

Date: April 4, 2016
 Time: 9:00 a.m.
 Ctrm: 850

1 Defendant Internet Corporation for Assigned Names and Numbers
 2 (“ICANN”) hereby responds to Plaintiff DotConnectAfrica Trust’s objections to the
 3 Declaration of Christine Willett:

Willett Declaration	Plaintiff’s Objection	ICANN’s Response	Court’s Ruling
<p>4 ¶2: “Those 5 applications are 6 evaluated in 7 accordance with 8 the procedures set 9 forth in the New 10 gTLD Applicant 11 Guidebook 12 (“Guidebook”).”</p>	<p>Lacks foundation [Fed. R. Evid. 602] and the Guidebook is the best evidence of the Guidebook [Fed. R. Evid. 1002]. In fact, the IRP Panel already concluded that DCA’s application was not handled in accordance with ICANN’s Bylaws, Articles and rules.</p>	<p>Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she was responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the procedures governing the evaluation of New gTLD applications.</p>	
<p>22 ¶3: “In the spring 23 of 2012, Plaintiff 24 and ZA Central 25 Registry (“ZACR”) each submitted 26 applications to 27 operate the 28 .AFRICA gTLD. In doing so, they, like all new gTLD</p>	<p>Conclusory, lacks foundation, lacks personal knowledge [Fed. R. Evid. 602].</p>	<p>Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN and that in that role she was responsible for overseeing the</p>	

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Willett Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
<p>applicants, expressly accepted and acknowledged the Guidebook, including the release and covenant not to sue found in paragraph 6 of Module 6.”</p>		<p>evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge regarding the applications received as part of the New gTLD Program, as well as regarding the Terms and Conditions to which New gTLD applicants agreed.</p>	
<p>¶5: “The new gTLD application was complex and required considerable detail. A list of the information new gTLD applicants were required to submit with their applications can be found in the Guidebook. (Guidebook at 201-42 (A-1 -A46).) Among other things, each applicant was required to submit</p>	<p>Completeness doctrine [Fed. R. Evid. 106] The Guidebook is the best evidence of the Guidebook [Fed. R. Evid. 1002].</p>	<p>Exhibit A contains all the portions of Plaintiff's Application that ICANN believes are relevant to the determination of Plaintiff's Motion for Preliminary Injunction. Plaintiff is in possession of its own Application and was free to enter the full Application into the record, as provided by Fed. R. Evid. 106.</p>	

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<p>an extensive, technical explanation of its plans for operating a gTLD registry. Attached hereto as Exhibit A is a true and correct copy is a partial excerpt of the technical explanation Plaintiff submitted as part of its New gTLD Application. As required, Plaintiff also submitted evidence of substantial financial support for its Application.”</p>		<p>The Court may refer to the Guidebook, which is part of the record. (Eshete Decl. Ex. 3, ECF. No. 17-3.)</p>	
<p>¶6: “In addition, because Plaintiff and ZACR had each applied for a gTLD that represents the name of a geographic region, in this instance, a continent, the Guidebook requires that Plaintiff and ZACR each provide documentation of support or non-objection from at</p>	<p>The Guidebook is the best evidence of the Guidebook [Fed. R. Evid. 1002].</p>	<p>The Court may refer to the Guidebook, which is part of the record. (Eshete Decl. Ex. 3, ECF. No. 17-3.)</p>	

	Willett Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>least 60% of the governments in the region. (Eshete Decl. Ex. 3 (“Guidebook”) at 170-72 (§2.2.1.4.2).) The Guidebook also provides that a Geographic Names Panel operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of an applicant’s documentation of support. (<i>Id.</i> At 173-175 (§2.2.1.4.4).) The Guidebook contemplated the possibility that more than one application for a geographic gTLD would be determined to have the requisite support and would also pass all of the other evaluations (technical, financial and so forth). In the event that both are</p>			

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20</p>	<p>supported by the same government or public authority, and that government or public authority so requests, the applications are placed in a "contention set" that could be resolved via an auction or other processes since only one registry operator can operate a Top Level Domain consisting of the exact same letters. (<i>Id.</i>) Otherwise, assuming that the applicants do not reach a resolution amongst themselves, their applications will be rejected. (<i>Id.</i>)”¹</p>			
<p>21 22 23 24 25 26 27 28</p>	<p>¶7: “Plaintiff submitted with its Application what it called a letter of support dated in 2009 (three years earlier) from the African Union Commission (“AUC”). A copy of that letter is</p>	<p>Lacks personal knowledge, lacks foundation, and speculative [Fed. R. Evid. 602]. Prejudicial [Fed. R. Evid. 403; Bekele Decl. ¶15, Ex. 7 (Unlike the initial letter of support from the</p>	<p>Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN and that in that role she was responsible for overseeing the evaluation of</p>	

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>	<p>attached as Exhibit 6 to the Eshete Declaration. I have been informed that in 2010, Plaintiff had received a letter from the AUC (and all of the African governments that were its members) that formally withdrew the AUC's support for Plaintiff. A copy of that letter is attached as Exhibit 7 to the Eshete Declaration. Plaintiff did not submit with its Application to ICANN the 2010 letter from the AUC to Plaintiff withdrawing its support for Plaintiff.</p>	<p>AUC, the subsequent letter omitted any official stamp, was not signed by the AUC Chairman, and instead was signed by Mr. Yedaly)]. The statement is also materially misleading because it fails to state that DCA specifically identified the purported withdrawal in its application to ICANN [Fed. R. Evid. 403].</p>	<p>applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge regarding the documents Plaintiff submitted with its Application.</p> <p>Plaintiff does not dispute Ms. Willett's testimony that Plaintiff did not submit with its Application the AUC's 2010 letter.</p> <p>Plaintiff does not explain how Ms. Willett's testimony regarding the AUC's 2010 letter is in any way prejudicial. The testimony is directly relevant to Plaintiff's claims, insofar as it demonstrates that Plaintiff knew or should have known at the time it submitted its Application that</p>	

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		Plaintiff did not have the requisite support of African governments, a critical component of the application.	
<p>¶9: "On June 5, 2013, at the time when ICANN's Board accepted the Governmental Advisory Committee's ("GAC's") advice objecting to Plaintiff's Application, Plaintiff had already passed all of the Initial Evaluation reviews except for the Geographic Names Panel review. At that time, the Geographic Names Panel was in the midst of its review of Plaintiff's Application; it had determined that the documented support submitted by Plaintiff, including the letters from the AUC and UNECA, did not meet the</p>	<p>Lacks foundation [Fed. R. Evid. 602].</p>	<p>Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN and that in that role she was responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of regarding the evaluation of New gTLD applications.</p>	

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>criteria set forth in the Guidebook, and was therefore planning to send "clarifying questions" to Plaintiff. Clarifying questions are sent where documented support does not meet the criteria set forth in the Guidebook and are an accommodation to provide applicants an opportunity to explain/supplement their documentation. However, as a result of the ICANN Board's acceptance of the GAC's advice, Plaintiff's Application was removed from further processing, and the clarifying questions were not sent at that time."</p>			
<p>25 26 27 28</p>	<p>¶10. "By July 31, 2015 following ICANN's Board's adoption of the recommendations of the independent</p>	<p>Lacks foundation and conclusory [Fed. R. Evid. 602; Local Rule 7-7 (Declarations shall contain only</p>	<p>Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division</p>	

	Willett Declaration	Plaintiff's Objection	ICANN's Response	Court's Ruling
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>review panel in <i>DCA v. ICANN</i> ("IRP Panel"), Plaintiff's Application was returned to processing as the Board directed. Contrary to what Plaintiff argues on page 1 of its motion for preliminary injunction, Plaintiff's Application was not returned to the "beginning of the process." Instead it was returned to precisely the portion of the review that was pending on the date the Application was removed from processing – the Geographic Names Panel review. As the Geographic Names Panel had been preparing to do when Plaintiff's Application was removed from processing, the Geographic Names Panel sent Plaintiff</p>	<p>factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P. 56(c)(4)]. The clarifying questions are the best evidence of the clarifying questions [Fed. R. Evid. 1002; Bekele Decl. ¶24, Ex. 15].</p>	<p>of ICANN and that in that role she was responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of regarding the evaluation of New gTLD applications, and Plaintiff does not explain why she might not have such knowledge.</p> <p>The Court may refer to the clarifying questions, which are part of the record. (Eshete Decl. Ex. 15, ECF No. 17-15.)</p>	

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18</p>	<p>clarifying questions regarding the documentation Plaintiff had submitted with its Application. Those clarifying questions are attached as Exhibit 15 to the Eshete Declaration. Plaintiff was given an opportunity to respond to those questions. Instead of supplementing its documentation, Plaintiff took the position that the documentation it had submitted with its Application in 2012 was sufficient.”</p>			
<p>19 20 21 22 23 24 25 26 27 28</p>	<p>¶14: “Accordingly, on March 3, 2016, ICANN’s Board adopted a resolution lifting the stay on the delegation of .AFRICA, a stay that had been in place since 2014 and continued pending ICANN’s full compliance with the IRP</p>	<p>Lacks personal knowledge, lacks foundation, and conclusory [Fed. R. Evid. 602; Local Rule 7-7 (Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of F.R.Civ.P.</p>	<p>Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN and that in that role she was responsible for overseeing the evaluation of applications received as part of the New gTLD</p>	

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<p>Panel's recommendation that ICANN resume its evaluation of Plaintiff's Application for .AFRICA. A true and correct copy of the Board's resolution is attached to this declaration as Exhibit C."</p>	<p>56(c)(4)]. The best evidence of the March 3, 2016 Board resolution is the March 3, 2016 Board resolution. Prejudicial [Fed. R. Evid. 403 (DCA's Motion for Preliminary Injunction was filed on March 1, 2016 and TRO was filed on March 2, 2016.)].</p>	<p>Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge regarding the ICANN Board's March 3, 2016 resolution with respect to .AFRICA and is competent to authenticate that resolution.</p> <p>The Court may refer to the March 3, 2016 resolution, which is part of the record. (Willett Decl. Ex. C, ECF No. 39-3.)</p> <p>Plaintiff does not explain how Ms. Willett's testimony regarding the March 3, 2016 is in any way prejudicial.</p>	

Dated: March 28, 2016

JONES DAY

By: /s/ Jeffrey A. LeVee
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS