

No. 16-55693

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DOTCONNECTAFRICA TRUST,

Plaintiff/Appellee,

v.

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

Defendant/Appellant.

On Appeal from the United States District Court
for the Central District of California, No. 2:16-CV-00862-RGK
The Honorable R. Gary Klausner

**EXCERPTS OF RECORD
VOLUME 7 OF 7
(ER-1375-1668)**

Craig E. Stewart
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939

Jeffrey A. LeVee
Rachel T. Gezerseh
Charlotte Wasserstein
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071.2300
Telephone: (213) 489-3939

Attorneys for Defendant/Appellant
INTERNET CORPORATION
FOR ASSIGNED NAMES AND
NUMBERS

No. 16-55693

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

EXCERPTS OF RECORD

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
119	6/27/2016	ICANN's Amended Notice of Appeal	1	ER-1 – ER-2
119-1	6/27/2016	Exhibit 1 Order re: Plaintiff's Motion for Preliminary Injunction; Exhibit 2 June 20 Court Order Denying Reconsideration of Previous Order Granting the Preliminary Injunction and Exhibit 3 ICANN's Representation Statement	1	ER-3 – ER-20
113	6/20/2016	Order re: Defendants Motion for Reconsideration re Order on Motion for Preliminary Injunction	1	ER-21 – ER-24
89	5/11/2016	Notice of Appeal	1	ER-25 – ER-39
75	1/12/2016	Order Granting Motion for Preliminary Injunction	1	ER-40 – ER-47

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
112	6/14/2016	Order Granting ZACR Motion to Dismiss	2	ER-48 – ER-52
97-1	5/23/2016	Supplemental Declaration of Mokgabudi Lucky Masilela in Support of ZACR's Motion to Reconsider and Vacate Preliminary Injunction Ruling	2	ER-53 – ER-56
97-2	5/23/2016	Exhibit A Summary of the Average Costs from July 2015 to April 2016	2	ER-57 – ER-60
97-3	5/23/2016	Exhibit B Exemplar Printouts of Redelegations	2	ER-62 – ER-81
97-4	5/23/2016	Exhibit C Printouts which Discuss Redelegations of gTLDs	2	ER-82 – ER-92
97-5	5/23/2016	Exhibit D Geographic Names Panel Clarifying Questions submitted by ICANN's	2	ER-93 – ER-95
97-9	5/23/2016	Declaration of Akram Atallah in Support of Defendant ZACR's Motion to Reconsider and Vacate Preliminary Injunction Ruling	2	ER-96 – ER-97
93	5/16/2016	Declaration of Sophia Bekele Eshete	2	ER-98 – ER-101
92	5/16/2016	Declaration of Sara C. Colon	2	ER-102 – ER-105

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
92-1	5/16/206	Exhibit 1 Contract SA 1301-12-CN-0035	2	ER-106 – ER-171
92-2	5/16/206	Exhibit 2 ICANN’s press release “Plan to Transition Stewardship of Key Internet Functions Sent to the U.S. Government”	2	ER-172 – ER-177
92-3	5/16/206	Exhibit 3 Internal Review Panel’s (“IRP”) Decision on Interim Measures of Protection	2	ER-178 – ER-191
92-4	5/16/206	Exhibit 4 March 8, 2016 email to Lucky Masilela	2	ER-192 – ER-193
92-5	5/16/206	Exhibit 5 April 1, 2016 email chain	2	ER-194 – ER-196
86	5/10/2016	Defendant Internet Corporation for Assigned Names and Numbers’ Joinder in Defendant ZACR’s Motion to Reconsider and Vacate Preliminary Injunction Ruling	2	ER-197 – ER-198
85-1	5/6/2016	Memorandum of Points and Authorities in Support of ZACR’s Motion to Reconsider and Vacate Preliminary Injunction Ruling	2	ER-199– ER-220
85-2	5/6/2016	Declaration of David W. Kesselman in Support of ZACR’s Motion to Reconsider and Vacate Preliminary	2	ER-221 – ER-222

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
		Injunction Ruling		
85-3	5/6/216	Declaration of Mokgabudi Lucky Masilela in Support of Defendant ZACR's Motion to Reconsider and Vacate Preliminary Injunction Ruling	2	ER-223 – ER-228
85-4	4/26/2016	Exhibit A-E to the Declaration of Mokgabudi Lucky Masilela	2	ER-229 – ER-338
46	3/21/2016	Declaration of Sara C. Colon	3	ER-339 – ER-342
46-1	3/21/2016	Exhibit 1 ICANN's 2014 Annual Report	3	ER-343 – ER-409
46-2	3/21/2016	Exhibit 2 ICANN's 2026 Operation Plan & Budget	3	ER-410 – ER-483
46-3	3/21/2016	Exhibit 3 July 15, 2015 letter from Defendant ZA Central Registry	3	ER-484 – ER-493
45	3/21/2016	Supplemental Declaration of Sophia Bekele Eshete	3	ER-494 – ER-496
45-1	3/21/2016	Exhibit 1 Excerpt of DCA's .Africa gTLD Application	3	ER-497 – ER-503
45-2	3/21/2016	Exhibit 2 June 25, 2013 Email and attachment from Trang Nguyen	3	ER-504 – ER-507

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
45-3	3/21/2016	Exhibit 3 September 22, 2015 Letter from The United Nations Economic Commission for Africa	3	ER-508 – ER-511
42	3/17/2016	Unredacted Exhibits 19 & 23-25 to Sophia Bekele Eshete Declaration in Support of Motion for Preliminary Injunction	3	ER-512 – ER-525
40	3/14/2016	Declaration of Moctar Yedaly in Support of ICANN's Opposition to Plaintiff's Motion for Preliminary Injunction	3	ER-526 – ER-531
40-1	3/14/2016	Exhibit A August 7, 2010 Abuja Declaration	3	ER-532 – ER-537
40-2	3/14/2016	Exhibit B GAC Early Warning – Submittal Africa–AUC–42560	3	ER-538 – ER-617
40-3	3/14/2016	Exhibit C 11 April 2013 GAC Communiqué – Beijing, People's Republic of China	3	ER-618 – ER-630
40-4	3/14/2016	Exhibit D June 2, 2014 AUC Letter to ICANN	3	ER-631 – ER-633
39	3/14/2016	Declaration of Christine Willett in Support of Defendant ICANN's Opposition to Plaintiff's Motion for Preliminary Injunction	4	ER-634 – ER-639

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
39-1	3/14/2016	Exhibit A Excerpts of the technical explanation Plaintiff submitted as part of its New gTLD Application	4	ER-640 – ER-651
39-2	3/14/2016	Exhibit B UNECA's September 2015 Letter	4	ER-652 – ER-654
39-3	3/14/2016	Exhibit C The Board's March 3, 2016 resolution	4	ER-655 – ER-672
38	3/14/2016	Declaration of Jeffrey A. LeVee	4	ER-673 – ER-677
38-1	3/14/2016	Exhibit A Excerpt of the Declaration of Sophia Bekele Eshete	4	ER-678 – ER-686
37	3/14/2016	Declaration of Kevin Espinola in Support of Defendant ICANN's Opposition to Plaintiff's Motion for Preliminary Injunction	4	ER-687 – ER-691
37-1	3/14/2016	Exhibit A Plaintiff's Comment.	4	ER-692 – ER-693
37-2	3/14/2016	Exhibit B Excerpt of the New gTLDs Proposed Final Applicant Guidebook Public Comment Summary	4	ER-694 – ER-697
37-3	3/14/2016	Exhibit C Module 6 of the April 2011 Guidebook	4	ER-698 – ER-703

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
37-4	3/14/2016	Exhibit D ICANN Board-GAC Consultation Legal Recourse for New Gtld Registry Applicants	4	ER-704 – ER-712
37-5	3/14/2016	Exhibit E Excerpt of Public Comments to the February 2009 Guidebook	4	ER-713 – ER-715
37-6	3/14/2016	Exhibit F 25 September Adopted Resolutions	4	ER-716 – ER-728
36	3/14/2016	Declaration of Akram Atallah in Support of ICANN’s Opposition to Plaintiff’s Motion for Preliminary Injunction	4	ER-729 – ER-733
36-1	3/14/2016	Exhibit A Excerpt of the final Declaration of the ICM Panel	4	ER-734 – ER-737
36-2	3/14/2016	Exhibit B ICANN Board Resolutions 2015.07.16.01-05	4	ER-638 – ER-751
27	3/4/2016	Order re: Temporary Restraining	4	ER-752 – ER-753
17	3/1/2016	Declaration of Sophia Bekele Eshete	4	ER-754 – ER-760
17-01	3/1/2016	Exhibit 1 Internet Corporation for Assigned Names and Numbers (“ICANN”) Internal Review Process (“IRP”) Final Declaration dated July 9, 2015	4	ER-761 – ER-824

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
17-02	3/1/2016	Exhibit 2 ICANN IRP Declaration on the IRP Procedure dated August 14, 2014	4	ER-825 – ER-858
17-03	3/1/2016	Exhibit 3 ICANN's gTLD Applicant Guidebook	5	ER-859 – ER-1157
17-03 Cont.	3/1/2016	Exhibit 3 ICANN's gTLD Applicant Guidebook	6	ER-1158 – ER-1197
17-04	3/1/2015	Exhibit 4 Bylaws for Internet Corporation for Assigned Names and Numbers	6	ER-1198 – ER-1306
17-05	3/1/2015	Exhibit 5 ICANN Reconsideration and Independent Review by Laws Article IV Accountability and Review	6	ER-1307 – ER-1310
17-06	3/1/2015	Exhibit 6 August 27, 2009 DCA endorsement letter from the AUC	6	ER-1311 – ER-1312
17-07	3/1/2016	Exhibit 7 April 16, 2010 letter from the AUC	6	ER-1313 – ER-1314
17-08	3/1/2016	Exhibit 8 August 8, 2008 DCA endorsement letter from the United Nations Economic Commission on Africa	6	ER-1315 – ER-1316

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
17-09	3/1/2016	Exhibit 9 March 23, 2014 email from Alice Munyua	6	ER-1317 – ER-1319
17-10	3/1/2016	Exhibit 10 September 21, 2015 letter from UNECA to Dr. Ibrahim, a representative of the AUC	6	ER-1320 – ER-1323
17-11	3/1/2016	Exhibit 11 December 5, 2010 DCA endorsement letter from the Internationalized Domain Resolution Union	6	ER-1324 – ER-1325
17-12	3/1/2016	Exhibit 12 November 17, 2010 DCA endorsement letter from the Corporate Council on Africa	6	ER-1326 – ER-1327
17-13	3/1/2016	Exhibit 13 August 7, 2012 endorsement letter from Kenya	6	ER-1328 – ER-1330
17-14	3/1/2016	Exhibit 14 March 8, 2012 letter from ICANN to AUC	6	ER-1331 – ER-1340
17-15	3/1/2016	Exhibit 15 First set of clarifying questions ICANN issued to DCA on September 2, 2015	6	ER-1341 – ER-1351
17-16	3/1/2016	Exhibit 16 ICANN's response to DCA regarding the clarifying questions in the Initial Evaluation Results Report issued	6	ER-1352 – ER-1354

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
		on October 13, 2015		
17-17	3/1/2016	Exhibit 17 Second set of clarifying questions ICANN issued to DCA on October 30, 2015	6	ER-1355 – ER-1365
17-18	3/1/2016	Exhibit 18 New gTLD Program Extended Evaluation Report Date 17 February 2016	6	ER-1366 – ER-1367
17-19	3/1/2016	Exhibit 19 March 15, 2013 email from Mark McFadden of the ICC to ICANN employees	6	ER-1368 – ER-1374
17-20	3/1/2016	Exhibit 20 ZACR's public application for the .Africa gTLD	7	ER-1375 – ER-1463
17-21	3/1/2016	Exhibit 21 AUC Communique on the AUC selecting ZACR	7	ER-1464 – ER-1468
17-22	3/1/2016	Exhibit 22 ICANN news article regarding InterConnect Communications	7	ER-1469 – ER-1472
17-23	3/1/2016	Exhibit 23 October 15, 2012 email from the ICC to ICANN with attachment	7	ER-1473 – ER-1476
17-24	3/1/2016	Exhibit 24 October 15, 2012 email from the ICC to ICANN with attachment	7	ER-1477 – ER-1478
17-25	3/1/2016	Exhibit 25 April 9, 2013 email from Samuel	7	ER-1479 –

ECF No.	DATE	DESCRIPTION	VOL.	PAGE
		Buruchara to Heather Dryden		ER-1480
17-26	3/1/2016	Exhibit 26 April 11, 2013 GAC Communique	7	ER-1481 – ER-1493
17-27	3/1/2016	Exhibit 27 New GTLD Program Initial Evaluation Report for ZACR's application	7	ER-1494 – ER-1496
17-28	3/1/2016	Exhibit 28 March meeting schedule	7	ER-1497 – ER-1500
17-29	3/1/2016	Exhibit 29 GAC Operating Principles	7	ER-1501 – ER-1508
16	3/1/2016	Notice of Motion and Motion for Preliminary Injunction; Memorandum of Points and Authorities	7	ER-1509 – ER-1535
16-1	3/1/2016	Declaration of Ethan J. Brown in Support of Plaintiff's Motion for Preliminary Injunction	7	ER-1536 – ER-1537
10	2/26/2016	Plaintiff's First Amended Complaint	7	ER-1538 – ER-1567
1	2/8/2016	Notice of Removal	7	ER-1568 – ER-1656
		Case No 16-cv-00862-RGK-JC Docket Index	7	ER-1657 – ER-1668

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 1 of 89 Page ID #:973

EXHIBIT 20



New gTLD Application Submitted to ICANN by: ZA Central Registry NPC trading as Registry.Africa

Application Downloaded On: 17 Feb 2014

String: africa

Application ID: 1-1243-89583

Applicant Information

1. Full legal name

[ZA Central Registry NPC trading as Registry.Africa](#)

2. Address of the principal place of business

Contact Information Redacted

3. Phone number

Contact Information Redacted

4. Fax number

Contact Information Redacted

5. If applicable, website or URL

<http://www.AfricaInOneSpace.org>

Primary Contact

6(a). Name

[Neil Dundas](#)

6(b). Title

[Director](#)

6(c). Address

6(d). Phone Number

Contact Information Redacted

6(e). Fax Number

Contact Information Redacted

6(f). Email Address

Contact Information Redacted

Secondary Contact

7(a). Name

Simla Budhu

7(b). Title

Manager - Legal & Policy

7(c). Address

7(d). Phone Number

Contact Information Redacted

7(e). Fax Number

Contact Information Redacted

7(f). Email Address

Contact Information Redacted

Proof of Legal Establishment

8(a). Legal form of the Applicant

Not for Profit Company (NPC)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Initially incorporated as a Section 21 Company (Not for Gain), under the Companies Act of 1973, with the Registrar of Companies (Companies and Intellectual Property Registry Office - CIPRO) In terms of the new Companies Act of 2008, has been reclassified as a Not for Profit Company, registered with the South African Companies and Intellectual Property Commission (CIPC)

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

Not applicable

9(c). If the applying entity is a joint venture, list all joint venture partners.

Applicant Background

11(a). Name(s) and position(s) of all directors

Name	Position
BROWNE, Calvin Scott	Director
DUNDAS, Neil Duncan	Director
ELKINS, Mark James	Director
KRAMER, Theodorus	Director
WALLACE, Fiona Jean	Director

11(b). Name(s) and position(s) of all officers and partners

Name	Position
BUDHU, Simla Rathilal	Legal & Policy Manager
ELS, Lizette	Administration Manager
MAASDORP, Sedrick Marco	Human Resoruces Manager

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

11(d). For an applying entity that does not have directors, officers, partners, or shareholders:
Name(s) and position(s) of all individuals having legal or executive responsibility

Name	Position
EL BASHIR, Mohamed	Chairperson: dotAfrica Steering Committee

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

14A. If applying for an IDN, provide the A-label (beginning with "xn--").

14B. If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

14C1. If an IDN, provide the language of the label (in English).

14C2. If an IDN, provide the language of the label (as referenced by ISO-639-1).

14D1. If an IDN, provide the script of the label (in English).

14D2. If an IDN, provide the script of the label (as referenced by ISO 15924).

14E. If an IDN, list all code points contained in the U-label according to Unicode form.

15A. If an IDN, upload IDN tables for the proposed registry. An IDN table must include:

1. the applied-for gTLD string relevant to the tables,
2. the script or language designator (as defined in BCP 47),
3. table version number,
4. effective date (DD Month YYYY), and
5. contact name, email address, and phone number.

Submission of IDN tables in a standards-based format is encouraged.

15B. Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15C. List any variants to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

There are no known issues, specific operational or rendering problems with the applied for string. It is a Latin alphabet based string that conforms to the specifications laid out in RFC 1035.

As with all new TLDs there is the potential for legacy applications to fail to recognize the new TLD string. Some older applications may have hardcoded lists of "valid" TLDs or, worse case, assume anything that is not ".com", ".net" or ".org" to be invalid. There are existing initiatives, including The Public Suffix List operated by the Mozilla Foundation, which the Applicant will work with to help educate the broader Internet Community.

17. OPTIONAL.

Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

18A. Describe the mission/purpose of your proposed gTLD.

Introduction: Mission, Vision and Purpose:

ZA Central Registry NPC is a non-profit company incorporated in South Africa and trading as the .ZA Central Registry ("ZACR"). The African Union Commission (AUC) has, on behalf of its member states, officially appointed ZA Central Registry NPC to apply for and launch the dotAfrica TLD.

In this application and any supporting documentation relating thereto, the Applicant may be referred to as ZA Central Registry NPC, UniForum SA, Registry.Africa, the ZA Central Registry and/or simply ZACR. Although it is the intention of the Applicant to

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 7 of 89 Page ID #:979
conduct its business under the Registry.Africa banner in the event that its application is successful, the evaluating team should, for purposes of this application, consider any reference to ZA Central Registry, UniForum SA, Registry.Africa, ZA Central Registry and/or ZACR as interchangeable and synonymous with the Applicant.

The ZACR and its partners in Africa, representing governments, ccTLD administrators, the technical and user communities, share a collective vision of establishing and running a successful, African-based registry operation for the benefit and pride of Africa.

Our primary objective and mission can therefore be summarised as follows: “To establish a world class domain name registry operation for the dotAfrica Top Level Domain (TLD) by engaging and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups”.

Our mission is to establish the dotAfrica TLD as a proud identifier of Africa’s online identity, fairly reflecting the continent’s rich cultural, social and economic diversity and potential. In essence we will strive to develop and position the dotAfrica TLD as the preferred option for individuals and businesses either based in Africa or with strong associations with the continent and its people.

The dotAfrica TLD represents a unique opportunity for Africa to develop and enhance its domain name and Internet eco-systems and communities by collaborating with each other to:

- identify, engage and develop African-based specialist skills and resources;
- share knowledge and develop DNS thought-leadership; and
- implement world class registry standards and contribute towards their continued development.

18B. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

By Africa, for Africa:

The dotAfrica TLD is a collaborative, public-private, African initiative, supported by African governments through the African Union and administered through the expertise and resources of the private sector. Shortly after its appointment in terms of the African Union RFP process, the Applicant, in consultation with Internet community representatives from all over Africa, at a meeting held in Johannesburg, established a Steering Committee to exercise moral and ethical oversight over the dotAfrica project.

Representatives of the broader African Internet community are currently participating in the project through the SteerCom, which comprises African Internet experts, country code managers, registrars and others volunteers. For a list of the SteerCom members refer to www.AfricaInOneSpace.org.

The SteerCom is engaged under formal Terms of Reference, which include, amongst others, a mandate to identify the criteria and processes for the incorporation of a new non-profit organisation, namely the dotAfrica Foundation. The SteerCom is therefore the precursor to the dotAfrica Foundation, which will work closely with the Applicant in assuming the moral and ethical oversight of the dotAfrica TLD and the development of policy issues. The SteerCom will be dissolved once the Foundation is incorporated and established.

Benefitting the African and Global Internet Communities:

Reinvestment into Africa:

Funds generated through the administration of the dotAfrica TLD will benefit Africans and the African continent through various skills development and capacity-building initiatives relating to the local domain name and Internet sectors. By investing in the development and enhancement of critical Internet infrastructure and resources, end-users will receive more efficient and reliable services, which will have a follow-on enabling effect on socio-economic growth and investment in the region.

Upon delegation of the dotAfrica TLD the Applicant will establish a Development Fund, which will comprise surplus operational funds generated through the administration of the dotAfrica gTLD. This Fund will be transferred to and administered by the dotAfrica Foundation, to be applied to development projects and initiatives in Africa. These include:

(A) The Development of African ccTLDs:

ccTLDs provide important Internet infrastructure that promote and support local economic growth, education and communication. The Development Fund must support the role of existing organisations such as AfTLD and strengthen and develop new African ccTLDs. Primary objectives of this development initiative are to:

(i) make available and/or share technical resources and know-how, developed and maintained in Africa;

(ii) develop and harmonise African ccTLD strategy and policy to make it more attractive and accessible to local and international markets;

(iii) harness and optimise the business potential that ccTLDs present, and to develop domestic strategies and partnerships to facilitate the dissemination of benefits down the domain name value chain; and

(iv) establish collaborative centres of excellence throughout Africa through which new

technical skills and thought leadership can thrive and develop.

(B) The Development of the African Registrar Market:

Of the over 900 ICANN-accredited registrars in the world, more than 500 are based in the United States, whilst Africa has only 5. Of these only 4 are operational. Africa is clearly lagging behind its international counterparts and a solution must be found from within Africa.

The Development Fund must support and facilitate the expansion of the African Registrar market. Some of the broad objectives of this development initiative are to:

(i) promote awareness of (and engage with) the registrar model as a mechanism for domestic and regional enterprise and skills development;

(ii) develop and implement industry best practices and consumer (registrant) protection mechanisms;

(iii) develop and provide shared, cost-effective resources and services;

(iv) collectively address associated business challenges, including billing and banking issues;

(v) provide a mechanism for registrars to enter the market and to nurture their businesses into becoming globally competitive and viable; and

(vi) harness the business potential of a competitive and vibrant registrar market for the benefit of African registrants and ccTLDs.

(C) The Development of African Online Content:

The dotAfrica project is a fantastic opportunity to drive content development focusing specifically on Africa. In order to kick-start this process and achieve some level of critical mass, the Applicant will reserve certain high-search value names and then utilise these, either on its own or through strategic partnerships with content providers, to develop online content and services. The Development Fund must support and facilitate the origination, development and maintenance of African-related online content and services.

Some of the broad objectives of this development initiative are to:

(i) Encourage existing African content and service providers to associate their content with the dotAfrica TLD in order to better engage with this user community. This is specifically relevant to African online content and service providers who utilise gTLDs instead of African ccTLDs. Potential targets for this initiative include African governments and agencies, large multi-national and parastatal organisations.

(ii) Develop strategic partnerships and associations with existing, well-established international online content and related services providers, to encourage and assist them to develop and customise their products and services specifically for the African market. Potential targets for this initiative include social media platforms, search engines providers, and leisure and business service providers.

(iii) Establish partnerships and associations with African service providers and businesses with the potential and capacity to develop sound business models for developing and driving online content and services; and assist them by making available high-search value names, start-up funding, technical support and mentoring, etcetera.

(D) The Support of Socio-Economic Development Projects and Initiatives:

The Applicant, through its administration of the successful CO.ZA domain name space in South Africa over the past 16 years, has already demonstrated its ability to establish and maintain a highly successful and sustainable social development initiative through its 'CoZa Cares' division. By 2011, this division, in collaboration with its strategic partners, had channelled over ZAR40mill (USD5,5M) towards the establishment of ICT infrastructure in over 250 schools, in 7 South African provinces.

#982
The Development Fund must support and facilitate various African socio-economic development initiatives and projects relating to the ICT sector. Supporting ICT skills development and capacity-building initiatives, from primary school to tertiary level, is critical to develop the African thought leaders of tomorrow.

The broad objectives of this development initiative are to:

- (i) facilitate the coordination of various ICT-related social-economic development initiatives in Africa, in order for the various participants to learn and benefit from each others' experiences and, where possible, to pool resources and expertise in order to address developmental challenges faced by Africa more effectively; and
- (ii) identify and support worthy ICT-development projects and initiatives throughout Africa in order to ensure their sustainability.

Although the above development initiatives and projects undertaken by the dotAfrica Project partners are almost exclusively focused on the African community, we believe that there is a compelling benefit for the rest of the world. Africa comprises nearly 1 billion people, based in 54 countries with a wide diversity of language and culture. A successful dotAfrica TLD, supported by an empowered and vibrant African community, presents significant business, social and leisure opportunities for the world. Success in Africa means success for the world.

In addition to the development projects and initiatives administered through the dotAfrica Foundation, the Applicant will endeavour, as part of its registry operations, to establish a Centre of Excellence, in terms of which African specialist skills and expertise, relating to the DNS environment, will be identified and developed. Specialist DNS expertise is a critical success factor in order to benefit the dotAfrica registry operation and African ccTLDs. The development of African DNS thought leadership and technical innovation is needed in order to sustain the empowerment of African ccTLDs.

Building a Global Brand with a Focus on Africa:

Africa, the Cradle of Humankind:

"Africa is the world's second-largest and second-most-populous continent, after Asia. Africa, particularly central Eastern Africa, is widely regarded within the scientific community to be the origin of humans and the Hominidae clade, as evidenced by the discovery of the earliest hominids and their ancestors, as well as later ones that have been dated to around seven million years ago." (wikipedia)

Africa, the Economic Opportunity:

"The economies of the fastest growing African nations experienced growth significantly above the global average rates. Many international agencies are gaining increasing interest in investing emerging African economies, especially as Africa continues to maintain high economic growth despite the current global economic recession. The rate of return on investment in Africa is currently the highest in the developing world."

Differentiation of dotAfrica from other new gTLDs:

There will be many arguments raised by registries in differentiating their new gTLDs from others. As a geographic indicator, the dotAfrica TLD, which is unique in essence, will automatically assume the reputation and goodwill of the region it represents. Africa represents a unique part of the world, with unique people, challenges and prospects. dotAfrica, therefore presents an opportunity to engage with the region and its people, thereby potentially unlocking the economic and social potential of a vast and diverse continent.

Whilst there are 54 ccTLDs that could potentially serve the needs of the African Internet community, not a single one of these is ideally positioned to provide a collective identity to the continent as a whole. With many of these ccTLDs in turmoil or unable to provide reliable services, dotAfrica will offer a secure, stable, and open TLD that will be recognized in Africa as well around the world.

Marketing, Communication and Public Relations #983

The marketing of the dotAfrica domain name brand will occur in terms of a defined strategy to create competitive advantages to governments, businesses and individuals within Africa and abroad. The entire African continent has unique needs, cultures, and political realities, market requirements and socio-economic conditions, which are influenced by internal and external forces. These variables need to be taken into account in our marketing and communication strategy with our various stakeholders.

Multiple media tools must be used in the dotAfrica marketing strategy. Radio remains a major source of information throughout Africa, but mobile penetration must also be used to dotAfrica's advantage. Broadband penetration outside of a very small number of countries has been limited, but Internet access via mobile telephone is on the rise. Digital and pay-for-service television access is on the rise. The vast target market needs to be segmented, in order to develop key messaging for each market sector. Each dotAfrica registration will help fund the dotAfrica Foundation that has the core mandate to promote digital inclusion, social development, and technical development of the Internet in the region.

A dotAfrica domain name is the perfect platform for global branding, marketing, and visibility with a focus on customers and markets in Africa which can help increase tourism, build and enhance international business relationships with Africa, and boost economic benefits. The marketing and communication campaign for dotAfrica is already using a number of communication platforms to create awareness and communicate with the various stakeholders, including: Facebook & Twitter and; dotAfrica website (africanonespace.org); and dotAfrica mailing lists. Traditional media such as newspapers, and radio and modern digital media have been used to spread the dotAfrica message. An African multi-stakeholder committee comprising of diverse skills has been established to focus on activities and strategy required for a successful PR campaign.

Registry Operations:

From a technical/operational perspective the dotAfrica TLD registry will operate on the Extensible Provisioning Protocol platform, which is an internationally accepted standard for registry functions across the world and which has the flexibility to incorporate extensions such as DNSSEC and extensions pertaining to domain specific policy requirements. The dotAfrica registry platform is wholly developed, maintained and hosted in Africa.

The applicant has a highly experienced team of experts dedicated to the on going development, maintenance, administration and training of the core registry services. The dotAfrica registry platform, which has been developed, implemented and maintained on the back of over 17 years registry experience by the Applicant, also provides WHOIS services, Secure EPP Message Handling, DNS and DNSSEC services. A key point of the registry system is the flexible Policy Integration and configuration independent of the core development team.

As part of the global DNS environment, the dotAfrica registry platform also integrates with specialist 3rd party DNS related systems and services, which when viewed collectively, provides a mature comprehensive, well-balanced world-class registry solution for dotAfrica. External systems and services compliant with industry best practises and ICANN requirements include: Data Escrow services; Anycast and Unicast services; and Off-site Hot Standby Failover Hosting.

We envisage that the investment by the Applicant into the development of the African ccTLD and Registrar communities will encourage the adoption and implementation of unified standards and policies across the Africa region. This should in turn facilitate the growth of a competitive and sustainable registry/registrar market and cost savings and efficiencies for registries that collaborate on the implementation of shared services and systems.

Preliminary steps have already been taken to create awareness and engage with the African registrar and registry communities on the subject of the proposed dotAfrica registry system. A wiki site which highlights the Applicant's EPP functionality and provides a walkthrough for current and potential registrars has been created at <http://registry.net.za>

6984
Apart from providing a platform for growth of the cctLD and registrar communities, the dotAfrica registry solution allows registrars access to a number of key services including an automated Registrar Accreditation Process, reporting and tracking, a Registry Notification Portal, and a secure flexible interface for retrieving financial statements and invoices. This allows for the registration and maintenance of domain names by registrars and results in ease of domain registration for registrants.

More importantly it provides a registry platform that promotes simple, accessible, secure, accurate and abuse free domain registration by registrars and ultimately the end user. The dotAfrica TLD registry function will be managed in a way that is service driven, secure and stable.

Registration Policy:

The dotAfrica registration policy will be established, implemented and maintained through a multi-stakeholder Policy Committee established by the Applicant in partnership with the Steering Committee or the Foundation. The registration policy will set out the technical and administrative procedures and criteria used by the registry with regards to domain name registrations or requests for such registrations, cancellations, transfers, suspensions and revocations. The policy will be informed and guided by those developed through the ICANN multi-stakeholder process.

Although a comprehensive final registration policy must still be approved, the broad parameters of the registration policy will include:

- (i) following the Sunrise and Land Rush periods, registrations will be delegated on a "first-come-first-served" basis;
- (ii) registrations will be open to anyone;
- (iii) access to the registry will be available only through an ICANN-Accredited Registrar who has executed a suitable accreditation agreement with the registry;
- (iv) registration periods will range from 1 - 10 years.

Similar criteria will apply to the establishment, implementation and maintenance of a privacy policy for the dotAfrica TLD that is based on international best practices as well as local and international standards. The registry will strive to protect the rights and privacy of all individuals or companies associated with dotAfrica TLD names.

Financial Aspects:

The Applicant, over 17 years of administering the successful CO.ZA domain in South Africa, has demonstrated an ability and capacity to manage and administer its financial affairs in a professional and transparent manner. The Applicant has maintained highly competitive fees charged to registrars within reasonable international parameters. Simultaneously it has generated reasonable surplus funds, not only to provide a suitable operating buffer for the efficient and effective operation of the registry, but also to fund social development initiatives and projects.

The Applicant will, under the scrutiny and oversight of the SteerCom or Foundation, apply similar financial disciplines and procedure to the administration of the dotAfrica TLD. As outlined above, the operating revenues generated through the administration of the dotAfrica TLD will be accounted for in accordance with internationally-accepted accounting practices. All surplus funds will be channelled into a Development Fund to be administered by the dotAfrica Foundation.

Although the financial parameters and policies must still be finalised and approved by the Policy Committee, the following are of importance concerning the application and launch of the dotAfrica TLD. The Applicant has made available up to US\$1,300,000 to apply for and launch the dotAfrica TLD. The above funds have been committed to a dedicated dotAfrica bank account that will be used exclusively for the dotAfrica project.

#985
The Applicant has provided a Continual Performance Guarantee to ICANN of US\$140,000 with ABSA Bank, a subsidiary of Barclays Plc to secure the provision of critical registry services for the dotAfrica TLD for up to 6 years. Initial registration fees are estimated to be in the region of US\$18 per year. Due to its considerable investment into its technical registry capacity for .ZA, including the procurement and development of technical skills and resources, the Applicant is able to leverage this against the provision of critical registry services for dotAfrica in the event that the TLD is commercially unsustainable in its own right.

18C. What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?

Rights Protection:

- Reserved Name Lists (Pre-Sunrise)
- Sunrise
- Post Delegation Dispute Resolution

The ZACR is committed to protecting the rights of governments, registrars, end users and the greater Internet community against fraudulent, deceptive and unfair business practices that may arise within the dotAfrica TLD. Abusive practices will be minimized through the following initiatives:

(A) Pre-Sunrise:

A pre-sunrise process will take place prior to the full-scale implementation of the Sunrise and Land-rush Policy applicable to the dotAfrica TLD. This is significant as it will provide African governments and government organisations, such as the African Union Commission (AUC), a window of opportunity to compile and submit a list of names that must be reserved or blocked from registration. These names may touch on sensitive territorial or political issues; hold special meaning in Africa (such as country names, city names, cultural sites or groups); or are simply offensive in Africa.

The Pre-Sunrise process will be done in coordination with the AUC on the terms and conditions agreed to between the AUC and the ZACR in their agreement signed on 1 March 2012 and will also be subject to all reservations prescribed by ICANN (included but not limited to reservations regarding the label 'example', two character labels, tagged domain names, prescribed registry operation names, country and territory names, etc.) as well as the GAC principles regarding new TLDS.

Names placed on the Reserve Lists will only be available to pre-defined Applicants who will be expected to apply for the names within a period of time prescribed by the dotAfrica Policy Committee.

(B) Sunrise:

A phase-based Sunrise procedure, with associated auction processes, will be implemented to allow established brands and trademark holders to register their corresponding domains within the dotAfrica TLD. Although the Policy Committee must still approve a final Sunrise Policy, a draft policy has already been developed and is currently under review. This policy caters for two Sunrise periods, namely:

- Sunrise 1, which provides priority for eligible owners of trademarks registered in Africa to obtain corresponding domains names.
- Sunrise 2, which allows eligible owners of trademarks to obtain corresponding domains names.

The ZACR will appoint an independent entity or entities to provide certain rights protection services which may include inter alia verification, validation, and dispute resolution services related to the eligibility of trademarks. In this regard the ZACR will endeavour to engage the services of African providers and institutions and has in the past

worked closely with the South African Institute of Intellectual Property Law (#986) (www.SAI IPL.org.za) concerning the establishment and implementation of alternate dispute resolution mechanisms in ZA.

The final Sunrise Policy will also provide further details and clarity on Sunrise Eligibility Requirements (SERs) and a dedicated dispute resolution policy and mechanism for this phase.

(C) Land Rush

Just as in the Sunrise period, Land Rush will be implemented over several phases and will be administered through the Applicant's Registrar Web Portal. Although the Policy Committee must still approve a final Land Rush Policy, a draft policy has already been developed and is currently under review. This policy caters for three Land Rush phases, namely:

- The first phase is the "Introductory Land Rush Period" and will see premium domain names made available for purchase for certain periods at time at a certain minimum prices which will decrease as the periods progress. Where there is more than one party interested in the same domain name, that domain name will be referred to auction.
- The second phase is the "Initiation Land Rush Period". This period will last for an estimated 14 days and will also be administered through the Registrar Web Portal. A minimum fee (roughly \$300 - \$500) will apply to registrations during this period. Multiple applications for the same domain name during this period will also be resolved using an auction process. Undisputed applications will be allocated at the end of the period.
- Depending on the decision made by the Policy Committee, the ZACR may elect to implement a "Limited Availability Operational Phase", following on from the Initiation Land Rush period. This mechanism, which will endure for a limited time (0-14 days) will be to place any newly requested domain name (application) in a reserved queue for a short period. If any additional applications for the same domain name are received during this period then the domain will enter a Land Rush auction for a maximum predetermined period. At the end of the period the bids will be collected and the winner determined. This process, or a process similar to this, may also be introduced by the ZACR on an adhoc basis to mitigate the effects of multiple applications for the same name following domain release as well as spontaneous applications due to international events or announcements

(D) All Rights Protection Mechanisms prescribed by ICANN will be implemented. In particular, the Uniform Rapid Suspension System (URS) will be adopted. Initially, Examiners accredited by ICANN appointed Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to make findings in URS applications, but the Registry hopes to arrange for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

In the case where a Post Delegation Dispute Resolution Procedure (PDDRP) is initiated following allegations that the Registry profited from a bad faith registration, the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD. Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will initially be requested to stand as Providers in PDDRP applications, but the Registry hopes to arrange for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

Provision will also be made to file initial complaints that the Registry has not complied with registry restrictions through a Whois Data Problem Report System (WDPRS) through InterNIC.net at a nominal, non-refundable fee. If a complainant is not satisfied that the Registry has complied with its requirements, the matter may be escalated using the RRDRP.

In the case of Registry Restrictions Dispute Resolutions Procedures (RRDRP), the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD. Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will initially be requested to stand as Providers in RRDRP applications, but the Registry hopes to arrange

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 15 of 89 Page ID #987
for the appointment of a board of suitably qualified Examiners particularly in Africa to make findings in these matters.

A dedicated online advisory / complaints portal will be created and end-users will have access to email, telephone and fax contact details of an appointed Complaints Officer who will attend to complaints directly or escalate them to the relevant divisions within the registry for resolution. A comprehensive Complaints Handling Policy, that sets out inter alia the scope and ambit of complaints that will be dealt with; the process that must be followed to deal with domain related complaints; and the course of action that the registry may take to deal with complaints depending on their nature, will also be drafted in consultation with the dotAfrica Policy Committee.

(E) The Policy Committee (PC), which is a multi-stakeholder consultative mechanism, will play a determining role in defining policy and determining pricing mechanisms within the dotAfrica TLD. The scope and mandate of the PC will include the review and authorisation of various pricing models, including multi-year (1 - 10 years) pricing, bulk discounts and prices changes. The PC will consider the input and comments of the Registry Operator, the Foundation, Registrars, the broader Internet community and other factors concerning the affordability and competitiveness of the TLD in determining policy, prices and/or or price changes.

The PC will, after due consideration and where circumstances reasonably allow, first publish a proposed policy or price update schedule for public comment on the Registry's website and will also circulate this to the Registrar mailing lists. The proposed update schedule will also include a description of the implementation roadmap for these changes to come into effect and prescribe a deadline for further comments and objections to be submitted for consideration.

Upon final review, taking into account the input provided and objections raised during the public inspection period, the PC will provide a final policy to the Registry Operator for implementation in the manner prescribed. The Registry Provider will then publish the policy on its website and duly inform all accredited Registrars and ICANN of the policy change. The Registry Operator will then ensure that the policy is implemented as published.

PARAGRAPH ON IMPLEMENTATION OF IDN WITHIN THE DOTAFRICA gTLD REGISTRY FUNCTION

Some of Africa's languages are non-Latin scripts for example Arabic and Amharic and also many African languages are written with extended Latin scrip. Africa has diverse cultural, religious and language groups so the impetus to facilitate IDN integration within the dotAfrica gTLD framework clearly exists. The ZACR has the technical knowledge and the specialized skills needed to add IDN capability within the dotAfrica gTLD registry function but believes that it would be premature to implement IDN integration without fully understanding the technical, legal and policy ramifications that this may have in Africa and elsewhere.

Whilst the implementation of IDN is not a new phenomenon internationally, its implementation in the African context will definitely be new. Associated to this is the fact that the African internet/domain name community has to be developed in terms of the beneficiation model described earlier in this submission so that it matures in terms of infrastructure, policies and human potential to a stage where the incorporation of IDN becomes axiomatic. Given the diversity and uniqueness of the management model of the dotAfrica gTLD domain name registry and the sensitivities surrounding language issues, the ZACR believes that it would be wise to reserve this issue for future research, discussion, debate and policy development under the guidance of a Policy Oversight Committee.

The ZACR intends to engage with those registries that have implemented IDN capability within its registry function to learn from their experience. More especially the ZACR plans to engage/consult with the broader African internet community, involving representatives from governments, registries, registrars as well as other experts and end users to investigate and resolve the challenges that IDN integration may present to Africa.

19. Is the application for a community-based TLD?

No

20A. Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.

20B. Explain the applicant's relationship to the community identified in 20(a).

20C. Provide a description of the community-based purpose of the applied-for gTLD.

20D. Explain the relationship between the applied- for gTLD string and the community identified in 20(a).

20E. Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.

20F. Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.

21A. Is the application for a geographic name?

Yes

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.

The ZACR is aware of the GAC advice on this issue and will take it into consideration in their management of second level domain name registrations and further confirms that it will comply with Specification 5 of the Registry Agreement.

Specification 5 of the New gTLD Registry Agreement initially reserves at the 2nd and all other levels within the TLD:

- Country and territory names contained on the ISO 3166-1 list
- UN Group of Experts on Geographical Names, Technical Reference Manual for the Standardisation of Geographical Names, Part II Names of Countries of the World, and
- The list of UN member states in 6 official UN languages prepared by the Working Group on Country Names of the UN Conference on the Standardization of Geographical Names

In accordance with the provisos contained in Specification 5, such names may be released if the Registry Operator reaches agreement with the applicable government and/or the Registry Operator proposes release of the reserved name(s) subject to review by GAC and approved by ICANN.

The Registry will work cooperatively with ICANN to ensure that the 2nd and subsequent levels of the proposed TLD comply with expressed public policies and goals and in particular the following:

1. It is worth noting, as documented by ICANN, that rights of governments or public authorities in relation to the rights of the sovereign state or territory which they represent cannot be limited or made conditional by any procedures that ICANN introduces to new gTLDs. The ZACR will follow the GAC public process relating to geographic names
2. The ZACR will use existing recognised international lists as prescribed by ICANN. The lists will be reserved at the second level at no cost to the governments of the dotAfrica TLD. It will be the prerogative of the relevant governments to adopt procedures that allow for applicants to register names from any of the reserve lists.
3. The AUC shall within three months into force of the agreement with the ZACR, allow member states to submit to the AUC and other member states a limited list of broadly recognised names with regard to geographical and/or geopolitical concepts which affect their political or territorial organisation that may either:
 - not be registered or
 - be registered only under a second level domain according to the public policy rules
4. The African Union Commission (AUC) will furnish the list of notified names to which such criteria apply, and the AUC shall also publish the list at the same time as it notifies the ZACR
5. Where a member state or the AUC within 30 days of publication raises an objection to an item included in the notified list, the ZACR will take measures to remedy the situation
6. Before starting the registration operations, the ZACR will adopt the initial registration policy for the dotAfrica TLD in consultation with the AUC and other interested parties. The ZACR will implement in the registration policy the public policy rules pursuant to the agreement between the AUC and the ZACR taking into account the exception lists and the GAC process as prescribed in the principles regarding new gTLDs.
7. It should be noted that the AUC shall retain all rights relating to the dotAfrica TLD, including in particular, intellectual property and other rights to the registry databases required to ensure the implementation of the agreement between the AUC and the ZACR, and the right to re-designate the registry function.

23. Provide name and full description of all the Registry Services to be provided.

Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.

The following registry services are customary services offered by a registry operator:

- A. Receipt of data from registrars concerning registration of domain names and name servers.
- B. Dissemination of TLD zone files.
- C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service).
- D. Internationalized Domain Names, where offered.
- E. DNS Security Extensions (DNSSEC). The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Additional proposed registry services that are unique to the registry must also be described.

1 Synopsis

This chapter provides a description of the registry services provided by the ZA Central Registry including domain provisioning services, domain and contact publishing services, zone publishing services, and services for interacting with accredited registrars, (Registrars), oversight bodies and statutory bodies such as the judiciary and accredited dispute resolution providers.

2 ZA Central Registry Details

Registry Name:- ZA Central Registry NPC trading as the ZA Central Registry.
Registry Address:- PO Box 4620, Halfway House, 1685, South Africa.
Registry Contact Number:- +27113140077
Registry Fax Number:- +27113140077
Registry eMail:- gtld@registry.net.za
Registry URL:- <http://www.coza.net.za> and <http://registry.net.za>

non- ZA Central Registry NPC, trading as the ZA Central Registry, was established as a profit organisation in 1988 by a group of end users, developers, and vendors who got together to form a professional association that would promote and exchange information on open systems. It was handed the responsibility of administering the CO.ZA domain name space in 1995 because it was seen as not only having the technical skills to do so but also seen as committed to neutrality and unity of purpose. At startup the co.za zone contained around 400 entries. Today, with over 760000 domains in the co.za zone amounting to over 95 % of the total registrations in the .ZA top level domain are to be found in the co.za domain and within the top 20 registries world wide. Over the years ZA Central Registry NPC played active roles in the internet industry including, but not limited to, the following

- establishing the alternate dispute resolution process for adjudicating domain name disputes in the co.za domain.

- translating the CO.ZA registry web site into all 11 official languages of South Africa as far back as 2001.

- cooperating with a range of other industry bodies to drive the growth of the South African Internet. We joined the South African Internet Service Providers Association (ISPA) in 1996, and have since worked with ISPA on a range of web and social responsibility projects.

- sponsoring and participating in the ISPA “Train the Teachers“ initiative.

- by addressing and sponsoring learner education, educator development and the provision of IT infrastructure and curriculum development through the Mindset Computer Science Curriculum project, COZA Cares School of the Month project and ISPA Teacher Training initiatives.

- participating in important debates, for example, by making contributions to parliamentary discussions about important laws with wide-reaching consequences for South African Internet users such as the Electronic Communications and Transactions Bill, providing regular input to the ZADNA on domain related issues and providing regular DNS training to the South African Internet community at large.

- transitioning the CO.ZA registration into a world class EPP registry.

- collaborating with South African Domain Name Authority (ZADNA) in transitioning into the ZA Central Registry in order to administer all open second level domains including .org.za, .net.za, and .web.za as 2nd level domains in .ZA.

exists In summary, ZA Central Registry NPC has served as a non-profit organisation that for the good of the South African Internet. We are proud to have remained true to the basic premise that surplus funds raised beyond covering our expenses are invested back into the greater Internet community. Although our role and the way forward might be changing, our principles and ideals have remained constant for more than 24 years and will endure into the future.

4 Registry Registrar Services and Operations

This section provides details on the technical operational services critical for the provisioning of domains, contacts and hosts as well as the services related to both publishing domain, host and contact information and the publishing of zone information as provided by the ZA Central Registry and as intended for use by the dotAfrica TLD.

4.1 Domain Registration Services

This section provides details on the receipt of data originating from Registrars concerning domain name, contact and nameserver (host) registration. All registration data from Registrars must be received over a secure TCP/IP connection conforming to the EPP protocol as defined by the IETF Standard 69, and in particular RFC5730 to RFC5734 as listed below.

Domain Mapping:- Data format for each EPP command must conform to RFC 5731 with each data unit conforming to section 4 of RFC 5734.

Host Mapping:- Data format for each EPP command must conform to RFC 5732 with each data unit conforming to section 4 of RFC 5734.

Contact Mapping:- Data format for each EPP command must conform to RFC 5733 with each data unit conforming to section 4 of RFC 5734.

4.2 Registry Zone Dissemination

The zone is published once every 15 minutes which may change from time to time depending on the policy for the dotAfrica TLD and the size of the zone.

4.3 Registry Zone Servers

The dotAfrica TLD will use nameserver infrastructure supplied by the ZA Central Registry including 2 anycast instances geographically dispersed including instances within the Africa continent, and 4 to 6 unicast instances geographically dispersed with at least 4 in Africa.

The DNS infrastructure will be outsourced to reputable industry service providers demonstrating geographic diversity and the necessary expertise for managing anycast services.

Unicast services will be managed both in-house, and optionally outsourced on a similar basis to the anycast services.

4.4 Zone Server Status Information

Zone Server status information relating to the zone servers of the dotAfrica TLD will be displayed on the Registrar portal and as detailed under Registrar Notifications in section 6.1. This includes the following

Primary Nameserver Zone Timestamp:- - The timestamp will be displayed in green should it be within expected limits according to the dotAfrica TLD policy, in orange if not, and a message in red indicating any critical error.

Secondary Nameserver Zone Timestamp:- - The timestamp for each secondary nameserver will be displayed in green should it be within expected limits according to the dotAfrica TLD policy, in orange if not, and a message in red indicating any critical error.

4.5 Registry Whois Services

This dissemination of contact and other information concerning domain name registrations in the dotAfrica TLD will be determined by the policy oversight committee of the dotAfrica TLD.

Whois Services offered by the ZA Central Registry for the dotAfrica TLD will include at least the following

Port 43 Whois:- Service in accordance with RFC3912.

Web Based Whois:- Service.

Typical information will include the following

domain:- The domain string

registrant:- The name of the registrant

registrant address:- The postal address of the registrant

registrant contact number:- The phone/fax number of the registrant

registrar:- The name of the sponsoring registrar
EXHIBIT 20 - Pg 0625

registrar address:- The postal address of the registrar

registrar contact number:- The phone/fax number of the registrar

billing:- The name of the billing contact

billing address:- The postal address of the billing contact

billing contact number:- The phone/fax number of the billing contact

technical:- The name of the technical contact

technical address:- The postal address of the technical contact

technical contact number:- The phone/fax number of the technical contact

registration status:- Status information pertaining to the domain eg. registration period, registration date, renewal date, last update, and domain state where the state could be any of the following

- Pending Update
- Pending Delete
- Pending Transfer
- Inactive
- Client/Server Hold

Name Servers:- The nameservers for the domain

Whois services will be subject to abuse prevention based on industry best practises including, but not necessarily limited to, load balancing, rate limiting and black listing addresses from where attacks placing undue load on

4.6 Internationalised Domain Names

These will not be supported at the launch of dotAfrica TLD. Any decision to implement IDNs during the life time of dotAfrica TLD will be determined by industry best practises, ICANN recommendations and the dotAfrica TLD Policy Oversight Committee. Should such a decision be taken then the technical implementation for IDNs will conform to the draft standards as set out in RFC 5890, RFC 5891, and RFC 5892.

4.7 DNSSEC

The ZA Central Registry will provide full support for Domain Name System Security Extensions (DNSSEC) for the dotAfrica TLD zone. The ZA Central Registry complies with industry best practices for zone signing and key protection, including security requirements as defined by the dotAfrica Policy Oversight Committee, industry best practises and taking international standards such as ISO27001 into account.

5 Registry Services by Agreement

This section provides details on services and products offered by the dotAfrica TLD over and above the normal registration services as listed above. These services and products are as per intended agreements with oversight bodies and role players.

The following services are provisionally intended and will be ratified by the dotAfrica Policy Oversight Committee prior to opening up registrations including the sunrise and landrush periods.

Reserved List:- This list provides a service that will allow strings to be reserved to particular groups or entities as determined by the dotAfrica Foundation. This list may also include abusive names as determined by the Policy Oversight Committee.

Management Information System:- The MIS service provides stakeholders and oversight bodies such as the African Union and the dotAfrica Policy Oversight Committee with an interface to determine registry performance, uptime, registration statistics and other information relating to registry service level agreements.

6 Additional Registry Services

Additional registry services for the dotAfrica TLD include services provided as business services provided to Registrars as required for their day to day operations.

6.1 Additional Registrar Services

Services listed here are intended to facilitate Registrar interaction with the Registry and are typically accessible via the Registrar portal as provided by the ZA Central Registry.

Registrar Accreditation Process:- This service provides an automated step by step process for accrediting prospective Registrars including both legal and technical phases of the process.

Registrar Payment Gateway:- This service provides a secure authenticated interface for topping up Registrar domain registration funds.

Registrar Key Management:- This service provides a secure authenticated interface for inserting and updating the Registrar public keys as used to ensure secure communication using the Transport Layer Security (TLS) protocol over TCP with the dotAfrica EPP based domain registration service.

Registrar Issue Tracker:- This service provides an interface allowing accredited Registrars to log and track technical issues with the Registry.

Registrar Financial Information:- This service provides a secure authenticated interface allowing Registrars to obtain financial information pertinent to their domain provisioning transactions including invoices, statements, and credit notes.

Registrar Management Information:- This service provides a secure authenticated interface allowing Registrars to obtain domain provisioning statistics and trends including comparative information allowing Registrars to see how they compare to others.

Registrar News Portal:- This service provides an interface where all Registry news items relating to Registrars are published.

Registrar Notifications:- This service provides details on various Registry news items including Registry infrastructural issues such as Registry Maintenance Times, Whois Maintenance Times and Zone Server Status.

24. Shared Registration System (SRS) Performance: describe

- the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and
- resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

A complete answer should include, but is not limited to:

- A high-level SRS system description;
- Representative network diagram(s);
- Number of servers;
- Description of interconnectivity with other registry systems;
- Frequency of synchronization between servers; and
- Synchronization scheme (e.g., hot standby, cold standby).

1 Synopsis

This chapter provides details on the technical and operational capabilities of the ZA Central Registry, and as will be used for the dotAfrica TLD. This covers the operational plans include system and human resourcing to run the dotAfrica TLD according to the requirements of ICANN, the TLD Registrars and industry best practices.

A high level architectural diagram and description of the services as provided by the ZA Central Registry are included as well as the resourcing model for operating the technical services for the dotAfrica TLD.

2 Shared Registry Ability

The ZA Central Registry has operated the co.za 2nd level domain registry since September 1995. This registry has grown from around 400 domains at startup to over 750000 domains and with an average growth of over 15000 domains per month over the past year. Currently the ZA Central Registry is in further negotiations with the South African Domain Name

Authority (ZADNA) to take over administration of further 2nd level domains including org.za which consists of around 40000 domains. The ZA Central Registry has maintained service levels comparable to specification 10 of the ICANN registry agreement during the time of administering co.za zone and will commit the necessary resources necessary to comply fully. The ZA Central Registry anticipates no issues with compliance to ICANN service level requirements.

3 High Level Shared Registry System Description

The ZA Central Registry system architecture ensures the necessary scalability allowing for anticipated growth of the registry. The components illustrated in diagram DNS-ShareRegistry-Diagram.pdf provide an overview of the ZA Central Registry Shared Registry System (SRS) as provided by the ZA Central Registry and as intended for use by the dotAfrica TLD. The SRS for the dotAfrica TLD will comply to and keep current with all relevant IETF RFCs in accordance with specification 6 section 1.2 and specification 10 of the ICANN registry agreement. These include the following

RFC 5730:- Extensible Provisioning Protocol (EPP).

RFC 5731:- EPP Domain Name Mapping.

RFC 5732:- EPP Host Mapping.

RFC 5733:- EPP Contact Mapping.

RFC 5734:- EPP TCP Transport.

RFC 3735:- Guidelines for Extending the Extensible Provisioning Protocol (EPP) should the dotAfrica TLD policy oversight committee implement policy that require extensions of the default EPP specification for domain, host, and contact objects.

4 Shared Registry Infrastructure

This section provides a high level description of the services, related infrastructure, human and system resources as provided by the ZA Central Registry and as will be utilised and expanded on for the dotAfrica TLD.

4.1 Message Handler

The Message System Handler (MSH) provides a secure, authenticating EPP messaging interface to accredited Registrars complying to IETF RFC 5734. The functions of the MSH include access control, registrar authentication, secure message handling between the registrars and the registry, registrar session management, sophisticated message tracking and EPP XML Message Schema validation in accordance with the EPP XML Schemas for domains, hosts and contacts as defined in IETF RFCs 5731 to 5733.

4.1.1 MSH Human Resources

The MSH is a critical front facing component for an SRS as it the gateway for all Registrar domain operations. The ZA Central Registry has a complement of 3 MSH administrators and developers responsible for the day to day operational requirements fulfilling

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 34 of 89 Page ID #:1006
the roles described in section 7.

4.1.2 MSH System Resources

The ZA Central Registry MSH implementation for the dotAfrica TLD will consist of 2 co-located servers hosted at the primary site with one acting as master server and the other as a hot swap standby server. A remote standby cluster of MSH servers will be located at the Johannesburg Internet Exchange JINX. The remote standby cluster will be configured as a replica of the local cluster.

4.2 Registry Engine

The ZA Central Registry Registry Engine (RE) provides the domain registration functionality of the dotAfrica TLD. The RE operates on the domain, contact and host objects in accordance with IETF RFCs 5730 to 5733 and the policies as required for the dotAfrica TLD. The RE returns responses for instructions received to the Registrars synchronously or asynchronously either via the MSH and/or using other out of band mechanisms such as e-mail. The RE provides sophisticated logging on all domain registration instructions. The RE ensures that all domain object financial transactions are posted to the appropriate financial accounts.

4.2.1 Registry Engine Human Resources

The ZA Central Registry has a complement of 6 RE administrators, developers, testers and support staff responsible for the development and day to day operational requirements fulfilling the roles described in section 7 of this document.

4.2.2 Registry Engine System Resources

The ZA Central Registry Registry Engine implementation for the dotAfrica TLD will consist of a cluster of 2 servers hosted at the primary site with one acting as master server and the other as a hot swap standby server. A remote standby cluster of Registry Engine servers will be located at the Johannesburg Internet Exchange JINX. The remote standby cluster will be configured as a replica of the local cluster.

4.3 Whois

The function of the Whois server provided by the ZA Central Registry is to provide domain registration information to the public at large and in accordance with the policies as dictated by applicable policies in accordance with industry best practises and high availability requirements. The Whois system provided by the ZA Central Registry, and as will be used for the dotAfrica TLD, consists of the following

Web Whois:- A web based whois providing domain, host and registrar and registrant contact details for the dotAfrica TLD.

Port 43 Whois:- A port 43 whois service providing domain, host and registrar and registrant contact details for the dotAfrica TLD.

4.3.1 Whois Human Resources

The ZA Central Registry has a complement of 4 Whois administrators, developers and testers responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.3.2 Whois System Resources

The ZA Central Registry Web Whois implementation for the dotAfrica TLD will consist of a cluster of 2 servers hosted at the primary site with one acting as master server and the other as a hot swop standby server.

The ZA Central Registry Port 43 Whois services for the dotAfrica TLD will be co-hosted on a single server and will be implemented as a cluster of 2 servers hosted at the primary site with one acting as master server and the other as a hot swap standby server.

A remote standby cluster of Whois servers will be located at the Johannesburg Internet Exchange JINX.

The remote standby cluster will be configured as a replica of the local cluster.

4.4 DNS System

The function of the Domain Name System, (DNS), is to provide the necessary publishing of zone records. The DNS system provided by the ZA Central Registry conforms to the relevant industry standards and is implemented and maintained according to industry best practises, security and high availability requirements.

The DNS system provided by the ZA Central Registry, and as will be utilised for the dotAfrica TLD, consists of 8 Nameserver services placed over a strategic geographical wide area. Two Nameservers will be configured as anycast dns servers, with the rest configured as unicast dns servers.

4.4.1 DNS Human Resources

The ZA Central Registry has a complement of 3 in house DNS administrators responsible for the day to day operational requirements and fulfilling the roles described in section 7 of this document.

4.4.2 DNS System Resources

The ZA Central Registry master DNS implementation for the dotAfrica TLD will consist of a server cluster hosted at the primary site.

A remote standby cluster of DNS servers will be located at the Johannesburg Internet Exchange JINX.

The remote standby cluster will be configured as a replica of the local cluster.

At least 6 unicast servers will be located at geographical diverse locations.

In addition 2 anycast dns services providers will be contracted to provide and maintain the geographically dispersed anycast instances.

4.5 Network Infrastructure

The network infrastructure and associated routing provided by the ZA Central Registry conforms to the relevant industry standards and is implemented and maintained according to industry best practises, security and high availability requirements.

4.5.1 Networking Human Resources

The ZA Central Registry has a complement of 3 inhouse network administrators responsible for the day to day operational requirements. fulfilling the roles described in section 7 of this document.

4.5.2 Network System Resources

The dotAfrica TLD initial system network will be co-hosted on the network of the ZA Central Registry.

4.6 Web Portal

The Web Portal provides the SRS with an interface to both the public and the accredited registrars with the following functionality

4.6.1 Public

The web portal provides a gateway for the domain registration public to the SRS. The functionality includes, but is not limited to, general TLD news, domain registration policy detail pertinent to the dotAfrica TLD, and an interface for reporting complaints and abuse related issues.

4.6.2 Accredited Registrars

The Registry portal provides accredited registrars with an authenticated secure interface into the registry enabling management of information pertinent to the Registrar. This including facilities for financial management, contact management and reporting of information relevant to the registrar and a notice board providing registry status information to the Registrars.

4.6.3 Web Portal Human Resources

The ZA Central Registry has a complement of 3 inhouse Web Portal developers and administrators fulfilling the roles described in section 7 of this document.

4.7 Management Information System

The Management Information System, (MIS), is responsible for providing the required domain registry statistics, trends and usage as required by oversight bodies including the dotAfrica TLD board and management, and ICANN.

The MIS will also provide Registrars with necessary service level registry information, and registration statistics within their mandate. The management information system will initially be co-hosted on the hardware of the Web Portal.

4.7.1 MIS Human Resources

The ZA Central Registry has a complement of 3 inhouse developers and administrators responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.8 Financial System

The Financial System, (FS), provided by the ZA Central Registry is based on OpenERP and provides the internal system for all financial and accounting responsibilities. This including Registrar invoicing, statements, and a realtime balance checking facility.

4.8.1 FS Human Resources

The ZA Central Registry has a complement of 5 inhouse FS developers, administrators and accounting clerks responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.9 Administration System

The Administration System provided by the ZA Central Registry provides the internal operational system for registry administration requirements including legal, administrative and technical functions. In addition to the above the Administration System also provides the necessary infrastructure to address the following

- * Uniform rapid suspension procedure requirements.
- * Post delegation dispute resolution policy requirements.

4.9.1 Administration System Human Resources

The ZA Central Registry has a complement of 3 inhouse developers and administrators, 3 technical support staff, 2 legal clerks and 5 administration clerks responsible for the day to day operational requirements fulfilling the roles described in section 7 of this document.

4.10 Database

The Registry Database is the repository for various objects critical to the operation of an SRS. These including domain, contact and host objects. It is also the repository for all transactions on these objects, including all financial and statistical records. The database is based on a clustered model allowing full replication to standby backup infrastructure.

4.10.1 Database Technology

The ZA Central Registry will use PostgreSQL 9.1 for the dotAfrica TLD implementation based on several reasons but mainly for the ability of scalability and synchronous replication allowing flexible remote failover database replication which is critical in a generic top level domain (gTLD) implementation with the potential to grow significantly and as will be used on a global scale.

4.10.2 Database Human Resources

The ZA Central Registry Registry has been using the PostgreSQL database in it's co.za registry administration operations for the past 12 years and has built up considerable experience and expertise on this. PostgreSQL is a powerful, open source object-relational database system. The ZA Central Registry has a complement of 5 database administrators and developers responsible for the day to day operational requirements around the database fulfilling the roles described in section 7.

4.10.3 Database System Resources

The ZA Central Registry database implementation for the dotAfrica TLD will consist of a cluster of 2 database servers hosted at the primary site with any one of the 2 servers acting as the master and with the second server acting as a hot standby server using synchronous replication on a transaction by transaction basis.

A remote backup cluster of the database servers will be located at the Johannesburg Internet Exchange JINX. These database servers will be configured as backup standby servers with data replicated asynchronously from the master database server.

5 Shared Registry Interconnectivity

The dotAfrica TLD will share the multi-homed internet connectivity as used by the ZA Central Registry for the co.za zone and as illustrated in diagram DNS-NetworkDiagram.pdf.

6 Shared Registry Synchronisation

The SRS for the dotAfrica TLD will be replicated to co-located standby servers and the remote backup site co-located at the Johannesburg Internet Exchange, JINX.

All dynamic data as contained in the database will be synchronously replicated between the master system and co-located standby servers.

In addition all dynamic data as contained in the database will also be asynchronously replicated between the master site and the remote backup standby site.

All system software and system configuration will be asynchronously updated to both the co-located standby servers and the remote backup standby servers as and when changes occur on a schedule to be maintained by the system administration department.

7 Shared Registry Resourcing

The dotAfrica TLD development, deployment and operational responsibilities for the initial technical requirements will be staffed by members of the ZA Central Registry during start-up phase. The ZA Central Registry has a current complement as follows

Board of Directors:- 7

CEO:- 1

Financial Management:- 1

Management:- 3

Junior Management:- 4

Human Resources:- 1

Administration and Accounts:- 7

Technical Support:- 3

Housekeeping:- 2

Senior Development:- 3

Junior Development:- 3

System Administration:- 3

Registrar Liaison:- 1

Public Relations:- 1

African cctld Liaison:- 1

The roles being as follows

Development and Maintenance:- This responsibility covers the development and maintenance of the registry systems. This also includes keeping abreast with registry industry trends by participating in organisations such as the IETF and ICANN.

Data Modeling:- This responsibility covers the development of data models required for the current and ongoing database requirements of the business of the registry.

Documentation:- This responsibility covers the documentation requirements.

System Testing:- This responsibility covers regression testing for all new releases, as well as providing Registrar documentation and notices regarding any issues that may crop up from time to time.

System Administration:- This responsibility covers administration of the registry systems including system installation and configuration, Registrar connectivity management, message management, security management covering Registrar public key management, operating system installation and configuration, etc.

System Monitoring:- This responsibility covers monitoring of the software and hardware dedicated to the registry services including uptime, performance, security and abuse monitoring, and general network, hardware and operating system health. This responsibility also covers performance monitoring, reporting, statistics gathering, etc.

Network Administration:- This responsibility covers administration of the network services including installation, routing configuration, and maintaining the networking hardware.

Backups:- This responsibility covers all backup related activities include hot backups to standby servers and cold backups (tape), including management of off-site backups as well as backup recovery procedures.

Security:- This responsibility covers all registry security related responsibilities including data security, hardware security, system services security (software) and network security.

Once the dotAfrica TLD becomes operational the plan is to deploy dedicated staff as follows

General Manager:- 1 person responsible for the day to day management including any legal responsibilities and keeping up to date with international registry/registrar policy standards and best practises.

Financial Manager:- 1 staff member responsible for the financial system implementation and the day to day financial policies and procedures.

Registrar Liaison:- 1 person responsible for the day to day registrar related issues, as well as for building the registrar base. #1012

Public Relations:- 1 person.

Clerical Staff:- 4 staff members responsible for the administrative and support tasks.

Technical Manager:- 1 staff member responsible for all technical related issues including keeping up to date with international standards and best practises.

System Administration:- 2 staff members responsible for the day to day system administration, network administration and system monitoring.

25. Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.

If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.

Describe resourcing plans (number and description of personnel roles allocated to this area).

A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE “ < ” and “ > ” CHARACTERS), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE FULL ANSWER TO THIS QUESTION IS ATTACHED AS PDF FILES dotAfrica-q25.pdf AND dotAfrica-q25-rfc.pdf, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

1 Synopsis

This chapter provides details on the ZA Central Registry Shared Registry System Extensible Provisioning Protocol EPP functionality as will be used by the dotAfrica TLD.

2 Overview

The functionality of the ZA Central Registry Shared Registry System allows registrars to interface using the EPP protocol and commands as defined in the following RFCs and as referenced in this document:

RFC 3735:- Guidelines for Extending the EPP.

RFC 5730:- EPP Description.

RFC 5731:- EPP Domain Name Mapping.

RFC 5732:- EPP Host Mapping.

RFC 5733:- EPP Contact Mapping.

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 41 of 89 Page ID #:1013
RFC 5734:- EPP TCP Transport.

RFC 5910:- EPP DNSSEC.

The ZA Central Registry Shared Registry System also conforms to the above-mentioned RFCs.

The ZA Central Registry does not provide support for Domain Registry Grace Period Mapping as per RFC 3915.

The ZA Central Registry will not be supporting International Domain Names at startup.

3 Registrar Interface

The dotAfrica implementation listens for incoming TCP connection requests. Once a client has issued an EPP <login> command on the listening port, the server responds, creating the required session and sending back an EPP <greeting> to the client.

To end a session, a client may close the connection by issuing EPP <logout> command or an active close call.

The dotAfrica implementation automatically closes a session once the session has idled for 24 hours.

A total of 2 concurrent sessions per client are allowed.

A Registrar can only establish a TCP connection to the server if they have been technically accredited, provided the ZA Central Registry with their public key and the public key has been successfully installed.

Exchanging of messages between client and server conforms to the requirements outlined in RFC 5734, and follows the general client-server message exchange as outlined in Figure 1 of RFC 5734 Section 3.

Pipelining commands is possible. The server supports command pipelining to a maximum limit of the connection buffer of 16384 bytes.

The dotAfrica implementation returns a message from the server to the client for every command performed. If a message is lost due to connection failure, the result code can only be retrieved if the client issues the same command using the same client transaction identifier <clTRID> .

The dotAfrica implementation uses SSL/TLS as well as IP based Access Control Lists. A session is started on login only if an SSL handshake is established and the client IP Address is listed on the Access Control List. Further security measures include authentication through use of usernames and passwords. A session is terminated upon logout. A session is valid for 24 hours.

The dotAfrica handling and interpretation of the EPP Data Units conforms to RFC 5734 Section 4, whereby the format of any EPP data unit will contain the 32-bit header describing the total length of the data unit, and the EPP XML Instance.

Length and calculation of data units conform with requirements outlined in RFC 5734 .

Changes in the implementation can be made and will have to be decided by the dotAfrica Policy Oversight Committee .

4 Extensible Provisioning Protocol (EPP)

This section describes the capability of the ZA Central Registry Shared Registry System EPP and compliance with RFC 5730

4.1 Protocol Description #1014

EPP is an XML based protocol used for provisioning domains and their associated objects. The dotAfrica EPP implementation supports all commands as defined in RFC 5730.

4.2 Protocol Commands

A command is any action performed on an object. Commands are grouped into session, query and object transformation commands as follows in the list below:

Protocol:-

- login
- logout

Query:-

- Check
- Info
- Poll
- Transfer

Transform:-

- Create
- Delete
- Renew
- Transfer
- Update

4.3 EPP <login> Protocol Command

The dotAfrica implementation of the EPP <login> command conforms to the requirements outlined in RFC 5730 Section 2.9.1.1.

4.4 EPP <logout> Protocol Command

The dotAfrica implementation of the EPP <logout> command conforms to the requirements outlined in RFC 5730 Section 2.9.1.2 .

4.5 EPP <poll> Protocol Command

The dotAfrica implementation of the EPP <poll> command conforms to the requirements outlined in RFC 5730 Section 2.9.2.3 .

4.6 Command Response

For each EPP command that is issued by the client to the server, a corresponding response will be returned to the client by the server. Every response will contain a result code. The result code indicates command success or failure. The dotAfrica implementation conforms to the theory of result codes outlined in RFC 5321 Section 4.2.1 and uses a fourth digit in its response codes.

5 EPP Domain Name Mapping

5.1 Overview

The following section provides details on how the ZA Central Registry

Shared Registry System maps its domain functionality. Any changes to the EPP Domain Name Mapping command set will be determined by the dotAfrica Policy Oversight Committee .

5.2 Relationship of Domain Objects and Host Objects

All created domain name objects require a minimum of 2 unique subordinate or delegated host objects.

5.3 Object Attributes

Domain and Host Names:- Only domain names conforming to standard ASCII will be used. Internationalized Domain Names (IDN)s must be provided in A-Label format.

Contact and Client Identifiers:- Client and contact identifiers will be represented through a cIID element to create an association with a domain object.

Status Values:- The dotAfrica implementation supports server and client status interaction outlined in RFC 5731.

Dates and Times:- All dates and times conform to RFC 5731 and are represented using UTC.

Validity Periods:- The dotAfrica implementation supports validity periods in months and years, as well as a combination of both.

Authorisation Information:- The dotAfrica implementation supports domain name object authorisation through use of passwords as defined in RFC 5731. Passwords are stored in one-way hash format.

5.4 EPP <check> Command

The dotAfrica implementation of the EPP <check> command conforms to the requirements outlined in RFC 5731 . The Domain <check> command will be limited to 100 checks per command.

5.5 EPP <info> Command

The dotAfrica implementation of the EPP <info> command conforms to the requirements outlined in RFC 5731 Section 3.1.2. The <info> command response will be restricted based on the requester credentials. Expiry dates and other information will not be presented to unauthorized sources.

5.6 EPP <transfer> Command

The dotAfrica implementation of the EPP <transfer> command conforms to the requirements outlined in RFC 5731. The dotAfrica implementation supports the following EPP <transfer> operations which conform to RFC 5730 :

"query":- Allows a client to identify the current status of a transfer request on a domain name object.

"request":- Allows a client to request a transfer of a domain object from

one sponsor to another.

"cancel":- Allows a client to cancel their transfer request for a domain as long as the domain has not yet been transferred.

"approve":- Allows the current domain sponsor to approve a transfer request for the requested domain.

"reject":- Allows the current domain sponsor the reject a transfer request for the requested domain.

The dotAfrica implementation incorporates an e-mail voting system whereby a registrant is allowed to vote on the transfer of a domain. An EPP Poll message will be queued for the current sponsor for transfer vote notification.

5.7 EPP <create> Command

The dotAfrica implementation of the EPP <create> command restricts the use of the <period> element where the registry defines the registration period of a domain object.

5.8 EPP <delete> Command

The dotAfrica implementation of the EPP <delete> command conforms to the requirements outlined in RFC 5731 Section 3.2.2 . The dotAfrica implementation denotes that any domain that undergoes a <delete> command is checked to conform to subordinate host dependencies outlined in RFC 5731 . A deletion request on a domain object will be prohibited if the subordinate host objects are referenced by other domains belonging to the same registrar.

5.9 EPP <renew> Command

The dotAfrica implementation of the EPP <renew> command restricts the use of the <domain:period> element. The domain object can only be renewed to a maximum of one period.

5.10 EPP <update> Command

The dotAfrica implementation of the EPP <update> command conforms to the requirements outlined in RFC 5731 . The dotAfrica implementation utilises the <domain:contact> element to set "tech", "billing", "admin" contacts to domain name objects.

6 EPP Host Mapping

The following section provides details on how the ZA Central Registry Shared Registry System maps its host functionality. The dotAfrica implementation restricts the host creation and usage to the individual registrar. In other words each registrar controls and maintains their own set of hosts even if the names are duplicated with other registrars. Subordinate host glue publication is strictly controlled to prevent nameserver masquerading.

6.1 Relationship of Domain Objects and Host Objects

All created domain name objects require a minimum of 2 unique subordinate or delegated host objects.

6.2 Object Attributes

Host Names:- Only host names conforming to standard ASCII will be used.

Status Values:- The dotAfrica implementation supports server and client status interaction outlined in RFC 5732.

Dates and Times:- All dates and times conform to RFC 5732 and are represented using UTC.

Glue:- The dotAfrica implementation supports IPv4 and IPv6 addresses, conforming to the requirements outlined in RFC 0791 and RFC 4291 respectively.

6.3 EPP <check> Command

The dotAfrica implementation of the EPP <check> command conforms to the requirements outlined in RFC 5732 .

6.4 EPP <info> Command

The dotAfrica implementation of the EPP <info> command conforms to the requirements outlined in RFC 5732 .

6.5 EPP <create> Command

The dotAfrica implementation of the EPP <create> command conforms to the requirements outlined in RFC 5732. The use of the Host create command might be restricted in lieu of the Domain Host handling during Domain update and creation. The eventual Host create usage will be determined by the dotAfrica Policy Oversight Committee .

6.6 EPP <delete> Command

The dotAfrica Implementation of the EPP <delete> command conforms to the requirements outlined in RFC 5732.

The dotAfrica implementation denotes that any host that undergoes a <delete> command is checked for dependencies outlined in RFC 5731 .

6.7 EPP <update> Command

The dotAfrica implementation of the EPP <update> command conforms to the requirements outlined in RFC 5732.

The dotAfrica implementation dictates that the changing of a host object information is performed through the domain object mapping using the domain <update> command.

7 EPP Contact Mapping

7.1 Overview

The following section provides details on how the ZA Central Registry Shared Registry System maps its contact functionality. Any changes to the EPP Contact Mapping command set will be determined by the dotAfrica Policy Oversight Committee. In the dotAfrica implementation the Registrar objects are stored as standard EPP Contact objects, thus allowing a registrar to adjust contact information such as passwords or support addresses.

7.2 Object Attributes

Contact and Client Identifiers:- Client and contact identifiers will be represented through a clID element to create an association with a domain object.

Status Values:- The dotAfrica implementation supports server and client statuses outlined in RFC 5733. Status combination interactions conform to RFC 5733.

Internationalized Postal Info:- The dotAfrica implementation supports postal information represented as a subset of UTF-8 encoding in 7-bit ASCII. All required and optional elements for a contact object are supported by the dotAfrica implementation.

Localized Postal Info:- The dotAfrica implementation also supports postal information represented in UTF-8 encoding. All required and optional elements for a contact object are supported by the dotAfrica implementation.

Telephone Numbers:- The dotAfrica implementation conforms to RFC 5733 by ensuring that all telephone numbers begin with a plus ("+") sign followed by a country code as defined in ITU.E164.2005, followed by a dot ("."), followed by a sequence of digits representing the telephone number.

E-mail Addresses:- The dotAfrica implementation conforms to the requirements for e-mail addresses as defined in RFC 5322.

Dates and Times:- All dates and times conform to RFC 5733. The dotAfrica implementation supports time zone representation in UTC format.

Authorisation Information:- The dotAfrica implementation supports contact object authorisation through use of passwords, conforming to outlined requirements in RFC 5733. Passwords are stored in one-way hash format.

Disclosure of Contact Elements and Attributes:- The dotAfrica implementation supports disclosure of contact attributes and conforms to RFC 5730, by announcing its data collection policies. The dotAfrica implementation supports the disclosure elements outlined in RFC 5733.

7.3 EPP <check> Command

The dotAfrica implementation of the EPP <check> command conforms to the requirements outlined in RFC 5733.

7.4 EPP <info> Command

The dotAfrica implementation of the EPP <info> command conforms to the

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 47 of 89 Page ID #1019
requirements outlined in RFC 5733. The disclosure of Contact information will obey the disclose options as provided for the Contact object.

7.5 EPP <transfer> Command

The dotAfrica implementation of the EPP <transfer> query command conforms to the requirements outlined in RFC 5733.

7.6 EPP <create> Command

The dotAfrica implementation of the EPP <create> command conforms to the requirements outlined in RFC 5733 .
The dotAfrica implementation supports the creation of a contact object with both <contact:postalInfo> types of "loc" and "int", conforming to the requirements outlined in RFC 5733 Section 3.2.1 .

7.7 EPP <delete> Command

Implementation of the EPP <delete> command conforms to the requirements outlined in RFC 5733 Section 3.2.2.

Current policy states that a contact object cannot be deleted if in any way it is associated with another object. If a contact object is still associated with a domain object, the contact object is not deleted until the association between contact and domain objects is removed.

7.8 EPP <update> Command

The dotAfrica implementation of the EPP <update> command conforms to the requirements outlined in RFC 5733 .
The dotAfrica implementation supports the updating of a contact object with both <contact:postalInfo> types of "loc" and "int", conforming to the requirements outlined in RFC 5733 Section 3.2.5 .

8 EPP Technical Plan

The Technical Layout will include the following:

- On-site Scalable Master Server with the following configuration:

Message Server:- The Message Server is responsible for handling session management, access control, user authentication EPP schema validation and Poll commands.

Registry Engine:- The Registry Engine is responsible for all object level query and transform commands.

Database:- The primary Registry Engine database.

- Scalable Standby Co-located Server with the following configuration:

Message Server:- A secondary Message Server used in the event that the Master Server fails.

Registry Engine:- A secondary registry Engine used in the event that the Master Server fails. #1020

Standby Database:- A secondary database that is used in the event that the primary database on the Master Server fails.

- Off-site Remote Standby Server with the following configuration:
The Remote Off-Site Server configuration is a mirror of the Master site.

From the Technical Layout above, the EPP Technical Plan is as follows:
The initial startup of the EPP System involves starting the Master server as well as a Standby server. The Standby server acts as a failover measure in the event that the Master server fails.

EPP traffic is received via the External Network Bus, flows to the Message Server. The Message Server handles all access control, SSL session management, authentication and EPP schema validation in accordance to RFC 5731 to 5733 and RFC 5910. The Registry Engine handles authentication of Registrars as well as processes all EPP commands in accordance with RFC 5730.

The Standby Server acts as a failover server in event that the Master Server fails. The Standby server is in a constant waiting state and is monitored for availability in the event that it needs to be used. In the event that the Master Server is overloaded, the Standby Server may be used for load balancing.

The Remote Standby System is an off-site server that is a complete duplication of the Master Server and the Standby Server. In the event that the Master Server and Standby Server fail, the Remote System will act as a failover and perform exactly as the Master and Standby Servers.

The Remote Off-Site Server will be located at the Johannesburg Internet Exchange (JINX). Both the primary site (hosting the Master Server and Standby Co-Located Server) and the backup site (hosting the Remote Off-Site Server) are highly redundant, state of the art data centers with multiple power supplies, on-site backup facilities, and offer protection from natural disasters.

Scalability for the EPP System covers hardware scalability related to system utilization. Additional servers and required hardware will be added for the Master Server as well as the Standby Co-Located Server as resource utilization nears 50%. Any scalability changes made to the Master Server and Secondary Co-Located server will also be duplicated to the Remote Off-Site Server.

9 DNSSEC

The dotAfrica implementation supports the DNSSEC and conforms to RFC 5910. The ZA Central Registry will be operating as a thick registry. A thick registry reflects on DNSSEC in the following way:

Only DNSKEYS will be supported. The Registry will generate the corresponding DS record.

The provided DS record is used for validation purposes only.

Removal of DS records will not be supported on the client side.

Removal of DNSKEYS will remove the associated DS record.

Any changes to the DNSSEC EPP Command Mapping will be determined by the dotAfrica Policy Oversight Committee .

10 EPP Resourcing

The following section provides a high level description of the related infrastructure, human and system resources as provided by the ZA Central Registry and as will be utilised and expanded on for the dotAfrica TLD.

10.1 SRS Human Resource

The ZA Central Registry has a compliment of 6 RE administrators, developers, testers and support staff responsible for the development and day to day operational requirements including the following roles

System Testing:- Responsibility covers regression testing for all new releases, as well as providing Registrar documentation and notices regarding any issues that may crop up from time to time.

System Administration:- Responsibility covers administration of the RE including installation, configuration, and operating system installation and configuration.

System Monitoring:- Responsibility covers monitoring of the hardware dedicated to the RE, RE uptime, RE performance, security and abuse monitoring, and general operating system health.

Backups:- Responsibility covers the backup requirements of the RE machines including total system backup and log backups.

Development and Maintenance:- Responsibility covers the development and maintenance of the RE system including registry policy updates as may be required from time to time as registry policy changes dictate, SRS performance monitoring, reporting, statistics gathering, etc.

10.2 Registrar Technical Support

The ZA Central Registry uses its human resources to provide technical support to Registrars beyond the day to day operational requirements, including:

Registry Online Portal:- Support covers the development and maintenance of the online Registry portal, updating EPP related frequently asked questions and the EPP Command wiki pages.

Registrar Technical Assistance:- The Registry portal incorporates an online contact mechanism where a Registrar can electronically ask a question and acquire technical support relating to their enquiry. Enquiries are tracked through a ticketing system, offering a platform for effectively monitoring and tracking Registrar enquiries.

Accreditation Support:- The ZA Central Registry offers online capability for Registrars to follow a policy aligned process for acquiring accreditation. The accreditation process is performed in 6 steps as listed below:

1. Providing Registrar contact information
2. Providing Company Registration Document
3. Providing contact information for a primary contact

4. Providing additional information including Registrar logo
5. Reviewing status of integration with the EPP system
6. Uploading of SLL Certificate and acquiring live system credentials

Support relating to accreditation comes in the form of answering accreditation process related queries, assigning test account credentials to newly applied Registrars, monitoring accreditation progress and providing live account credentials for accredited Registrars.

Key Management Support covers the safe acquisition of SSL Certificates from accredited Registrars. Accredited Registrars can safely request to change their current in-use key.

Any alterations to or removal of proprietary extensions will be determined by the dotAfrica Policy Oversight Committee .

11 Domain Extensions

The following section provides the domain name proprietary extensions implemented by the ZA Central Registry for the dotAfrica TLD. All proprietary extensions conform to the requirements outlined in RFC 3735, and are written in RFC format as below.

1 Abstract

This document describes an Extensible Provisioning Protocol (EPP) extension mapping for the provisioning and management of Domain Name extensions for domain objects stored in a shared central repository. Specified in XML, the mapping extends the EPP domain name mapping to provide additional features required for the control of the DNServices Registry Domain Objects.

Contents

1 Abstract	1
2 Introduction	2
3 Conventions Used in This Document	2
4 Object Attributes	2
4.1 Auto Renew	2
5 EPP Command Mapping	3
6 EPP Query Commands	3
6.1 EPP <check> Command	3
6.2 EPP <info> Command	3
6.3 EPP <transfer> Command	4
7 EPP Transform Commands	4
7.1 EPP <create> Command	4
7.2 EPP <delete> Command	6
7.3 EPP <renew> Command	6
7.4 EPP <transfer> Command	6
7.5 EPP <update> Command	6
8 Formal Syntax	9

1

2 Introduction

This extension provides additional functionality to the Domain object as described in RFC 5731. The additional functionality is listed below:

1. Auto Renew
2. Cancel Pending Action

3 Conventions Used in This Document

The key words "MUST", "MUST NOT", "REQUIRED", "SHALL", "SHALL NOT", "SHOULD", "SHOULD NOT", "RECOMMENDED", "MAY", and "OPTIONAL" in this document are to be interpreted as described in BCP 14, RFC 2119.

In examples, "C:" represents lines sent by a protocol client, and "S:" represents lines returned by a protocol server. "////" is used to note element values that have been shortened to better fit page boundaries. Indentation and white space in examples is provided only to illustrate element relationships and is not a mandatory feature of this protocol.

XML is case sensitive. Unless stated otherwise, XML specifications and examples provided in this document MUST be interpreted in the character case presented in order to develop a conforming implementation. gtlld is used as an abbreviation for <http://co.za/epp/extensions/gtlldomain-1-0>.

4 Object Attributes

This extension adds an Auto Renew attribute to a domain name object.

4.1 Auto Renew

The auto renew flag is a boolean flag used to control the renew functionality around a domain upon expiry. If the flag is set to TRUE then the domain will be automatically renewed in the Registry assuming:

1. There are sufficient funds
2. There are subordinate host dependencies on the domain

2

5 EPP Command Mapping

6 EPP Query Commands

6.1 EPP <check> Command

This extension does not add any elements to the EPP <check> command or <check> response described in the EPP domain mapping RFC 5731.

6.2 EPP <info> Command

This extension does not add any elements to the EPP <info> command described in the EPP domain mapping RFC 5731. However, additional elements are defined for the <info> response.

When an <info> command has been processed successfully, the EPP <resData> element MUST contain child elements as described in the EPP domain mapping RFC 5731. In addition, the EPP <extension> element MAY contain a child <gtldd:infData> element that identifies the extension namespace if the domain object has data associated with this extension and based on server policy. The <gtldd:infData> element contains the following child elements:

- An OPTIONAL <gtldd:autoenew> element that indicates the domain object preference for automatic renewal

Example <info> Response for Auto Renew:

```
S: <epp:epp xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
S: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
S: xmlns:gtldd="http://co.za/epp/extensions/gtlddomain-1-0">
S: <epp:response>
S:   <epp:result code="1000">
S:     <epp:msg> Domain Info Command completed successfully </epp:msg>
S:   </epp:result>
S:   <epp:resData>
S:     <domain:infData>
S:       <domain:name> exampledomain.gtld </domain:name>
S:       <domain:roid> DOM_2W-COZA </domain:roid>
S:       <domain:status s="ok"> Domain Creation </domain:status>
S:       <domain:registrant> testCont </domain:registrant>
S:     </domain:ns>
S:
S:       3
S:     <domain:hostAttr>
S:       <domain:hostName> ns1.otherdomain.gtld </domain:hostName>
S:     </domain:hostAttr>
S:     <domain:hostAttr>
S:       <domain:hostName> ns2.otherdomain.gtld </domain:hostName>
S:     </domain:hostAttr>
S:   </domain:ns>
S:   <domain:clID> testrar1 </domain:clID>
S:   <domain:crID> testrar1 </domain:crID>
S:   <domain:crDate> 2011-02-23T14:43:12Z </domain:crDate>
S:   <domain:upID> testrar1 </domain:upID>
S:   <domain:upDate> 2011-02-23T14:46:18Z </domain:upDate>
S:   <domain:exDate> 2013-02-22T14:43:12Z </domain:exDate>
S: </domain:infData>
S: </epp:resData>
S: <epp:extension>
S:   <gtldd:infData>
S:     <gtldd:autoenew> false </gtldd:autoenew>
S:   </gtldd:infData>
S: </epp:extension>
S: <epp:trID>
S:   <epp:clTRID> CLTRID-12984723857-97L2 </epp:clTRID>
S:   <epp:svTRID> DNS-EPP-12E52FC3CEB-A80EF </epp:svTRID>
S: </epp:trID>
S: </epp:response>
S: </epp:epp>
```


6.3 EPP <transfer> Command

This extension does not add any elements to the EPP <transfer> command or <transfer> response described in the EPP domain mapping RFC 5731.

7 EPP Transform Commands

7.1 EPP <create> Command

This extension defines additional elements for the EPP <create> command described in the EPP domain mapping RFC 5731. The additional auto-renew elements are defined for the EPP <create> response as follows. The EPP <create> command provides a transform operation that allows a client to create a domain object. In addition to the EPP command elements

4

described in the EPP domain mapping RFC 5731, the command MAY contain an <extension> element, and the <extension> element MAY contain a child <gtlidd:create> element that identifies the extension namespace if the client wants to associate data defined in this extension to the domain object.

The <gtlidd:create> element contains the following child elements:

- An OPTIONAL <gtlidd:autorenew> element that indicates a child's preference to automatically renew this domain object upon expiration.

Example <create> Command for autorenew false:

```
C: <epp:epp xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
C: xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
C: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
C: xmlns:gtlidd="http://co.za/epp/extensions/gtliddomain-1-0"
C: xsi:schemaLocation="urn:ietf:params:xml:ns:epp-1.0 epp-1.0.xsd">
C: <epp:command>
C:   <epp:create>
C:     <domain:create
C:       xsi:schemaLocation="urn:ietf:params:xml:ns:domain-1.0
C:         domain-1.0.xsd">
C:       <domain:name> exampledomain.gtld </domain:name>
C:       <domain:ns>
C:         <domain:hostAttr>
C:           <domain:hostName> ns1.exampledomain.gtld </domain:hostName>
C:           <domain:hostAddr ip="v4"> 160.124.24.57 </domain:hostAddr>
C:         </domain:hostAttr>
C:         <domain:hostAttr>
C:           <domain:hostName> ns2.exampledomain.gtld </domain:hostName>
C:           <domain:hostAddr ip="v4"> 160.124.24.58 </domain:hostAddr>
C:         </domain:hostAttr>
C:       </domain:ns>
C:       <domain:registrant> rant1 </domain:registrant>
C:       <domain:authInfo>
C:         <domain:pw> coza </domain:pw>
C:       </domain:authInfo>
C:     </domain:create>
C:   </epp:create>
C: </epp:extension>
```

```

C:      <gtlidd:create>                                     #:1026
C:      <gtlidd:autorenew> false </gtlidd:autorenew>
C:      </gtlidd:create>

```

5

```

C:      </epp:extension>
C:      </epp:command>
C:      </epp:epp>

```

When a <create> command has been processed successfully, the EPP response is as described in the EPP domain mapping RFC 5731 with the extension element as follows:

```

S:      <epp:extension>
S:      <gtlidd:gtldData>
S:      <gtlidd:detail result="success">
S:      AutoRenew 'False' successful
S:      </gtlidd:detail>
S:      </gtlidd:gtldData>
S:      </epp:extension>

```

7.2 EPP <delete> Command

This extension does not add any elements to the EPP <delete> command or <delete> response described in the EPP domain mapping RFC 5731.

7.3 EPP <renew> Command

Although this extension does not add any elements to the EPP <renew> command or <renew> response described in the EPP domain mapping RFC 5731 it does extend the Registry's handling of the domain object upon expiry.

7.4 EPP <transfer> Command

This extension does not add any elements to the EPP <transfer> command or <transfer> response described in the EPP domain mapping RFC 5731.

7.5 EPP <update> Command

This extension defines additional elements for the EPP <update> command described in the EPP domain mapping RFC 5731. The additional elements and attributes are defined for the EPP <update> response as follows. The EPP <update> command provides a transform operation that allows a client to modify the attributes of a domain object. In addition to the EPP command elements described in the EPP domain mapping, the command MAY contain an <extension> element, and the <extension> element MAY

6

contain a child <gtlidd:update> element that identifies the extension namespace if the client wants to update the domain object with data defined in this extension. The <gtlidd:update> element MAY contain a <gtlidd:chg> element. The <gtlidd:chg> element contains a <gtlidd:autorenew> element to adjust the automatic renewal status of a domain object. The <gtlidd:update> element also contains an OPTIONAL "cancelPendingAction" attribute that a client can use to ask the server operator to cancel a predefined action as provided by the Registry software. This attribute accepts XML token values meaning standard text without leading or trailing

#:1027

whitespace.

The <gtlidd:update> element contains the following child elements:

- An OPTIONAL <gtlidd:chg> element that contains a <gtlidd:autorenew> element that is used to adjust the auto renew flag on the domain object.
- An OPTIONAL cancelPendingAction attribute that contains the predefined action name as provided by the server.

Example <update> Command for autorenew false:

```
C: <epp:epp xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
C: xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
C: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
C: xmlns:gtlidd="http://co.za/epp/extensions/gtlddomain-1-0"
C: xsi:schemaLocation="urn:ietf:params:xml:ns:epp-1.0 epp-1.0.xsd">
C: <epp:command>
C:   <epp:update>
C:     <domain:update
C:       xsi:schemaLocation="urn:ietf:params:xml:ns:domain-1.0
C:         domain-1.0.xsd">
C:       <domain:name> exampledomain.gtlid </domain:name>
C:     </domain:update>
C:   </epp:update>
C: <epp:extension>
C:   <gtlidd:update>
C:     <gtlidd:chg>
C:       <gtlidd:autorenew> false </gtlidd:autorenew>
C:     </gtlidd:chg>
C:   </gtlidd:update>
C: </epp:extension>
C: </epp:command>
C: </epp:epp>
```

7

When the <update> command has been processed successfully, the EPP response is as described in the EPP domain mapping RFC 5731 with the extension element as follows:

```
S: <epp:epp xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
S: xmlns:gtlidd="http://co.za/epp/extensions/gtlddomain-1-0">
S: <epp:response>
S:   <epp:result code="1001">
S:     <epp:msg> Domain action 'PendingUpdate' pending </epp:msg>
S:   </epp:result>
S:   <epp:extension>
S:     <gtlidd:gtldData>
S:       <gtlidd:detail result="success">
S:         AutoRenew 'False' successful
S:       </gtlidd:detail>
S:     </gtlidd:gtldData>
S:   </epp:extension>
S:   <epp:trID>
S:     <epp:clTRID> CLTRID-12984717630-F490 </epp:clTRID>
S:     <epp:svTRID> DNS-EPP-12E52F2BC78-8AC51 </epp:svTRID>
S:   </epp:trID>
S: </epp:response>
S: </epp:epp>
```

If a domain object enters a deletion process through expiry or command then the action MAY be cancelled.

Example <update> Command for cancelling a pending action:

```

C: <epp:epp xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance"
C: xmlns:epp="urn:ietf:params:xml:ns:epp-1.0"
C: xmlns:domain="urn:ietf:params:xml:ns:domain-1.0"
C: xmlns:gtldd="http://co.za/epp/extensions/gtlddomain-1-0"
C: xsi:schemaLocation="urn:ietf:params:xml:ns:epp-1.0 epp-1.0.xsd">
C: <epp:command>
C:   <epp:update>
C:     <domain:update
C:       xsi:schemaLocation="urn:ietf:params:xml:ns:domain-1.0
C:       domain-1.0.xsd">
C:       <domain:name> exampledomain.gtld </domain:name>
C:     </domain:update>
C:   </epp:update>
C: <epp:extension>
C:   <gtldd:update cancelPendingAction="PendingDeletion"/>

```

8

```

C: </epp:extension>
C: </epp:command>
C: </epp:epp>

```

When the <update> command has been processed successfully, the EPP response is as described in the EPP domain mapping RFC 5731. However the action that was specified MUST be cancelled and any status effects on that domain object removed. If the action is not pending or does not exist then an appropriate message is returned to the client.

8 Formal Syntax

An EPP object mapping is specified in XML Schema notation. The formal syntax presented here is a complete schema representation of the object mapping suitable for automated validation of EPP XML instances. The BEGIN and END tags are not part of the schema; they are used to note the beginning and ending of the schema for URI registration purposes.

BEGIN

```

<?xml version="1.0" encoding="UTF-8"?>
<schema targetNamespace="http://co.za/epp/extensions/gtlddomain-1-0"
  xmlns:gtldd="http://co.za/epp/extensions/gtlddomain-1-0"
  xmlns="http://www.w3.org/2001/XMLSchema"
  elementFormDefault="qualified">

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0 domain command extension ////
      schema for gTLD required extensions </documentation>
    </annotation>

    <element name="create" type="gtldd:createType"/>
    <element name="update" type="gtldd:updateType"/>
    <element name="infData" type="gtldd:infoResponseType"/>
    <element name="gtldData" type="gtldd:gtldDataType"/>

    <complexType name="chgType">
      <sequence>

```

```

    <element name="autorenew" type="gTld:autorenewType" minOccurs="0"/>
  </sequence>
</complexType>

```

9

```

<complexType name="updateType">
  <sequence>
    <element name="chg" type="gTld:chgType" minOccurs="0"/>
  </sequence>
  <attribute name="cancelPendingAction" type="string" use="optional"/>
</complexType>

<complexType name="createType">
  <sequence>
    <element name="autorenew" type="gTld:autorenewType" minOccurs="0"/>
  </sequence>
</complexType>

<complexType name="infoResponseType">
  <sequence>
    <element name="autorenew" type="gTld:autorenewType" minOccurs="0"/>
  </sequence>
</complexType>
<complexType name="gTldDataType">
  <sequence>
    <element name="detail">
      <complexType>
        <simpleContent>
          <extension base="string">
            <attribute name="result" type="gTld:resultType" use="required"/>
          </extension>
        </simpleContent>
      </complexType>
    </element>
  </sequence>
</complexType>

<simpleType name="resultType">
  <restriction base="NMTOKEN">
    <enumeration value="success"/>
    <enumeration value="failure"/>
  </restriction>
</simpleType>

<simpleType name="autoRenewType">
  <restriction base="boolean">
  </restriction>
</simpleType>
</schema>
END

```

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 58 of 89 Page ID

- how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement;
- how the Applicant's Whois service will comply with RFC 3912; and
- resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

A complete answer should include, but is not limited to:

- A high-level Whois system description;
- Relevant network diagram(s);
- IT and infrastructure resources (e.g., servers, switches, routers and other components);
- Description of interconnectivity with other registry systems; and

Frequency of synchronization between servers.

To be eligible for a score of 2, answers must also include:

- Provision for Searchable Whois capabilities; and
- A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions

A complete answer is expected to be no more than 5 pages.

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE “ < ” and “ > ” CHARACTERS), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE FULL ANSWER TO THIS QUESTION IS ATTACHED AS PDF FILE dotAfrica-q26.pdf, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

1 System Description

The ZA Central Registry whois system supports both RFC 3912 port 43 whois and a web based system. The system is designed for high performance and high availability by ensuring that the system is scalable, redundant and geographically dispersed. Diagram DNS-DetailedWhoisVM.pdf provides an overview of the dotAfrica TLD initial whois service implementation

1.1 Master Site Implementation

The hardware in use at the master site at startup phase will consist the following servers:

Port 43 whois servers

HTTP based query servers

Rate limiting servers

Query cache servers

Database servers

The master whois server cluster is replicated onto a co-hosted hot standby server cluster with incoming queries across the primary server and the standby server shared.

The system fully complies with the requirements of Specification 4 of the Registry Agreement. #1031

1.2 Redundant Site Implementation

At the startup phase there will be a single redundant site with an identical server configuration to the primary site. Queries between the redundant site and the primary site are shared by means of an anycast address setup. Additional geographically dispersed redundant sites will be added as whois query volume demand grows.

2 Synchronisation

Both the port 43 and the Web based whois services are considered critical infrastructure.

The whois system is replicated synchronously to the onsite standby system and is up to date to the point of the last transaction.

The whois system is replicated asynchronously to a remote standby site.

Changes are replicated continuously and are well within the limits allowed by specification 10 of the registry agreement.

Geographical fail-over between the sites is achieved using any-cast IP addresses such that if one site becomes unreachable whois queries will continue un-effected.

3 Data Object Specifications

Objects returned by the whois system comply with specification 4 of the registry agreement. All data returned is in plain text format in key-value pairs. Additional formats may be provided at a later date as requested by the community or specified by ICANN.

Sample data returned by the port 43 service for the domain example.africa

```
Domain Name: example.africa
Domain ID: DOM_1S2XW-AFRICA
WHOIS Server: whois.AFRICA
Referral URL: http://www.africa/
Updated Date: 2012-01-22T19:36:00Z
Creation Date: 2012-01-22T19:36:00Z
Registry Expiry Date: 2013-01-22T19:36:00Z
Sponsoring Registrar: EXAMPLE AFRICA REGISTRAR
Sponsoring Registrar IANA ID: 0000
Domain Status: clientTransferProhibited
Registrant ID: coza1buye1494cc2
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX
Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
```

#:1032

Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Billing ID: EXAMPLE12345
Billing Name: ACCOUNTS
Billing Organization: EXAMPLE ACCOUNTS
Billing Address: 22 EXAMPLE STREET
Billing City: SOME CITY
Billing State/Province: CA
Billing Country/Economy: US
Billing Postal Code: 1234
Billing Phone: +1.234567890
Billing FAX: +1.234567890
Billing FAX Ext.:
Billing E-mail: billing@example.com

Name Server: NS01.AFRICARAR.AFRICA

Name Server: NS01.AFRICARAR.AFRICA

====

This WHOIS information is provided for free by the ZA central registry for .za domain names. This information and the .za WHOIS are:

Copyright ZA Central Registry 2012.

This port 43 whois facility is made available "as is," and we do not guarantee its accuracy or uninterrupted availability. By submitting a port 43 whois query, you agree that you will not use this facility to enable high volume, automated, electronic processes that unduly stress or load the whois database system. The commercial compilation, repackaging, dissemination or other use of the data you obtain from this facility is expressly prohibited without prior written consent from us.

We reserve the right to modify these terms at any time. By submitting this query, you agree to abide by these terms.

4 Lookups

4.1 Search Capabilities

The RFC 3912 system only allows domain name lookups. The web based whois tool is a full feature system. Two types of users are catered for:

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 61 of 89 Page ID
#1033
Unauthenticated users. I.e the average anonymous Internet user.

RFC 5731:- Authenticated Registrars or nominated authenticated users.

4.1.1 Unauthenticated Users

The user may search for domain names only. Information returned is identical to as returned by the port 43 whois system other than being formatted for web browsers. Information is returned when the query exactly matches the domain.

The user may use wild card queries. Eg: examp*.africa. In this case a list of the matching domains are returned. The user may then click on the domain to view its details. To prevent data-mining abuse only a subset of the matches are returned.

4.1.2 Authenticated Users

Authenticated users have access to a full featured system offering partial match capabilities on at least the following fields:

1. Domain name
2. Registrant's name
3. All sub-fields described in EPP (e.g., street, city, state or province, contact numbers etc.)
4. Registrant and or billing, registrar or other contact ids,

Exact match search will be offered on the following:

1. Registrar id
2. EPP host objects (server names).
3. Glue records (IP addresses)

The system will allow for Boolean combinations of fields using the standard AND, OR and NOT operators.

Returned results will always include the domain names as per the specification. Objects owned by the authenticated user (e.g a registrar querying a list of their owned domains) will be fully displayed while objects owned by other registrars will honour any <contact:disclose> settings.

The level of information displayed for non owned objects will be adjusted from time to time as per industry and ICANN recommended best practice as determined by the dotAfrica Policy Oversight Committee

4.2 Abuse Prevention

Unauthenticated users are controlled by a rate limiting system to prevent wholesale mining of the whois database.

Authenticated users will also be limited but to a much lesser degree. All matching objects owned by the requester will be returned in a search. A limited subset of matching objects will be returned when the objects are NOT owned by the requester.

Two aspects of abuse prevention are covered by the rate limiting system.

IP Address:- - Abuse originating from a single IP address or range of IP

addresses will be limited by a Token Bucket ^{#-1034} algorithm separate to other mechanisms but having the highest priority.

Domain Name:- - Abuse on a single domain name will have an isolated limitation based on the algorithm above to prevent multiple sources querying the same name. This prevents denial of service issues when a domain name is due for deletion and multiple source continuously query the domain to check for availability.

If a user exceeds the limits imposed by the token bucket system on the web based whois system the user is then required to enter a CAPTCHA test to continue using the system.
dotAfrica undertakes to add additional measures if it becomes apparent that large amounts of information are being retrieved by any single entity.

5 RFC 3912 Compliance

The implementation conforms with the requirements of RFC 3912 (WHOIS Protocol Specification)

A whois query to the system connects to TCP port 43 on the public WHOIS server. A single domain name is sent with the line terminated by a carriage return and a new line. The server responds with the result of the whois query in plain ASCII.

Since RFC 3912 does not specify any details for internationalisation, the whois service of the dotAfrica TLD will provide ASCII character set data. This implies that where EPP contact addresses exist of both local and international types, the International version will be returned.

RFC 5733 disclosure settings are honoured when returning information.
For example

```
<contact:disclose flag="0">  
  <contact:email/>  
  <contact:voice/>  
</contact:disclose>
```

will prevent the registrant's email or contact number from being displayed in the whois query.

6 Resourcing Requirements

The dotAfrica TLD development, deployment and operational responsibilities for the above will be staffed by members of the ZA Central Registry during start-up phase. Once the dotAfrica TLD becomes operational dedicated staff will initially be deployed to manage both the RFC 3912 whois and the web based whois as follows

Technical Manager:- - 1 staff member responsible for all technical related issues including keeping up to date with international standards and best practises.

System Administration:- - 2 staff members responsible for the day to day system administration and system monitoring.

7 Bulk Access

Bulk access here is defined as a full copy of the whois database.
Bulk access of objects in the Whois service will only be provided to ICANN or their appointed agents in accordance with the specifications 4 and 10 of the ICANN Registry Agreement.

27. Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:

- explain the various registration states as well as the criteria and procedures that are used to change state;
- describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply;
- clearly explain any time elements that are involved for instance details of add grace or redemption grace periods, or notice periods for renewals or transfers; and
- describe resourcing plans for this aspect of the criteria (number and description of personnel roles allocated to this area).

The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.

If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.

A complete answer is expected to be no more than 5 pages.

1 Synopsis

This chapter provides details on the proposed lifecycle of domains registered in the proposed gTLD. Included in the details is an elaboration on the various states, pending action periods and the registration periods of a domain.

2 Registration Life Cycle

2.1 Introductory Life Cycle

The diagram DNS-DomainLifecycle-SRLR.pdf details the introductory domain life cycle with Sunrise and Landrush periods. Domains registered during the Sunrise and Landrush periods will be registered for a period of 5 years.

2.1.1 Sunrise

On introduction of dotAfrica there will be a Sunrise period as defined below. Applications for Trademark names will be accepted during the Sunrise period. The Sunrise phase will be administered by an external provider as decided by the dotAfrica Policy Oversight Committee

The Sunrise period will be broken up into 3 phases as described in diagram DNS-DomainLifecycle-Sunrise.pdf.

1. Pre-Sunrise - Name collection for reservation and blocking starting from June 2012 and reserved names being held for a period of 24 months while blocked names will be held indefinitely.
2. Sunrise Phase 1 - The initial Sunrise period for African Registered Trademark holders running a period estimated at 2 weeks + 4 weeks, and to be ratified by the dotAfrica policy oversight committee with the latter period being used for examination and verification.

- #1036
3. Sunrise Phase 2 - The secondary Sunrise period for International Registered Trademark holders running for a period estimated at 2 weeks + 4 weeks, and to be ratified by the dotAfrica policy oversight committee with the latter period being used for examination and verification.

Application names will be reserved during the above periods until resolution occurs. Should an application be rejected or withdrawn the reserved names will be auctioned as part of the Landrush process.

2.1.2 Landrush

A Landrush period of estimated at 14 days, and to be ratified by the dotAfrica policy oversight committee will be enforced on the introduction of dotAfrica.

2.2 Operating Life Cycle

The diagram DNS-DomainLifecycle-LR.pdf details the Domain Operating Life Cycle.

Available:- The domain is available for creation and will not appear on the registry whois or EPP info query. The name might appear on a Sunrise/Landrush whois like interface.

Landrush:- The domain application has been submitted and is pending creation. Multiple creates will be accepted for the same domain during this period with any conflicts resulting in an auction period of 0 to 14 days.

Grace Period:- Once the domain has been created it will be in a state of grace lasting estimated at 10 days, and to be ratified by the dotAfrica policy oversight committee. The domain can be released and return to the available state should the registrant of the domain choose. The result will be a partial refund and a tasting fee as to be determined by the dotAfrica TLD policy oversight committee.

Registered:- The domain is now registered and in operation until a further change in state by one of the following operations:

1. Domain Renew
2. Domain Update
3. Domain Expiry
4. Domain Deletion
5. Domain Transfer

Expired:- A rollover of the domain expiry date will result in one of 2 actions:

Auto Renew:- If the auto renew attribute has been set on the domain and sufficient funds exist in the sponsor account then the domain will be renewed and move to the registered state for another period.

Suspension:- If the auto renew attribute has not been set or the sponsor has insufficient funds then the domain will enter the pending suspension state for eventual release.

Pending Suspension:- The domain may enter a state of pending suspension for estimated at 15 days, and to be ratified by the dotAfrica policy

#1037
oversight committee should it be deleted or expire. The domain will still be published to the zone. The pending suspension state may be cancelled at any time which may result in re-instatement should there be sufficient funds (if the pending suspension was due to an expiry).

Pending Deletion:- Once the period for pending suspension lapses so the domain will enter a state of pending deletion for estimated at 5 days, and to be ratified by the dotAfrica policy oversight committee. The domain will no longer be published to the zone but will still appear on whois and EPP info queries. The pending deletion state may be cancelled at any time which may result in re-instatement should there be sufficient funds (if the pending deletion was due to an expiry).

Released:- The domain will enter the available state in the eventual case of a domain being deleted which will then be available for re-registration.

3 Domain Life Cycle State Definition

The domain object status will be adjusted to any of the following states during its registration life cycle. The Domain Status interaction as defined in RFC 5731 will apply.

The diagram DNS-DomainLifecycle-Registration.pdf details the Domain Registration Life Cycle.

3.1 Pending Create

A pendingCreate status with an appropriate message will be applied upon receipt of a domain create command. During the state, the domain may be pending Sunrise legal resolution or Landrush auction. The domain object will be held by an escrow registrar as ordained by dotAfrica. The domain object will be transferred to the winning applicant upon expiration of the Sunrise or Landrush period defined below.

3.1.1 Sunrise

A Sunrise period estimated at 2 weeks + 4 weeks, and to be ratified by the dotAfrica policy oversight committee will begin on the launch of dotAfrica. The domain object will be held and advertised as being in Sunrise phase. Applications will be collected then accepted or rejected.

3.1.2 Landrush

The Landrush state will comprise of three phases:

Introduction:- A Landrush period estimated at 14 days, and to be ratified by the dotAfrica policy oversight committee will apply. Domain names will be offered at a premium fee which will be reduced at selected intervals until the next Landrush phase begins.

Initiation:- Thereafter a secondary Landrush period estimated at 14 days, and to be ratified by the dotAfrica policy oversight committee will apply. During the Landrush phase a domain in contention; which is a domain that is requested by multiple parties over the period; will enter an auctionary period. The auction will be maintained and monitored by an external provider as defined by the dotAfrica Policy Oversight Committee .

Operation:- During standard operation a period of 0 to 14 days will apply. The period will increase based on the amount of applications received for a domain name to a maximum period. Should more than one application be received for a single domain name then the applicants, or further applicants, shall enter a private auction to determine the ultimate owner of the name. The private auction is specific to recently released domain names where an out-of-band notification mechanism is utilized.

3.2 OK

The domain state of OK will apply until further commands are issued resulting in a change of state.

3.3 Pending Update

Domain update commands will be processed asynchronously resulting in an EPP Result Code of 1001. The Update period may vary depending on the extent of the update command and the domain update policy as to be determined by the dotAfrica TLD policy oversight committee.

3.4 Pending Transfer

A Registrar transfer may be initiated during the registration period. The transfer will result in a period varying 0 to 5 days depending on the credentials supplied with the transfer command.

3.5 Pending Delete

The pending delete state will apply for the periods of two of the phases in the domain life cycle as detailed below.

Pending Suspension:- A pending suspension period of estimated at 15 days, and to be ratified by the dotAfrica policy oversight committee during which the domain will remain in the dotAfrica zone.

Pending Deletion:- A pending deletion period of estimated at 5 days, and to be ratified by the dotAfrica policy oversight committee during which the domain will be removed from the dotAfrica zone.

3.6 Inactive

The domain state of Inactive will apply for the Pending Deletion period of estimated at 5 days, and to be ratified by the dotAfrica policy oversight committee. The state flags the domain for removal from the zone.

3.7 Hold States

The hold states of clientHold and serverHold will remove the domain from the dotAfrica zone and may apply indefinitely.

3.8 Locking States

The following client locking states may be applied indefinitely on a domain

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 67 of 89 Page ID #:1039
object

1. clientUpdateProhibited
2. clientRenewProhibited
3. clientTransferProhibited - Any domain transfer requests sent while the state is in effect will require authentication credentials.
4. clientDeleteProhibited

The following server locking states may be applied indefinitely on a domain object

1. serverUpdateProhibited - State will apply during Sunrise and Landrush periods as well as during any Universal Dispute Resolution Process, (UDRP).
2. serverRenewProhibited
3. serverTransferProhibited - State will apply during Sunrise and Landrush periods as well as during UDRP.
4. serverDeleteProhibited - State will apply during Sunrise and Landrush periods as well as during UDRP.

4 Resource Planning

4.1 Personnel Roles

Period and State roles are held by persons that have a role in affecting the dotAfrica's Policies and Procedures.

The policy roles are:

1. Policy Administrator, PA
2. Legal Advisor, LA
3. Technical Advisor, TA

4.1.1 Number of persons required per task

At any given time, there must be at least 2 individuals within the organization per policy role indicated in 4.1.

4.1.2 Identification and authentication for each role

Only people who have signed a confidentiality agreement and an agreement to acknowledge their responsibilities with the Registry may hold a policy role.

4.1.3 Tasks requiring separation of duties

The policy roles in 4.1 above to a maximum of two may be held simultaneously by one and the same person. In other words, the PA and TA role might be held by one person, while the LA role may be held by another. There must always be a minimum of two personnel present during policy

4.2 Policy Management

The Registry for dotAfrica includes software for maintaining and controlling dotAfrica policy. The policy roles in 4.1 must have access to the software and understand how the policy is implemented by the Registry.

28. Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:

- An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller;
- Policies for handling complaints regarding abuse;
- Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and
- Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.

- Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:
 - Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means
 - Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and
 - If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars.
- A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners;
- Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:
 - Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time

- #1041
- passwords) from registrants to process update, transfers, and deletion requests;
 - o Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and
 - o Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted.

A complete answer is expected to be no more than 20 pages.

1 Synopsis

This chapter provides details on the Abuse Prevention and Mitigation procedures as provided by the ZA Central Registry as currently in use for the co.za 2nd level domain, and as intended for use in the dotAfrica TLD on ratification by the dotAfrica TLD policy committee and in accordance with industry best practises and the ICANN Registrar and Registry Accreditation Agreement policies.

2 Abuse Policies and Procedures

2.1 Implementation Plan: Abuse Point of Contact

The ZA Central Registry is committed to protecting consumers, registrars and the greater internet community against fraudulent, deceptive and unfair business practices and to provide online advisory assistance to eliminate or at the very least minimize such practices within the dotAfrica TLD name space immediately after delegation. The ZA Central Registry, in consultation with the dotAfrica Policy Oversight Committee , intends investigating and implementing the following strategy to ensure that the above objectives are achieved:

1. Setting up a dedicated online complaints portal with access to email, telephone and fax contact details ;
2. Appointing a dedicated Complaints Officer who will attend to complaints or channel them to the relevant divisions within the registry to expedite resolution thereof;
3. Creating policies that will clearly set out inter alia: the scope and ambit of complaints that will be dealt with; the process that will be followed to deal with domain related complaints; the course of action that will be available to the registry to deal with complaints depending on their nature.

2.2 Domain Complaints Policy

Policies handling complaints pertaining to the dotAfrica domain name will be drafted and approved by the dotAfrica Policy Oversight Committee . What follows is a brief outline of some of the aspects that must be included as part of the policy framework and content

2.2.1 Background

This document sets out the ZA Central Registry policy on handling complaints relating to registrants, accredited registrars and resellers in the dotAfrica TLD domain name space.

2.2.2 Definitions Clause

In this part of the policy it would be imperative to define terms such as complaints (a party who has lodged a complaint regarding a dotAfrica domain name or a service provided by an accredited registrar or reseller), domain complainant (make it subject to the clause that defines what complaints will be covered within the scope of the policy); industry complaints (make it subject to clause that describes what complaints are covered within the parameters of this policy), respondent (person who lodges a complaint with the ZA Central Registry).

2.2.3 Jurisdiction to handle domain name complaints

This clause should define the ability of the ZA Central Registry to handle complaints that fall exclusively within the dotAfrica domain name space and list those complaints which the ZA Central Registry will not be competent to handle such as domain complaints relating to generic Top Level Domains or other country code Top Level Domains; web-hosting, web-management or web-design services which generally fall within the contractual sphere; internet access or email services which again falls outside the registry function; offensive or objectionable website content. Reference should also be made to relevant policies that may be developed and which may contain their own internal authority or institution mandated to deal with breaches thereof. Referrals to these institutions must be possible and perhaps a link should be provided to the appropriate authority or institution.

2.2.4 Complaints Management Process

This clause should give details of how complaints should be communicated to the Complaints Officer, i.e. whether by fax, email or post; whether the respondent will be given an opportunity to respond to the complaint; stipulate the time frames (specific or within a reasonable period of time) within which the complaint will be resolved; and how the complainant will be notified of the outcome of the investigations conducted regarding the complaint.

2.2.5 What constitutes domain complaints/industry domain complaints?

This clause should set out the type of complaints that will be addressed by the Complaints Officer. For example, domain complaints may include but not be limited to: cybersquatting, spam, phishing, ownership of domain names, transfer of domain names from one registrant to another, breach of any dotAfrica published policies; mismanagement of the dotAfrica domain name space by an accredited registrar or domain name reseller, breaches of the registrar agreement or any Codes of Conduct that may exist. Complaints that fall outside the competence of the Complaints Officer must also be specifically mentioned. For example, that the Complaints Officer would not entertain complaints that relate to competing rights in a domain name or any commercial disputes between registrars and resellers and/or registrars/resellers and registrants. The dotAfrica Policy Oversight Committee would have to decide how broad or narrow this component should be.

2.2.6 Kinds of decisions/actions that can be taken

This will depend on the nature of the complaint that is lodged and will have to be streamlined by the Policy Oversight Committee. Sample of decisions/actions could be:

1. In the case of a registrar or reseller being in breach of the registrar

#1043
accreditation agreement or any published policy, the action could be to notify the registrar or reseller of the breach and to give them an opportunity (time-based) to remedy the breach or risk more stringent action being taken, such as, to deny or cancel the registration, renewal or transfer of any .africa domain names, or to place any .africa domain name on registry lock, hold or similar status;

2. In the case of an unauthorized/unlawful transfer, it could be a reversal of that transfer;
3. Request the registrar/reseller to submit a full explanation of what transpired and tender an apology for any abusive practice that has negatively affected the complainant.

3 Whois Accuracy

3.1 Ad-hoc Validation Process

Currently, authentication of registrar/registrant data on the Whois database is governed in two ways. Firstly, the ZA Central Registry registrar accreditation agreement contains a number of provisions that places an obligation on the registrars to ensure that the data uploaded on the registry system is correct and updated on a periodic basis, failing which, accreditation status may be lost. The registrar accreditation agreement also places an obligation on the registrar to enter into contracts, which incorporate the key principles enunciated in the accreditation agreement as well as any additional legal requirements, with their registrants. This places a reciprocal duty on both the registrar and registrant community to ensure that at the very least, information maintained on the whois database is accurate, complete and current.

Secondly, the ZA Central Registry has a process (clause 7.3 in terms of the registration agreement, and a subsequent form 15 manual takedown process) in place to ensure that domain related data submitted to the registry is accurate and complete. The ZA Central Registry conducts ad hoc surveys or scrutiny of its Whois that shows that material information is missing on the Whois database and/or may also receive complaints from third parties that critical information on a particular domain is missing or inaccurate. The clause 7.3 process is activated to handle abusive practices of this nature. This process entails giving the registrar/registrant formal written notice by email/fax/postage to its billing/admin/tech contact to update the Whois database within 14 to 21 days, failing which the domain will be deleted. Upon expiry of this a Whois look-up is conducted and if the domain contact details have not been updated then the registrar/registrant is given a final 24 hour period to attend to our update request. If the Registrant contact details are not updated within the initial and extended periods then a take down request in terms of form 15 is formally processed and the domain is subsequently deleted. This process is properly documented and all efforts are made to ensure that the registrar/registrant receives proper notification and a reasonable opportunity to ensure that the domain details are complete and accurate. Within the dotAfrica gTLD context the dotAfrica Policy Oversight Committee will need to endorse this process or adapt it for implementation in the dotAfrica gTLD space.

4 Registrar Requirements

Notwithstanding the ICANN Registrar Agreement for accredited registrars the proposed registrar accreditation agreement for the dotAfrica TLD will include the following measures to ensure compliance to address abuse prevention, abusive behavior and address service levels for law enforcement requests.

COMMENCEMENT AND DURATION #1044

- a Duration
- b Registrar may Terminate

REGISTRAR ACCREDITATION

- a Requirement for Accreditation
- b Registrar Service
- c Non-Exclusivity
- d Continuous Disclosure

LOSS OF REGISTRAR'S ACCREDITATION

- a Loss of Accreditation
- b Consequences of Loss of Accreditation

WARRANTIES

- a Information Provided to the Registry
- b The Registry's Reliance

USE OF THE REGISTRY NAME AND LOGO

- a Grant of Licence
- b Other Use not Permitted

GENERAL OBLIGATIONS OF REGISTRAR

- a Registrar Services
- b Compliance with Published Policies
- c Notification of changes to Published Policies
- d Compliance with Code of Practice
- e Inconsistencies
- f No Limitation

PAYMENT OF FEES

- a Assessment Fee:
- b Accreditation Fees:
- c Annual Fee:
- d Transaction Fees:
- e Insurance:
- f Value Added Tax (VAT):
- g Timely Payment:
- h Interest on Late Payment:
- i No Set-Off:

APPLICATION FOR A DOMAIN NAME

- a Consideration by Registrar
- b Compliance with Published Policies
- c Final Check by the Registry
- d Approved Domain Name Applications
- e Rejected Domain Name Applications

REGISTRANT AGREEMENTS

- a Registrant Agreement
- b The Registry's Requirements
- c No Inconsistent Terms
- d Make Information Available to the Registrant
- e Registrar's Agency:

REGISTRANT DATA

- a Submit to the Registry Operator
- b Updated Registrant Data
- c Access to Registrant Data
- d Information to be Publicly Available

TRANSFER BETWEEN REGISTRARS

- a Transfers
- b Acknowledgement

NON-SOLICITATION OF REGISTRANTS

- a Use of WHOIS Service Information
- b No Application

REGISTRAR'S OTHER OBLIGATIONS

- a Positive Covenants
- b Negative Covenants
- c Insurance
- d Enquiries and Complaints

CONTROL OF RESELLERS

- a Appointment of Resellers
- b Responsibility of the Registrar
- c Reseller Agreement

PRIVACY

INTELLECTUAL PROPERTY RIGHTS

- a Registrant Data:

OBLIGATIONS OF THE REGISTRY

- a General obligations

CONFIDENTIALITY

a Delivery or Destruction of Confidential Information

LIMITATIONS OF LIABILITY

- a Disclaimer
- b Effect of Legislation
- c Exclusion of Implied Warranties
- d General Exclusion of Liability
- e Specific Performance
- f Limitation of Liability
- g Aggregate Liability
- h Consequential Losses

DISPUTE RESOLUTION

DEFAULT AND TERMINATION

a Consequences of Default:

CONSEQUENCES OF TERMINATION

- a Rights and Obligations on Termination:
- b Survival:
- c Forced Transfer:

PROHIBITION OF ASSIGNMENT

- a No Assignment:
- b No Change of Control:
- c Fees and Expenses:
- d Details:

GENERAL

- a Entire Agreement and Variations:
- b Further Assurance:
- c Legal Costs and Expenses:
- d Waiver and Exercise of Rights:
- e Time of the Essence:
- f Non-Solicitation:

NOTICES

a Service of Notice:

INTERPRETATION

- a Governing Law and Jurisdiction:
- b Persons
- c Joint and Several:
- d Legislation:
- e Severance:
- f Rule of Construction:

#:1047

- g Force Majeure
- h Currency:
- i Business Day:
- j Number and Gender:

5 Domain Operation Control Policies

The domain operation control policies will include adequate controls to ensure proper access to domain functions by registrars and token based control of domain operations by registrants as defined by the following framework.

THE REGISTRY SYSTEM AND SERVICES

- a Introduction
- b Access to the Registry System
- c Registrar Support Services
- d dotAfrica TLD Registrar Interface

NEW REGISTRATIONS

- a Domain Name Registration Process
- b Managing Domain Names
- c Registrar Maintenance
- d Locking Domain Names

CANCELLATIONS, REINSTATEMENTS AND DELETIONS

- a Canceling a Domain Name other than During a Grace Period
- b Canceling a Domain Name during a Grace Period
- c Cancellation of Non-Renewed Domain Names
- d Reinstating Cancelled Domain Names
- e Status Change Notifications to Registrars
- f Status Change Notifications to Registrants

CHANGES TO REGISTRANT INFORMATION

- a Registrant Notification
- b Registrant Change Reinstatement
- c Registrar Guidelines

CHANGES TO ZONE RECORDS

- a General
- b Principles

TRANSFERS BETWEEN REGISTRARS

- a Registrant Notification
- b Registrant Token Control
- c Transfer Control Process (Including Registrant Token Based Control)
- d Transfer Reimbursements

5.1 Authentication and Notification Mechanisms

The dotAfrica TLD Registry implementation will support password based authentication for Contact and Domain Registry objects. These password based authentication mechanisms may bypass object locks (EPP client Action Prohibited statuses) depending on usage. One-time passwords may be utilized to issue emergency transfers or suspensions if deemed necessary by the dotAfrica Policy Oversight Committee .

The dotAfrica TLD Registry implementation employs out-of-band notification to the Domain Registrant. The notification system, usually Email/SMS based, is utilized whenever a Domain or Contact object transform command is executed. The notification provides the Registrant an opportunity to query and, if applicable, cancel the action or transfer the domain. Additionally, the notification system allows Domain Registrants to vote via Web or Email on Domain Transfer requests. If, at any point in the process, the Registrant feels that the requesting Registrar is being abusive the registrant may issue an abuse complaint as per section 2.2 of this document.

In addition to the out-of-band notification system, the Registry also employs EPP based Poll messages for the current sponsor of the EPP object. A Poll message notifying the sponsoring Registrar will be queued if any transform command is executed on the Registry.

6 Orphan Glue Record Policy

The dotAfrica Registry implementation may prohibit the use of Host create/update commands, thus forcing the requester to create Host associations via the Domain create/update commands. The process ensures that a host cannot be edited directly and glue cannot be adjusted without knowledge of the superordinate domain. The Zone publication procedures will not publish Glue records for Host objects if the superordinate domain is not owned and published by the same Registrar. The process inherently prevents the creation and publication of orphan glue.

If at any point orphan glue records should exist the ZA Central Registry will provide a policy for removing it based on document ICANN document sac-048-en.pdf as published by the ICANN Security and Stability Advisory Committee (SSAC) dated 12 May 2011.

7 Resource Planning

In the interim post delegation phase, the abuse point of contact portfolio may require the appointment of at least two people. Costing for this position is included in the financial model submitted with this application.

29. Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.

A complete answer should include:

- A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a

#1049
Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and

- A description of resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.

A complete answer is expected to be no more than 10 pages.

1 Synopsis

This chapter provides details on the Rights Protection Mechanisms as proposed for the dotAfrica gTLD including the sunrise and landrush policy implementation in accordance with the ICANN Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.

2 Launch Process Outline

The ZA Central Registry intends to offer the following launch model.

- * Pre-Sunrise: Allowing names to be reserved for a period of 24 months or to be blocked.
- * Sunrise 1: (favouring trademarks registered in Africa; those trademarks registered or applied for 18 months prior to delegation will be granted an additional level of priority)
- * Sunrise 2: Favouring all trademarks
- * Introductory Land Rush: seeking to allocate premium names in separate sub-phases, during which the prices of these names will decrease in steps.
- * Initiation Land Rush: Seeking to allocate names not previously identified as premium at an increased price compared to open delegation.
- * Limited Availability Operational Period: Placing newly requested names on a reserved list for a short period before allocation to guard against unfair allocation of domain names where multiple applications for the same domain name following release of domains or following an announcement or event. Conflicted names will be referred to auction.
- * General Availability Operational Period: Steady state pricing; first-come-first-served allocation.

3 Sunrise:

The Sunrise process is separated into three phases:

- * Pre-Sunrise provides the opportunity to place names on the reserved or blocked lists. Names will be placed on the Reserved list if they hold special meaning in Africa (such as city names, names of cultural sites or groups, etc). Names will be blocked if the names are offensive in the

#1050
African region. The African Union Commission (AUC) in partnership with the African Governments will administer Pre-Sunrise.

- * Sunrise 1 provides priority for eligible owners of trademarks registered in Africa to obtain domains corresponding to the trademarks they own that are related to the policy of the Registry.
- * Sunrise 2 allows eligible trademark owners to obtain domains corresponding to the trademarks they own.

There is no priority during the respective Sunrise Periods. A batching system is used for identical competing applications, which are then allocated by auction.

The ZA Central Registry will publish full details of its Sunrise policy and eligibility once it has been approved by the Policy Oversight Committee. What follows is a basic outline of the proposed policy with some key definitions. To be eligible to submit a REGISTRATION REQUEST under Sunrise 1, a Sunrise APPLICANT must:

1. comply with the SUNRISE ELIGIBILITY REQUIREMENTS; and
2. be related to the POLICY of the REGISTRY; and
3. AFFIRM COMPLIANCE with the POLICY of the REGISTRY.

To be eligible to submit a REGISTRATION REQUEST under Sunrise 2, a Sunrise APPLICANT must:

1. comply with the SUNRISE ELIGIBILITY REQUIREMENTS; and
2. AFFIRM COMPLIANCE with the POLICY of the REGISTRY.

3.1 Sunrise Definitions:

The policy will in all likelihood be based inter alia upon the following key definitions.

ELIGIBLE: A trademark or service mark conforming to the SUNRISE ELIGIBILITY REQUIREMENTS (SERs).

OWNERSHIP: Ownership of an ELIGIBLE trademark may mean owner, co-owner or assignee. For an assignee, the PROVIDER may request appropriate evidence that the assignment has taken place, and meets the legal requirements to be an effective assignment in the jurisdiction in which the mark is registered. For a co-owner, the PROVIDER may request appropriate evidence that the co-owners have joined in the application. Any dispute will be decided upon by the PROVIDER.

PROVIDER: An independent entity or entities appointed by the Registry to provide certain rights protection services which may include inter alia verification, validation, and dispute resolution related to eligibility of trademarks. In this regard the ZA Central Registry has provisionally elected to engage the South African Institute of Intellectual Property Law (www.SAIPL.org.za) for assistance and advice concerning the establishment of a specialist panel of experts.

REGISTRATION REQUEST: An application submitted by an ACCREDITED REGISTRAR on behalf of an APPLICANT to register a name in the TLD.

3.2 Sunrise Dispute Resolution Policy

The REGISTRY will operate a Sunrise Dispute Resolution Policy either itself or via the PROVIDER, full details and the fees of which will be published on the REGISTRY WEBSITE.

The policy will allow challenges based on the following grounds:

- * at the time the challenged domain name was registered, the domain name REGISTRANT did not hold an ELIGIBLE trademark;
- * the trademark registration on which the domain name REGISTRANT based its Sunrise registration is not ELIGIBLE;
- * the domain name is not identical to the trademark on which the domain name REGISTRANT based its Sunrise registration; and
- * the REGISTRATION REQUEST which led to the award of the domain name was in some way incorrect, misleading or fraudulent.

3.3 Sunrise Eligibility Requirements (SERs)

1. These are cumulative.

- * OWNERSHIP of a word mark registered in the Trademark Clearinghouse; or
- * OWNERSHIP of a word mark of national or regional or international effect registered in one of the states or entities in the WIPO Standard ST.3, that is in full force and effect at the time of submission of the REGISTRATION REQUEST, and at the time of Registration of any awarded name, and for which acceptable evidence of USE in the class for which it is registered is provided; or
- * OWNERSHIP of a word mark that has been court-validated; or
- * OWNERSHIP of a word mark that is specifically protected by a statute or treaty currently in effect. Trademarks that were in effect on or before a date 18 months prior to delegation will be given priority in Sunrise 1;

2. a word mark which directly corresponds to the name in the REGISTRATION REQUEST;

3. a statutory declaration or an affidavit signed by the APPLICANT:

- * that the information provided is true, correct and complete;
- * that no pertinent information has been withheld;
- * that acknowledges the fact that if there is any information withheld, that it automatically results in the loss of rights in any domain name(s) acquired, or the loss of the right to seek to register same; and
- * that the application is compliant with the relevant Sunrise requirements;

4. provision of data conforming to the SUNRISE INFORMATION REQUIREMENTS sufficient to document rights in the trademark;

- #1052
5. is not a word mark that includes the STRING as a portion of the trademark;
 6. is not a trademark for which an application for registration has been filed, but is not actually registered;
 7. is not a trademark for which an application has lapsed, been withdrawn, revoked, or cancelled;
 8. is not an unregistered trademark including such common law marks;
 9. is not a U.S. state trademark or service mark or a U.S. supplemental registration;
 10. is not an international application for the registration of trademarks, made through the Madrid system, unless based on or have resulted in a registered trademark of national effect;
 11. is not intellectual property other than a word mark such as rights in a sign or name, including domain names, trade names, and appellations of origin.
 12. is not a trademark registration that came into full effect after the effective date of the Registry Agreement;
 13. is not a trademark registration that was applied for after the 1 May 2012 being the date at which ICANN announced the applications received.

One key objective of the SERs is to facilitate marks registered and used in good faith and not merely as a means to register a domain name.

3.4 Sunrise Information Requirements

APPLICANTS in Sunrise 1 and Sunrise 2 must submit the following information, either in an ACCEPTABLE ELECTRONIC FORMAT, as prescribed by the ZA Central Registry, or via a link to the relevant database of the trademark registry, as part of a REGISTRATION REQUEST:

* EITHER OF: the Trademark name and its corresponding Trademark Clearing House identity number; or

* Two (2) all of the following:

- the trademark corresponding to the name to be Registered;
- the country, region, or organization found in WIPO STANDARD ST.3 in which the trademark is registered;
- the current registration number of the trademark;
- the date on which the trademark application was submitted;
- the date on which the trademark was registered;
- the class or classes under the latest publication of the Nice system (or its equivalent) for with the trademark is registered (see: ; and
- the status of the APPLICANT being one of owner, co-owner, or assignee of the trademark.

USE: Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use in the relevant jurisdiction, provided in an ACCEPTABLE ELECTRONIC FORMAT. The form of the signed declaration will be as follows. I/We [name of applicant]

declare that I/we have used the trademark #1053 [name of work mark] since [date] in [country] on [state goods or services] and attach a sample of [type of sample] as evidence.

4 Land Rush:

Land Rush is a period designed to allocate domain names (by price) that may be regarded by the market as desirable (premium names). The Land Rush Period is divided into sub phases and will be administered through the Applicants Registrar Web Portal.

The first phase is the Introductory Land Rush period. All Domain Names not taken up during the Sunrise Periods are made available for purchase for a certain period at a certain price. Where there is more than one party interested in the same domain name, that domain name will be auctioned. Only parties that indicated that they were willing to pay the price for the domain name during that period (by submitting an application for the name in the prescribed manner) will be entitled to bid in the subsequent auction. During the Introductory Land Rush period the price of domain names will start at USD 10000, and will fall by USD 2000 at the beginning of each subsequent period (such as a week) until it reaches USD 2000. Bids will be collated at the end of each of these periods and undisputed applications will be allocated, whilst disputed application (more than 1 (one) application for the same name) will be referred to auction.

Then starts the Initiation Land Rush period. This period will last for an estimated 14 days. It will also be administered through the Registrar Web Portal. A minimum cost of USD 300 will apply to registrations during this period. Multiple applications for the same domain name during this period will also be resolved using an auction process. Undisputed applications will be allocated at the end of the period.

To be eligible for Land Rush an applicant must AFFIRM COMPLIANCE with the POLICY of the REGISTRY. An applicant may submit one or more REGISTRATION REQUESTS during Land Rush for any available name.

5 Operational Phase: Limited Availability:

Depending on the decision made by the dotAfrica Policy Oversight Committee, the ZA Central Registry may elect to implement a limited availability operational phase, following on from the Initiation Land Rush period. This phase could last between 0 and 14 days, and will be administered through the Applicants SRS EPP system.

The procedure will be to place any requested domain name (application) in a reserved queue for a short period. If any additional applications for the same domain name are received during this period then the domain will enter a Land Rush auction for a maximum predetermined period. At the end of the period the bids will be collected and the winner determined. This process is intended to mitigate the effects of multiple applications for the same name following domain release as well as spontaneous applications due to international events or announcements.

6 Operational Phase: General Availability:

General Availability starts at the close of the limited availability operational phase. Domain names are available at fixed prices (via Registrars) on a first-come first-served model.

7 Trademark Clearing House:

During Sunrise 1 and Sunrise 2, all applications will be compared to the Trademark Clearinghouse database, and the applicant will be informed if there is any trademark in that database that is an identical match to the domain name applied for.

The notice will be sent in English, and the applicant will be required to:

1. Acknowledge receipt of the notice;
2. Confirm that it understands the notice; and
3. Confirm that, to the best of its knowledge and belief, use of the domain name applied for will not infringe the rights of the trademark cited.

During Sunrise 1, Sunrise 2 and Introductory Land Rush, all applications will be compared to the Trademark Clearinghouse database and, if the domain name is identical to any trademark recorded in this database, the owner of that trademark shall be given notice of the domain name application in good time for him to also make application for the domain name.

8 Rights Protection Mechanisms (RPMs):

All RPMs prescribed by ICANN will be implemented.

In particular, the Uniform Rapid Suspension System (URS) shall be available. Examiners accredited by ICANN appointed Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to make findings in URS applications.

In the case of where a Post Delegation Dispute Resolution Procedure (PDDRP) is initiated following allegations that the Registry profited from a bad faith registration, the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD.

Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to stand as Providers in PDDRP applications.

Provision will be made to file initial complaints that the Registry has not complied with registry restrictions through a Whois Data Problem Report System (WDPRS) through InterNIC.net at a nominal, non-refundable fee.

If a complainant is not satisfied that the Registry has complied with its requirements, the matter may be escalated using the RRDRP.

In the case of Registry Restrictions Dispute Resolutions Procedures (RRDRP), the Registry undertakes to participate in the procedure and be bound by the determination made. This will be specifically included in the agreement with prospective applicants for domain names in this TLD.

Providers accredited by ICANN as Dispute Resolution Service Providers (according to the Applicant Guidebook Module 3, paragraph 3.2.3) will be requested to stand as Providers in RRDRP applications.

The Registry will endeavour to encourage and support suitably qualified persons in Africa to apply to be appointed to the board of Examiners in the present ICANN Dispute Resolution Bodies.

9 Resources:

Supporting RPMs requires several departments within the registry operator to work together. The implementation of Sunrise and the Trademark Claims service and on-going RPM activities will pull from the members of the engineering, product management, development, security and policy teams at the registry. No additional hardware or software resources are required to

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 83 of 89 Page ID
#1055
support this as the Applicant has fully operational capabilities to manage
abuse today.

30A. Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:

- indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities;
- description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided);
- list of commitments made to registrants concerning security levels.

To be eligible for a score of 2, answers must also include:

- Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).

A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).

1 Synopsis

This chapter provides a summary of the security policy for the proposed dotAfrica TLD to be provided and implemented by the ZA Central Registry.

2 Independant Assessment

The ZA Central Registry has developed and ISO27001 Information Security Management System (ISMS) policy with an accreditation provider. The ZA Central Registry is committed to obtaining ISO27001 certification. Further details are included in Question 30b.

3 Registry Security Policy

The Registry Security Policy acts the overseeing policy for the following key aspects:

Data Security:- The data security must be maintained to ensure data integrity and confidentiality. All the policies and procedures for data security are detailed in the Data Security Policy.

Hardware Security:- Hardware security must be instituted to maintain system availability, integrity and confidentiality. All the policies and procedures for hardware security are detailed in the Hardware Security Policy.

Network Security:- Network must be secure to ensure system availability, integrity and confidentiality. All the policies and procedures for network security are detailed in the Network Security Policy.

Software Security:- Software security for all system services must be maintained to ensure system availability, integrity and confidentiality. All the policies and procedures for software security are detailed in the System Services Security Policy.

Physical Security:- Physical security must be maintained at all sites to ensure system availability, integrity and confidentiality. All the policies and procedures for physical security are detailed in the Physical Security Policy.

Threat Security:- Threats must be identified mitigated and managed to ensure system availability, integrity and confidentiality. All the policies and procedures for threats are detailed in the Threat Security Policy.

Issue Tracking System:- The registry must provide and maintain a issue tracking system for tracking security incidents, the system will contain all information detailed the Security Incident Report contained in the Threat Response Procedure.

The Main Policy Statement is:

The ZA Central Registry must ensure the registry system maintains availability, integrity and appropriate confidentiality of all information.

Compliance to the Registry Security Policy is ensured through the following Compliance Clause:

The security measures will be tested and a report will be compiled and reviewed by management in accordance with the security policy schedule to be defined by management.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

4 Data Security

The security policy governing Data Security is the "Data Security Policy" with the following Main Policy Statement:

The ZA Central Registry does ensure the protection of registry system data and backups and prevent any unauthorised access.

The Data Security Policy address the following key aspects:

Access Control:- Access to registry system must be performed through the following mechanisms:

1. Authentication in accordance with the following procedure:Authentication Procedure
2. Access Control Lists (ACL) in accordance with the following procedure:Access Control List Procedure

Data Encryption:- All communication with the database must be over encrypted SSL connections.

Private Keys:- Private Keys for zone signing must be stored in Hardware Security Module HSM devices. These will be managed according to the HSM Key Procedure.

Backups:- Backups are stored in secure storage and in secure off site storage facilities. Backups are also encrypted and will be performed according to the procedure detailed in the Backup Procedure.

Data Escrow:- dotAfrica TLD conforms with ICANN's requirements on registry data escrow as outlined by Specification 2 of the Agreement as contained in the Applicant Guidebook. The procedure for handling data escrow is defined in the Data Escrow Procedure.

Portable Storage:- Sensitive registry data must not be stored on portable drives or USB flash disks unless required to by security procedure and fully encrypted.

Compliance to the Data Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

5 Hardware Security

The security policy governing Hardware Security is the "Hardware Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system hardware including servers, HSM's and routers are protected from unauthorised access.

The Hardware Security Policy address the following key aspects:

Physical Access:- Physical access to the area containing registry hardware including servers, HSM's and routers are controlled by keycard and biometric access control mechanisms. Keycards are used and issued according to the Keycard Issuing Procedure.

Server Access:- All servers are housed in locked server cabinets.

Router Access:- All routers are housed in locked server cabinets.

HSM Access:- All HSM's are housed in locked server cabinets or locked safes.

Console Access:- All console access is restricted by system level password authentication and follow the procedures defined in the Authentication Procedure.

Auditing Access:- All network access is logged and audited in accordance with the Threat Detection Through Auditing section.

Compliance to the Hardware Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

6 Network Security

The security policy governing Network Security is the "Network Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system network infrastructure routers are protected from unauthorised access and DOS attacks.

The Network Security Policy address the following key aspects:

6.0.1 Supporting Statements

Firewall:- A Firewall is configured to limit connections according to an ACL. The ACL will be operated in accordance with the Access Control List Procedure

Routers:- Routers are secured by limiting access according to an ACL. The ACL must be operated in accordance with the Access Control List Procedure

DOS Mitigation:- A plan is in place to mitigate the effects of a DOS attack. The procedures for mitigating security threats is detailed in the Threat Mitigation Procedure.

Network Access:- Network access is controlled by the use of the following 2 mechanisms:

1. Authentication in accordance with the Authentication Procedure
2. Access Control Lists (ACL) in accordance with the Access Control List Procedure

Compliance to the Network Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

7 System Service Security

The security policy governing System Service Security is the "System Service Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system software is maintained and updated to prevent any security issues.

The System Service Security Policy address the following key aspects:

Operating System:- All registry systems run Ubuntu LTS 12.04 or newer.

Operating System Security Updates:- All security patches for operating systems that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

OpenSSL Software Updates:- All security updates to the OpenSSL li-

#1059
baries that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

OpenSSH Server Software Updates:- All security updates to the OpenSSH server that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

BIND Server Software Updates:- All security updates to the BIND server that are identified as required by the registry system are applied as follows:

Critical :- within 24 hours of the notice being received.

High :- within the next maintenance window.

Warning :- within the next 4 maintenance windows.

Compliance to the System Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

8 Physical Security

The security policy governing Physical Security is the "Physical Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system physical sites are secure to prevent any unauthorized access.

The Physical Security Policy address the following key aspects:

Regulation Compliance:- The registry physical security measures comply with local safety codes, building codes and fire prevention codes.

Building Access:- Building Access is controlled by the use of key cards.

Server Room Access:- Server Room Access is controlled by the use of biometric testing.

Server Cabinet Access:- Server Cabinet Access is controlled by the use of keys.

Access Auditing:- All access logs are kept for auditing purposes.

Compliance to the Physical Security Policy is ensured through the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

Case 2:16-cv-00862-RGK-JC Document 17-20 Filed 03/01/16 Page 88 of 89 Page ID
#1060
tioned key aspects as well as any other criteria identified by the management.

9 Threat Security

The security policy governing Threat Security is the "Threat Security Policy" with the following Main Policy Statement:

The ZA Central Registry must ensure the registry system manages its security risk against threats identified.

The Threat Security Policy addresses the following key aspects:

Threat Identification:- Threats that are identified are reported on in accordance with the Threat Identification Procedure.

Threat Classification:- Threats are classified. Threat Classification must be done in accordance with the Incident Severity Classification Procedure.

Threat Detection:- Threats are identified through auditing logs. Threat Detection is done in accordance with the Threat Auditing Procedure.

Threat Mitigation:- Threats are mitigated to reduce risk to the registry system where reasonable. Threat mitigation is done in accordance with the Threat Mitigation Procedure.

Threat Response:- Threats are responded to in accordance with the threat classification and Threat Response Procedure.

Compliance to the Threat Security Policy is ensured by the following Compliance Clause:

The security measures will be tested every 6 months and a report will be compiled and reviewed by management. This period may be reviewed at the discretion of the IT Manager.

Any reports required for decision making will be made available in a timely manner prior to the policy compliance review date.

All processes and procedures are supported by reporting systems, allowing timely access to required information.

Compliance is measured according to the success or failure of the abovementioned key aspects as well as any other criteria identified by the management.

10 Additional Information

Monitoring of systems for compliance to the abovementioned policies is performed by various tools that review logs, monitor critical systems availability, produce security reports and will escalate identified anomalies to the network and system administrators on a 24x7 basis.

11 Commitment to Registrants

The ZA Central Registry is committing to running industry standard security practices or higher where possible.

11.1 Registrant Rights

The registrant will retain control of their domain name, and in this regard registrants must be able to choose the registrar they wish to use to maintain the domain name. The registrar will not operate in such a way that the registrant is locked-in, or such that their actions could make the registrant reasonably believe that they are locked in.

© Internet Corporation For Assigned Names and Numbers.

Case 2:16-cv-00862-RGK-JC Document 17-21 Filed 03/01/16 Page 1 of 5 Page ID #:1062

EXHIBIT 21

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

P. O. Box 3243, Addis Ababa, ETHIOPIA Tel.: (251-11) 5182406 Fax: (251-11) 5182450

COMMUNIQUE

On the implementation of the dotAFRICA (.AFRICA) Top Level Domain (TLD)

The AUC wishes to provide the following clarity to all stakeholders in Africa and internationally:

1. In view of the needs expressed by the African community at large, and in order to fast track the launch and operation of the dotAFRICA (.AFRICA) TLD, the Extraordinary Session of the African Union Conference of Ministers in charge of Communications and Information Technologies (CITMC) held in Johannesburg acknowledged the benefits of the dotAFRICA (.AFRICA) domain name to Africa and called for :

"Establishment of dot Africa as a continental Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet agencies."

2. Following the endorsement of the outcomes of the above extraordinary conference by the Heads of States and Governments Summit in January 2010, the Ministers of the African Union in charge of Communication and Information Technologies who met at the Third Ordinary Session of the African Union Conference in Abuja (The Abuja Declaration), requested the AUC to:

"Set up the structure and modalities for the Implementation of the dotAFRICA project."

3. In fulfilling its mandate from African governments the AUC has, in accordance with an open and transparent Request for Proposal (RFP) process, officially endorsed UniForum SA t/a the ZA Central Registry (ZACR) to apply for and launch the dotAFRICA (.AFRICA) TLD.

THE OFFICIALLY ENDORSED APPLICATION:

4. The UniForum/ZACR, in accordance with the procedures and standards prescribed by the Internet Corporation for Assigned Names and Numbers (ICANN), has officially lodged an application for the delegation of the dotAFRICA (.AFRICA) geographic Top Level Domain, under reference number: **1-1243-89583**. This application constitutes the official AUC endorsed application for the dotAFRICA (.AFRICA) Top Level Domain.

Further details of this official application is available at:
<http://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1184>

5. The application submitted by the UniForum/ZACR, meets or exceeds, the minimum evaluation criteria set by ICANN and will result in the successful delegation of the dotAFRICA (.AFRICA) geographic TLD (gTLD).
6. Furthermore, UniForum/ZACR's application, as endorsed by the AUC, is correctly designated as a geographic application in accordance with the criteria and processes outlined by ICANN in the Applicant Guidebook.

In particular:

Africa (and therefore .Africa) is a clearly designated geographic area as defined in the UNESCO "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.

Therefore the designation of the official dotAFRICA (.AFRICA) TLD string application, as a geographic name, is technically and procedurally correct. The "geographic evaluation process" that this application is subject to provides sufficient checks and balances for the protection of interests and rights of African governments and the Pan-African community.

7. The AUC endorsed dotAFRICA (.AFRICA) application has been, and continues to be, a collaborative Pan-African initiative involving African governments, ICT stakeholders and the broader African community.

In this regard the stated mission and objective of the AUC's officially endorsed application is enshrined in the answers to question 18 of the Application, and reads as follows:

"To establish a world class domain name registry operation for the dotAfrica Top Level Domain (TLD) by engaging and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups".

8. In addition, to adhere to the spirit of inclusivity of African ICT stakeholders, community and governments, the ZACR has set up a Steering Committee (Steercom) comprising of the AUC, African country code Top Level Domains (ccTLDs), African ICANN-accredited registrars, ICT regulators, UNECA and civil society.
9. The Steercom is responsible for driving the ICANN application process, and for ensuring that a suitable . dotAFRICA (.AFRICA) Foundation is set up to ensure that dotAFRICA (.AFRICA) is run in a manner that supports the development of the African domain name community. More information about the Steercom and about the progress of the AUC endorsed dotAFRICA (.AFRICA) project is available at <http://africainonespace.org/>

10. To emphasize their commitment to the AUC-endorsed .Africa application, at least 39 African governments have submitted letters of support to the UniForum/ZACR .Africa application.
11. Details about the AUC's officially endorsed application, including the .Africa Steercom, can be found at:
 - a. <http://www.AfricaInOneSpace.Org>
 - b. Twitter @africandomain
 - c. <http://www.facebook.com/africandomain>
 - d. <http://www.youtube.com/user/Africandomain?feature=watch>

CONFUSINGLY SIMILAR APPLICATION:

12. A competing private application for a confusingly similar string has been lodged by the DotConnectAfrica Trust. This application for the .dotAfrica ("dotdotafrica") TLD string, under reference number **1-1165-42560**, is an unwarranted and unnecessary intrusion on the AUC's mandate from African governments and, if allowed to proceed, will lead to confusion with the AUC's officially endorsed application. Consequently, the AUC has initiated suitable proceedings (in accordance with the ICANN new gTLD Applicant Guidebook) to oppose this application through the Governmental Advisory Committee (GAC) and ICANN's prescribed objection procedures.

Further details of this application is available at: <http://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1276>

Case 2:16-cv-00862-RGK-JC Document 17-22 Filed 03/01/16 Page 1 of 4 Page ID #:1067

EXHIBIT 22



PREPARING EVALUATORS FOR THE NEW GTLD APPLICATION PROCESS

by Michael Salazar | 22 November 2011

The names of the global firms that will serve as the evaluation panels for new generic Top Level Domain (gTLD) applications were recently announced during the ICANN 42 Dakar meeting.

As Program Director for the New gTLD Program (<http://newgtlds.icann.org/>) responsible for the design and deployment of the New gTLD Application Processing Program and managing the process as it takes flight, I am extremely proud of the selections we have made. All of the organizations chosen are highly qualified, global, and are respected experts in the areas for which they have been selected.

Whom did we select?

We followed a thorough, fair, detailed process to select the evaluation panels. The process, which is described on our website under "Call for Applicant Evaluation Panel Expressions of Interest (<http://www.icann.org/en/announcements/announcement-25feb09-en.htm>)" began in February of 2009. When I came on board in July 2009 I quickly understood the heightened level of interest in providing services for this relatively new Program. In all, twelve global firms formally submitted responses. Out of that pool, we selected: The Economist Intelligence Unit (<http://www.eiu.com>), Ernst & Young (<http://www.ey.com>), InterConnect Communications (<http://www.icc-uk.com>) (partnering with the University College London (<http://www.ucl.ac.uk>)), Interisle Consulting Group (<http://www.interisle.net>), JAS Global Advisors (<https://www.jasadvisors.com>), and KPMG (<http://www.kpmg.com>).

These firms will work together in various combinations to evaluate applications during the process as follows:

String Reviews

- **String Similarity** - InterConnect Communications/University College London
- **DNS Stability** - Interisle Consulting Group
- **Geographic Names** - The Economist Intelligence Unit and InterConnect Communications/University College London

Applicant Reviews

- **Technical and Operational** - Ernst & Young, JAS Global Advisors, and KPMG
- **Financial Capability** - Ernst & Young, JAS Global Advisors, and KPMG
- **Registry Services** - Interisle Consulting Group
- **Community Priority** - The Economist Intelligence Unit and InterConnect Communications

Why is there more than one firm for each of the evaluation types? Three reasons:

- To provide sufficient bandwidth to conduct the number of necessary evaluations,
- To provide an alternate channel to avoid conflicts of interest,
- To provide for continued competition among service providers to ensure quality and value going forward.

All of the firms exhibit characteristics that are important to the integrity of this process. For example, KPMG and Ernst & Young both have large global footprints and can effectively scale to ensure timely and culturally sensitive processing of applications. Their strong and long history in providing audit, tax, and advisory services makes them well suited to serve as the panels for financial and technical/operational evaluations. JAS Global Advisors has a decade of experience in due diligence, Internet security, and global IT operations as well as an intimate knowledge of ICANN. The Economist Intelligence Unit, the sister organization of *The Economist*, incorporates a solid understanding of global corporate and government processes. InterConnect Communications, in conjunction with the University College London brings an internationally recognized and diverse linguistics resources offering an abundance of subject matter expertise. And finally, Interisle Consulting Group has a very specific, excellent subject matter expertise in the DNS.

How are we ensuring an effective and efficient evaluation effort?

Ensuring that we have an effective and efficient evaluation effort is one of the most important aspects of building this program - and this starts with how we are preparing the evaluation panels.

The first step begins with simulation exercises. Currently, my team is conducting simulation exercises using mock applications. The simulation exercises have been instrumental in testing the evaluation process, understanding the level of effort to review an application, and equally as important, to calibrate the analysis across the firms.

The next step is building and implementing a robust training program. We are finalizing a training program that all evaluators are required to complete before performing an evaluation. Any individual serving on a panel will need to complete the training program prior to starting. The training program seeks to ensure consistency across all processes and scoring methods so that all applications are evaluated equally.

Finally, we are implementing a Quality Control program to ensure that applications have followed the same evaluation process and have been evaluated consistently. I strongly believe that the Quality Control function is a paramount component of the Program. In addition to performing the critical task of ensuring consistency, Quality Control will enable us to identify areas for improvement. These will in turn create initiatives that will bring enhanced effectiveness to the overall program as well as improvements in costs as we consider future rounds.

How will ICANN address any conflicts of interest?

Conflict of interest is an area that ICANN takes very seriously as it impacts the integrity of the Program. In fact, our processes are built to avoid and adequately deal with potential conflicts of interest. For example, where feasible, we have multiple firms providing services making sure that no evaluators have a conflict with a particular application.

I helped craft applicable language in the Applicant Guidebook and have made the topic the subject of contract negotiations with each firm reinforcing the importance of avoiding conflict of interest (inherent or perceived). There is also a code of conduct that we have asked each firm to abide. Some of the guidelines under the code of conduct restrict the evaluators from speaking at meetings or conferences on the topic of New gTLDs and interacting with entities or individuals that have identified themselves as potential applicants of the New gTLD Program. See [Module 2 of the Applicant Guidebook \(http://newgtlds.icann.org/applicants/agb\)](http://newgtlds.icann.org/applicants/agb) (Section 2.4.3 Code of Conduct Guidelines for Panelists) for more information on the Code of Conduct and Conflict of Interest guidelines.

The New gTLD Application Program is a major undertaking for ICANN and the global Internet community. We are very excited to get this program underway. Stay tuned for additional announcements as we continue to prepare for launch on 12 January 2012.

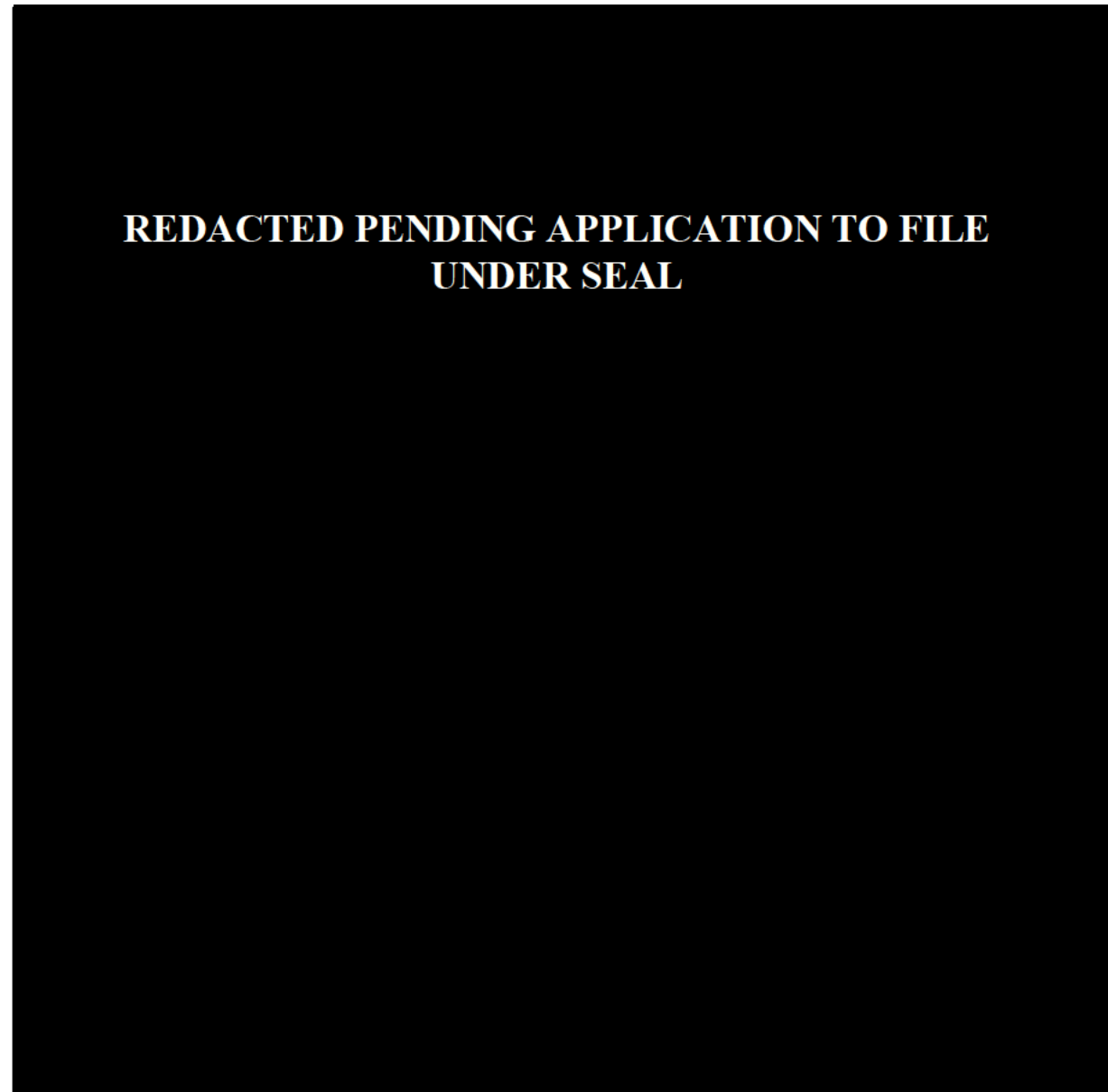
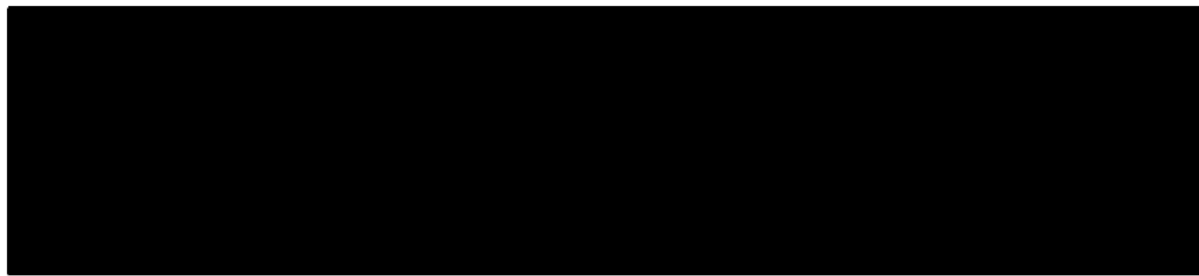
If you have any questions about the gTLD Program, the evaluation process or the evaluation firms selected, please send your questions to:

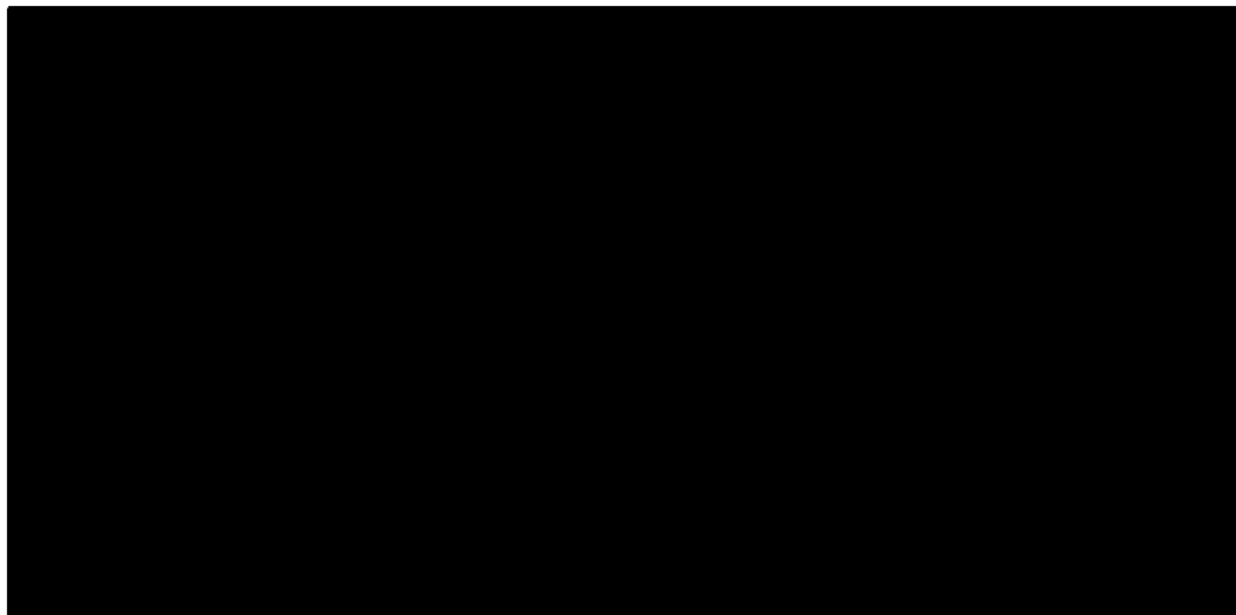
newgtld@icann.org (<mailto:newgtld@icann.org>)

© 2015 Internet Corporation For Assigned Names and Numbers
[Site Map](#)

Case 2:16-cv-00862-RGK-JC Document 17-23 Filed 03/01/16 Page 1 of 4 Page ID #:1071

EXHIBIT 23





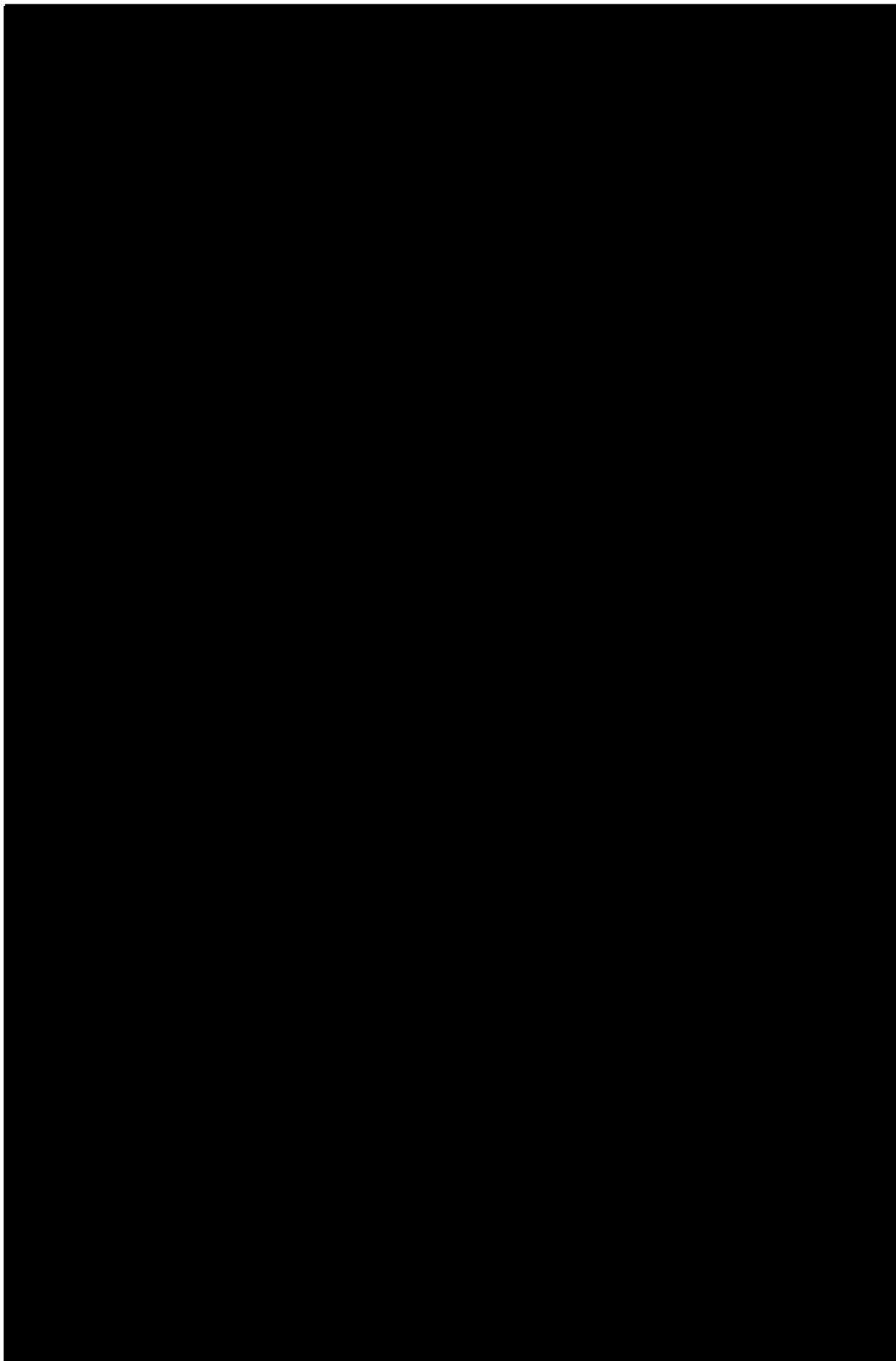


EXHIBIT 23 - Pg 0699

ER-1476

Case 2:16-cv-00862-RGK-JC Document 17-24 Filed 03/01/16 Page 1 of 2 Page ID #:1075

EXHIBIT 24

**REDACTED PENDING APPLICATION TO FILE UNDER
SEAL**

Case 2:16-cv-00862-RGK-JC Document 17-25 Filed 03/01/16 Page 1 of 2 Page ID #:1077

EXHIBIT 25

**REDACTED PENDING APPLICATION TO FILE UNDER
SEAL**

Case 2:16-cv-00862-RGK-JC Document 17-26 Filed 03/01/16 Page 1 of 13 Page ID #:1079

EXHIBIT 26



Governmental Advisory Committee

Beijing, People's Republic of China – 11 April 2013

GAC Communiqué – Beijing, People's Republic of China¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Beijing during the week of 4 April 2013. Sixty-one (61) GAC Members participated in the meetings and eight (8) Observers. The GAC expresses warm thanks to the local hosts China Internet Network Information Center (CNNIC), China Organizational Name Administration Center (CONAC), and Internet Society of China for their support.

II. Internal Matters

1. New Members and Observers

The GAC welcomes Belarus, Cape Verde, Côte d'Ivoire, Lebanon, and the Republic of the Marshall Islands to the Committee as members, and The World Meteorological Organisation as an Observer.

2. GAC Secretariat

Following a request for proposals, the GAC received presentations from two organizations and agreed that one such candidate should be providing secretariat services to the GAC, with the aim of becoming operational as soon as possible. Negotiations with such organization will start immediately after the Beijing meeting.

¹ To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

3. GAC Leadership

The GAC warmly thanks the outgoing Vice-Chairs, Kenya, Singapore, and Sweden and welcomes the incoming Vice-Chairs, Australia, Switzerland and Trinidad & Tobago.

III. Inter-constituencies Activities

1. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC met with the ATRT 2 and received an update on the current activities of the ATRT 2. The exchange served as an information gathering session for the ATRT 2 in order to hear GAC member views on the Review Team processes and areas of interest for governments. The GAC provided input on governmental processes and the challenges and successes that arose during the first round of reviews, and implementation of the GAC related recommendations of the first Accountability and Transparency Review Team.

2. Board/GAC Recommendation Implementation Working Group (BGRI-WG)

The Board–GAC Recommendation Implementation Working Group (BGRI–WG) met to discuss further developments on ATRT1 recommendations relating to the GAC, namely recommendations 11 and 12. In the context of Recommendation 11, the GAC and the Board have concluded the discussion and agreed on the details of the consultation process mandated per ICANN Bylaws, should the Board decide not to follow a GAC advice. With respect to Recommendation 12, on GAC Early Engagement, the BGRI-WG had a good exchange with the GNSO on mechanisms for the GAC to be early informed and provide early input to the GNSO PDP. The BGRI–WG intends to continue this discussion intersessionally and at its next meeting in Durban.

3. Brand Registry Group

The GAC met with the Brand Registry Group and received information on its origins, values and missions.

4. Law Enforcement

The GAC met with law enforcement representatives and received an update from Europol on the Registrar Accreditation Agreement (RAA).

The GAC warmly thanks the Accountability and Transparency Review Team 2, the Brand Registry Group, Law Enforcement, and the ICANN Board who jointly met with the GAC as well

as all those among the ICANN community who have contributed to the dialogue with the GAC in Beijing.

IV. GAC Advice to the ICANN Board²

1. New gTLDs

a. GAC Objections to 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:³

1. The application for .africa (Application number 1-1165-42560)
2. The application for .gcc (application number: 1-1936-2101)

ii. With regard to Module 3.1 part II of the Applicant Guidebook⁴:

1. The GAC recognizes that Religious terms are sensitive issues. Some GAC members have raised sensitivities on the applications that relate to Islamic terms, specifically .islam and .halal. The GAC members concerned have noted that the applications for .islam and .halal lack community involvement and support. It is the view of these GAC members that these applications should not proceed.

b. Safeguard Advice for New gTLDs

To reinforce existing processes for raising and addressing concerns the GAC is providing safeguard advice to apply to broad categories of strings (see Annex I).

c. Strings for Further GAC Consideration

In addition to this safeguard advice, that GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban.

- i. Consequently, **the GAC advises the ICANN Board to:** not proceed beyond Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun, .thai, .zulu, .wine, .vin

² To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings>

³ 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.

⁴ Module 3.1: "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.

d. The GAC requests:

- i. a written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.

e. Community Support for Applications

The GAC advises the Board:

- i. that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information.

f. Singular and plural versions of the same string as a TLD

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

Therefore the GAC advises the ICANN Board to:

- i. Reconsider its decision to allow singular and plural versions of the same strings.

g. Protections for Intergovernmental Organisations

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the GAC reiterates its advice to the ICANN Board that:

- i. appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

2. Registrar Accreditation Agreement (RAA)

Consistent with previous communications to the ICANN Board

a. the GAC advises the ICANN Board that:

- i. the 2013 Registrar Accreditation Agreement should be finalized before any new gTLD contracts are approved.

The GAC also strongly supports the amendment to the new gTLD registry agreement that would require new gTLD registry operators to use only those registrars that have signed the 2013 RAA.

The GAC appreciates the improvements to the RAA that incorporate the 2009 GAC-Law Enforcement Recommendations.

The GAC is also pleased with the progress on providing verification and improving accuracy of registrant data and supports continuing efforts to identify preventative mechanisms that help deter criminal or other illegal activity. Furthermore the GAC urges all stakeholders to accelerate the implementation of accreditation programs for privacy and proxy services for WHOIS.

3. WHOIS

The GAC urges the ICANN Board to:

- a. ensure that the GAC Principles Regarding gTLD WHOIS Services, approved in 2007, are duly taken into account by the recently established Directory Services Expert Working Group.

The GAC stands ready to respond to any questions with regard to the GAC Principles.

The GAC also expects its views to be incorporated into whatever subsequent policy development process might be initiated once the Expert Working Group concludes its efforts.

4. International Olympic Committee and Red Cross /Red Crescent

Consistent with its previous communications, the GAC advises the ICANN Board to:

- a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

5. Public Interest Commitments Specifications

The GAC requests:

- b. more information on the Public Interest Commitments Specifications on the basis of the questions listed in annex II.

V. Next Meeting

The GAC will meet during the period of the 47th ICANN meeting in Durban, South Africa.

ANNEX I

Safeguards on New gTLDs

The GAC considers that Safeguards should apply to broad categories of strings. For clarity, this means any application for a relevant string in the current or future rounds, in all languages applied for.

The GAC advises the Board that all safeguards highlighted in this document as well as any other safeguard requested by the ICANN Board and/or implemented by the new gTLD registry and registrars should:

- be implemented in a manner that is fully respectful of human rights and fundamental freedoms as enshrined in international and, as appropriate, regional declarations, conventions, treaties and other legal instruments – including, but not limited to, the UN Universal Declaration of Human Rights.
- respect all substantive and procedural laws under the applicable jurisdictions.
- be operated in an open manner consistent with general principles of openness and non-discrimination.

Safeguards Applicable to all New gTLDs

The GAC Advises that the following six safeguards should apply to all new gTLDs and be subject to contractual oversight.

1. **WHOIS verification and checks** —Registry operators will conduct checks on a statistically significant basis to identify registrations in its gTLD with deliberately false, inaccurate or incomplete WHOIS data at least twice a year. Registry operators will weight the sample towards registrars with the highest percentages of deliberately false, inaccurate or incomplete records in the previous checks. Registry operators will notify the relevant registrar of any inaccurate or incomplete records identified during the checks, triggering the registrar's obligation to solicit accurate and complete information from the registrant.
2. **Mitigating abusive activity**—Registry operators will ensure that terms of use for registrants include prohibitions against the distribution of malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
3. **Security checks**— While respecting privacy and confidentiality, Registry operators will periodically conduct a technical analysis to assess whether domains in its gTLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. If Registry operator identifies security risks that pose an actual risk of harm, Registry operator will notify the relevant registrar and, if the registrar does not take immediate action, suspend the domain name until the matter is resolved.

4. **Documentation**—Registry operators will maintain statistical reports that provide the number of inaccurate WHOIS records or security threats identified and actions taken as a result of its periodic WHOIS and security checks. Registry operators will maintain these reports for the agreed contracted period and provide them to ICANN upon request in connection with contractual obligations.
5. **Making and Handling Complaints** – Registry operators will ensure that there is a mechanism for making complaints to the registry operator that the WHOIS information is inaccurate or that the domain name registration is being used to facilitate or promote malware, operation of botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law.
6. **Consequences** – Consistent with applicable law and any related procedures, registry operators shall ensure that there are real and immediate consequences for the demonstrated provision of false WHOIS information and violations of the requirement that the domain name should not be used in breach of applicable law; these consequences should include suspension of the domain name.

The following safeguards are intended to apply to particular categories of new gTLDs as detailed below.

Category 1

Consumer Protection, Sensitive Strings, and Regulated Markets:

The GAC Advises the ICANN Board:

- Strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. The following safeguards should apply to strings that are related to these sectors:
 1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
 2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
 3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
 4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.

5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

In the current round the GAC has identified the following non-exhaustive list of strings that the above safeguards should apply to:

- **Children:**
 - .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, .toys
- **Environmental:**
 - .earth, .eco, .green, .bio, .organic
- **Health and Fitness:**
 - .care, .diet, .fit, .fitness, .health, .healthcare, .heart, .hiv, .hospital,, .med, .medical, .organic, .pharmacy, .rehab, .surgery, .clinic, .healthy (IDN Chinese equivalent), .dental, .dentist .doctor, .dds, .physio
- **Financial:**
 - capital, . cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .fianancialaid, .forex, .fund, .investments, .lease, .loan, .loans, .market, . markets, .money, .pay, .payu, .retirement, .save, .trading, .autoinsurance, .bank, .banque, .carinsurance, .credit, .creditcard, .creditunion, .insurance, .insure, ira, .lifeinsurance, .mortgage, .mutualfunds, .mutuelle, .netbank, .reit, .tax, .travelersinsurance, .vermogensberater, .vermogensberatung and .vesicherung.
- **Gambling:**
 - .bet, .bingo, .lotto, .poker, and .spreadbetting, .casino
- **Charity:**
 - .care, .gives, .giving, .charity (and IDN Chinese equivalent)
- **Education:**
 - degree, .mba, .university
- **Intellectual Property**
 - .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip
- **Professional Services:**
 - .abogado, .accountant, .accountants, .architect, .associates, .attorney, .broker, .brokers, .cpa, .doctor, .dentist, .dds, .engineer, .lawyer, .legal, .realtor, .realty, .vet
- **Corporate Identifiers:**
 - .corp, .gmbh, .inc, .limited, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
- **Generic Geographic Terms:**
 - .town, .city, .capital

- .reise, .reisen⁵
- .weather
- .engineering
- .law
- **Inherently Governmental Functions**
 - .army, .navy, .airforce
- In addition, applicants for the following strings should develop clear policies and processes to minimise the risk of cyber bullying/harassment
 - .fail, .gripe, .sucks, .wtf

The GAC further advises the Board:

1. In addition, some of the above strings may require further targeted safeguards, to address specific risks, and to bring registry policies in line with arrangements in place offline. In particular, a limited subset of the above strings are associated with market sectors which have clear and/or regulated entry requirements (such as: financial, gambling, professional services, environmental, health and fitness, corporate identifiers, and charity) in multiple jurisdictions, and the additional safeguards below should apply to some of the strings in those sectors:
 6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.
 7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.
 8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Category 2

Restricted Registration Policies

The GAC advises the ICANN Board:

1. **Restricted Access**
 - As an exception to the general rule that the gTLD domain name space is operated in an open manner registration may be restricted, in particular for strings mentioned under category 1

⁵ Austria, Germany, and Switzerland support requirements for registry operators to develop registration policies that allow only travel-related entities to register domain names. Second Level Domains should have a connection to travel industries and/or its customers

above. In these cases, the registration restrictions should be appropriate for the types of risks associated with the TLD. The registry operator should administer access in these kinds of registries in a transparent way that does not give an undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.

2. Exclusive Access

- For strings representing generic terms, exclusive registry access should serve a public interest goal.

- In the current round, the GAC has identified the following non-exhaustive list of strings that it considers to be generic terms, where the applicant is currently proposing to provide exclusive registry access
 - .antivirus, .app, .autoinsurance, .baby, .beauty, .blog, .book, .broker, .carinsurance, .cars, .cloud, .courses, .cpa, .cruise, .data, .dvr, .financialaid, .flowers, .food, .game, .grocery, .hair, .hotel, .hotels, .insurance, .jewelry, .mail, .makeup, .map, .mobile, .motorcycles, .movie, .music, .news, .phone, .salon, .search, .shop, .show, .skin, .song, .store, .tennis, .theater, .theatre, .tires, .tunes, .video, .watches, .weather, .yachts, .クラウド [cloud], .ストア [store], .セール [sale], .ファッション [fashion], .家電 [consumer electronics], .手表 [watches], .書籍 [book], .珠宝 [jewelry], .通販 [online shopping], .食品 [food]

ANNEX II

List of questions related to Public Interest Commitments Specifications

1. Could a third party intervene or object if it thinks that a public interest commitment is not being followed? Will governments be able to raise those sorts of concerns on behalf of their constituents?
2. If an applicant does submit a public interest commitment and it is accepted are they able to later amend it? And if so, is there a process for that?
3. What are ICANN's intentions with regard to maximizing awareness by registry operators of their commitments?
4. Will there be requirements on the operators to maximize the visibility of these commitments so that stakeholders, including governments, can quickly determine what commitments were made?
5. How can we follow up a situation where an operator has not made any commitments? What is the process for amending that situation?
6. Are the commitments enforceable, especially later changes? Are they then going into any contract compliance?
7. How will ICANN decide whether to follow the sanctions recommended by the PIC DRP? Will there be clear and transparent criteria? Based on other Dispute Resolution Procedures what is the expected fee level?
8. If serious damage has been a result of the past registration policy, will there be measures to remediate the harm?

Case 2:16-cv-00862-RGK-JC Document 17-27 Filed 03/01/16 Page 1 of 3 Page ID #:1092

EXHIBIT 27



**New gTLD Program
Initial Evaluation Report**
Report Date: 12 July 2013

Application ID:	1-1243-89583
Applied-for String:	AFRICA
Priority Number:	307
Applicant Name:	UniForum SA (NPC) trading as Registry.Africa

Overall Initial Evaluation Summary

Initial Evaluation Result	Pass
Congratulations! Based on the review of your application against the relevant criteria in the Applicant Guidebook (including related supplemental notes and advisories), your application has passed Initial Evaluation.	

Background Screening Summary

Background Screening	Eligible
Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.	

Panel Summary

String Similarity	Pass - No Contention																						
The String Similarity Panel has determined that your application is consistent with the requirements in Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, and your applied-for string is not in contention with any other applied-for strings.																							
DNS Stability	Pass																						
The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.																							
Geographic Names	Geographic Name - Pass																						
The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4, and the documentation of support or non-objection provided has met all relevant criteria in Section 2.2.1.4.3 of the Applicant Guidebook.																							
Registry Services	Pass																						
The Registry Services Panel has determined that the proposed registry services do not require further review.																							
Technical & Operational Capability	Pass																						
The Technical & Operational Capability Panel determined that: Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.																							
<table border="0"> <thead> <tr> <th align="left">Question</th> <th align="right">Score</th> </tr> </thead> <tbody> <tr> <td>24: SRS</td> <td align="right">1</td> </tr> <tr> <td>25: EPP</td> <td align="right">1</td> </tr> <tr> <td>26: Whois</td> <td align="right">2</td> </tr> <tr> <td>27: Registration Life Cycle</td> <td align="right">1</td> </tr> <tr> <td>28: Abuse Prevention and Mitigation</td> <td align="right">1</td> </tr> <tr> <td>29: Rights Protection Mechanism</td> <td align="right">1</td> </tr> <tr> <td>30: Security Policy</td> <td align="right">1</td> </tr> <tr> <td>31: Technical Overview of Registry</td> <td align="right">1</td> </tr> <tr> <td>32: Architecture</td> <td align="right">2</td> </tr> <tr> <td>33: Database Capabilities</td> <td align="right">2</td> </tr> </tbody> </table>	Question	Score	24: SRS	1	25: EPP	1	26: Whois	2	27: Registration Life Cycle	1	28: Abuse Prevention and Mitigation	1	29: Rights Protection Mechanism	1	30: Security Policy	1	31: Technical Overview of Registry	1	32: Architecture	2	33: Database Capabilities	2	
Question	Score																						
24: SRS	1																						
25: EPP	1																						
26: Whois	2																						
27: Registration Life Cycle	1																						
28: Abuse Prevention and Mitigation	1																						
29: Rights Protection Mechanism	1																						
30: Security Policy	1																						
31: Technical Overview of Registry	1																						
32: Architecture	2																						
33: Database Capabilities	2																						

		C-99
34: Geographic Diversity	2	
35: DNS Service	1	
36: IPv6 Reachability	1	
37: Data Backup Policies & Procedures	1	
38: Data Escrow	1	
39: Registry Continuity	2	
40: Registry Transition	1	
41: Failover Testing	1	
42: Monitoring and Fault Escalation	1	
43: DNSSEC	1	
44: IDNs (Optional)	0	
Total	25	
Minimum Required Total Score to Pass*	22	
<i>*No zero score allowed except on optional Q44</i>		
Financial Capability		Pass
The Financial Capability Panel determined that:		
Your application meets the Financial Capability criteria specified in the Applicant Guidebook.		
Question	Score	
45: Financial Statements	1	
46: Projections Template	1	
47: Costs and Capital Expenditures	2	
48: Funding and Revenue	1	
49: Contingency Planning	2	
50: Funding Critical Registry Functions	1	
Total	8	
Minimum Required Total Score to Pass**	8	
<i>**No zero score allowed on any question</i>		

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

Case 2:16-cv-00862-RGK-JC Document 17-28 Filed 03/01/16 Page 1 of 4 Page ID #:1095

EXHIBIT 28

Upcoming Meeting: Marrakech, 5-10 March 2016

Meeting 55: Marrakech, Kingdom of Morocco, 5-10 March 2016

ICANN 55 Public Schedule

TRAVEL

Travel and Visa Information

Travel Support rules

VISA APPLICATIONS

Ordinary visas (English | français)

Diplomatic visas (English | français)

HIGH LEVEL GOVERNMENTAL MEETING

ICANN 55 High Level Governmental Meeting revised agenda (18 Feb 2016)

Translations: |l français

GAC Guidelines for High Level Government Meetings

DOCUMENTS

Fact sheet - Attending your first GAC meeting

ICANN55_Hotel_Shuttles.pdf

ICANN55_Two_pages_Flyer_and_Map.pdf

icann55_meetingguideandvenuemap.pdf

GAC AGENDA

OPEN **BREAK** **CLOSED**

Meeting room: **CRISTAL**

Adobe Connect link: **fbc**

Session Date	Session Time/ Item	Session Title
Friday 4 March 2016	08:30 - 17:00	CCWG Accountability Face to Face Meeting (CRISTAL)
Saturday 5 March 2016	Community Sessions relevant to the GAC*	
	14:00 - 14:30	GAC Opening Plenary 1. Welcome new Members and Observers (lead: GAC Chair) 2. Introduce Support, logistics and Secretariat Staff (lead: GAC Chair) 3. Overview of the week : GAC and ICANN (lead: ACIG) 4. Next phase of the GAC election cycle (lead: ACIG)
	14:30 - 16:00	Transition and Accountability Overview Leads: GAC Chair, ACIG, GAC Members in the CCWG Accountability and ICG Groups

	16:00 - 16:30	
	16:30 - 17:00	gTLD Safeguards - Current Round Lead: GAC Chair
	17:00 - 18:00	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
Sunday 6 March 2016	08:30-10:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	10:30 - 11:00	BREAK
	11:00 - 12:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	12:30 - 14:00	LUNCH BREAK GAC Human Rights and International Law WG meeting (CRISTAL)
	14:00 - 14:30	Update on CCT Review Lead: GAC CCT Review Team Members
	14:30 - 15:30	Future New gTLD Rounds Policy Development Lead: GAC Chair
	15:30 - 16:00	BREAK
	16:00 - 17:00	Meeting with the GNSO Lead: Co-Chairs GNSO
	17:00 - 18:00	Preparation for the High Level Governmental Meeting (HGLM) Lead: Morocco
Monday 7 March 2016	10:00 - 19:30	High Level Governmental Meeting
Tuesday 8 March 2016	09:00 - 09:30	HLGM Stocktake Lead: Morocco
	09:30 - 10:30	Meeting with the ALAC Lead: ALAC and GAC Chairs
	10:30 - 11:00	BREAK
	11:00 - 12:00	Meeting with ccNSO Lead: GAC Chair
	12:00 - 12:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	12:30 - 14:00	LUNCH BREAK GAC Commonwealth Members meeting (COUPLE)
	14:00 - 14:30	Preparation for Meeting with the ICANN Board Lead: GAC Chair
	14:30 - 15:30	GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
	15:30 - 16:00	BREAK
	16:00 - 18:00	Finalise GAC Position as a Chartering Organisation for CCWG Accountability Lead: GAC Chair
		Tuesday GAC Working Group Sessions: <ul style="list-style-type: none"> • 12:30 – 14:00 - GAC PSWG and ASO/NRO Workshop (CRISTAL) • 12:30 – 14:00 – GAC GeoNames Working Group – Room TBA • 18:00 – 19:00 – GAC Nom Com Working Group – Room TBA • 18:00 – 19:00 - PSWG WG (closed meeting) (AMETYSYE)

		18:00 – 19:00 - GAC HRIL and CCWP on ICANN's Corporate and Social Responsibility to Respect Human Rights joint meeting with GAC HRIL (CRISTAL)
Wednesday 9 march 2016	08:30 - 10:00	Meeting with the ICANN Board Lead: GAC Chair and ICANN Board
	10:00 - 10:30	Independent GAC Secretariat Lead: GAC Chair
	10:30 - 11:00	BREAK
	11:00 - 12:00	GAC Working Groups Updates (except Operating Principles WG which has dedicated slots elsewhere on the agenda) Leads: <ul style="list-style-type: none"> • Public Safety – AUC and Thailand • Human Rights – Peru, UK & Switzerland • Under Served Regions - Trinidad & Tobago, and AUC • Geo Names – Argentina • Nom Com – Argentina
	12:30 - 14:00	LUNCH BREAK
	14:00 - 14:30	2 Character code Implementation
	14:30 - 18:00	GAC Communiqué drafting
Thursday 10 March 2016	09:00 - 10:00	GAC Operating Principles Working Group Lead: Namibia
	10:00 - 10:30	New ICANN Meeting Structure Lead: Portugal
	10:30 - 11:00	BREAK
	11:00 - 11:30	Asia-Pacific Region Discussion Lead: Australia, New Zealand, Cook Islands, Thailand
	11:30 - 12:00	GAC Website Update Lead: Trinidad and Tobago
	12:00 - 12:30	Planning for GAC Meeting in June (ICANN 56)/27th – 30th June, 2016 Lead: GAC Chair and ACIG

Case 2:16-cv-00862-RGK-JC Document 17-29 Filed 03/01/16 Page 1 of 8 Page ID #:1099

EXHIBIT 29

GAC Operating Principles

Dedicated to preserving the central coordinating functions of the global Internet for the public good.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

GOVERNMENTAL ADVISORY COMMITTEE (GAC) - OPERATING PRINCIPLES

As amended, GAC Buenos Aires meeting in June, 2015

ARTICLE	SCOPE OF THE GOVERNMENTAL ADVISORY COMMITTEE
ARTICLE	MEETINGS
ARTICLE	AGENDA
ARTICLE V	MEMBERSHIP
ARTICLE V	OBSERVERS
ARTICLE V	REPRESENTATION
ARTICLE V	CHARACTERISTICS OTHER OFFICERS AND COMMITTEES
ARTICLE V	POWERS OF THE CHAIR
ARTICLE X	ELECTION OF CHAIR AND VICE CHAIRS
ARTICLE X	CONDUCT OF BUSINESS
ARTICLE X	THE SECRETARAT
ARTICLE X	PROVISION OF ADVICE TO THE ICANN BOARD
ARTICLE X	RECORDS
ARTICLE X	PUBLICITY OF MEETINGS
ARTICLE XV	REVISION
ARTICLE XV	GENERAL PROVISIONS

Whereas:

- 1 The functions and responsibilities of the Internet Assigned Numbers Authority (IANA) are being transferred to a new private not for profit corporation the Internet Corporation for Assigned Names and Numbers (ICANN)
- 2 ICANN's functions and responsibilities will affect the functioning of the global Internet
- 3 ICANN's Articles of Incorporation establish that the corporation shall operate for the benefit of the Internet community as a whole and shall pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by performing and coordinating functions associated with the technical management of Internet names and addresses
- 4 a) The Articles of Incorporation and Bylaws establish that ICANN shall carry out its activities in conformity with relevant principles of international law and applicable international conventions and local law b) ICANN is committed to carrying out its activities based on the principles of stability competition private bottom up coordination and representation
- 5 ICANN's Bylaws Article X Advisory Committees Section 2.1 provide for a Governmental Advisory Committee The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments and where they may affect public policy issues The Advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account by ICANN both in the formulation and adoption of policies
- 6 The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests

Considering that:

- 1 The Internet naming and addressing system is a public resource that must be managed in the interests of the global Internet community;
- 2 The management of Internet names and addresses must be facilitated by organizations that are global in character
- 3 ICANN's decision making should take into account public policy objectives including among other things:
 - secure reliable and affordable functioning of the Internet including uninterrupted service and universal connectivity;
 - the robust development of the Internet in the interest of the public good for government private educational and commercial purposes world wide;
 - transparency and non discriminatory practices in ICANN's role in the allocation of Internet names and addresses;
 - effective competition at appropriate levels of activity and conditions for fair competition which will bring benefits to all categories of users including greater choice lower prices and better services;
 - fair information practices including respect for personal privacy and issues of consumer concern; and
 - freedom of expression
- 4 Country code top level domains are operated in trust by the Registry for the public interest including the interest of the Internet community on behalf of the relevant public authorities including governments who ultimately have public policy authority over their ccTLDs consistent with universal connectivity of the Internet

ARTICLE I – SCOPE OF THE GOVERNMENTAL ADVISORY COMMITTEE

Principle 1

The Governmental Advisory Committee (GAC) shall consider and provide advice on the activities of CANN as they relate to concerns of governments, multinational governmental organisations and treaty organisations and distinct economies as recognised in international fora including matters where there may be an interaction between CANN's policies and various laws and international agreements and public policy objectives.

Principle 2

The GAC shall provide advice and communicate issues and views to the CANN Board. The GAC is not a decision making body. Such advice given by the GAC shall be without prejudice to the responsibilities of any public authority with regard to the bodies and activities of CANN including the Supporting Organisations and Councils.

Principle 3

The GAC shall report its findings and recommendations in a timely manner to the CANN Board through the Chair of the GAC.

Principle 4

The GAC shall operate as a forum for the discussion of government and other public policy interests and concerns.

Principle 5

The GAC shall have no legal authority to act for CANN.

ARTICLE II – MEETINGS

Principle 6

The GAC shall meet at least once annually; notwithstanding this designated annual meeting the GAC shall meet as appropriate.

Principle 7

A meeting may be convened on the initiative of the Chair at the request of a Member or at the request of the CANN Board concurred in by one third (1/3) of the Current Membership.

Principle 8

Face to face meetings of the GAC shall be convened by the Chair by a notice issued not less than twenty eight (28) calendar days prior to the date set for the meeting. This notice may be issued electronically via telefacsimile or via airmail.

Principle 9

Online and electronic meetings of the GAC shall be convened by the Chair by a notice issued not less than ten (10) calendar days prior to the date set for the meeting.

This notice may be issued electronically via telefacsimile or via airmail.

Principle 10

An emergency meeting of the GAC may be convened by the Chair by a notice issued not less than ten (10) calendar days prior to the date set for the meeting. This notice may be issued electronically via telefacsimile or via airmail. Principle 11 in addition to face to face meetings meetings and discussions may be conducted online via secure communications "Online" includes electronic mail web based communications and teleconferences.

ARTICLE III – AGENDA

Principle 12

A proposed agenda for the meeting shall be communicated to Members prior to the meeting.

Principle 13

Requests for items to be placed on the agenda of a forthcoming meeting shall be communicated to the Secretariat of the GAC in writing either via electronic mail telefacsimile or airmail.

ARTICLE IV – MEMBERSHIP

Principle 14

Members of the GAC shall be national governments, multinational governmental organisations and treaty organisations and public authorities each of which may appoint one representative and one alternate representative to the GAC. The accredited representative of a Member may be accompanied by advisers. The accredited representative, alternate and advisers must hold a formal official position with the Member's public administration. The term 'official' includes a holder of an elected governmental office or a person who is employed by such government, public authority or multinational governmental or treaty organisation and whose primary function with such government, public authority or organisation is to develop or influence governmental or public policies.

Principle 15

Membership is open to all national governments. Membership is also open to distinct economies as recognised in international fora. Multinational governmental organisations and treaty organisations may also participate as observers on the invitation of the GAC through the Chair.

Principle 16

Accredited representatives of governments and other public authorities, Members of GAC, have voting rights. Accredited representatives of international Organisations and entities other than public authorities participate fully in the GAC and its Committees and Working Groups as Observers but do not have voting rights.

Principle 17

Those who constitute the Current Membership are defined as those Members from whom the Chair has received formal notification of the name and contact details of their accredited representative. The list of current Members shall be updated regularly and be posted online.

ARTICLE V – OBSERVERS

Principle 18

Representatives of invited UN inter-governmental Organisations, non-member public authorities and other relevant entities may attend meetings of the GAC as observers at the discretion of the Chair.

ARTICLE VI – REPRESENTATION

Principle 19

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.

Principle 20

In consideration of the GAC's commitment to efficiency, there shall be no attendance or voting by proxy. Members may only be represented at meetings both face to face and electronic by their accredited representative or designated alternate representative.

ARTICLE VII – CHAIR, VICE CHAIRS, OTHER OFFICERS AND COMMITTEES

Principle 21

If the GAC moves to require additional officers other than the Chair, then five (5) Vice Chairs shall be elected from among the Members. To the extent possible, the Vice Chairs should appropriately reflect the geographic and development diversity of the membership. The Chair shall hold office for a term of two (2) years, renewable once. The Vice Chairs shall hold office for a term of one (1) year and may be re-elected; however no person may serve as Vice Chair for more than two consecutive terms.

Principle 22

The GAC Chair and Vice Chairs shall be elected by the Members of the GAC from among the accredited representatives of governments and other public authorities, Members of GAC pursuant to procedures outlined under Article X (Election of Office Holders) of these Operating Principles. The elections of the Chair and Vice Chairs will be concurrent as provided for in Principle 34.

Principle 23

The GAC may designate other officers as necessary.

Principle 24

The Chair shall normally participate in the proceedings as such and not as the accredited representative of a Member in which case the Member may accredit another representative. The Chair may, however, at any time request permission to act in either capacity. The Vice Chairs shall participate in the proceedings as accredited representatives of a Member.

Principle 25

If the Chair is absent from any meeting or part thereof, one of the five (5) Vice Chairs shall perform the functions of the Chair. If no Vice Chairs were elected or if no Vice Chair is present, the GAC shall elect an interim Chair for that meeting or that part of the meeting.

Principle 26

If the Chair can no longer perform the functions of the office, the GAC shall designate one of the Vice Chairs referred to in Principle 22 of these Operating Principles to perform those functions pending election of a new Chair in pursuant to procedures outlined under Article X (Election of Chair and Vice Chairs) of these Operating Principles. If no Vice Chair was elected, the GAC shall elect an interim Chair to perform those functions pending the election of a new Chair.

Principle 27

The Chair may call for the creation of Committees and Working Groups to address matters that relate to concerns of governments and where they may affect public policy issues. Accredited representatives may designate advisers to serve on such committees.

ARTICLE VIII – POWERS OF THE CHAIR

Principle 28

In addition to exercising the power conferred elsewhere by these Principles, the Chair shall decide the opening and closing of each meeting, shall direct the discussion, accord the right to speak, submit questions for decisions, announce decisions, rule on points of order and subject to these rules, have control of the proceedings. The Chairperson may also call a speaker to order if the remarks of the speaker are not relevant.

Principle 29

The Chair, with the consent of the meeting, may limit the time allowed to each speaker.

Principle 30

The Chair shall not normally have voting power; however, in the event of a tie, the Chair shall have a casting vote.

ARTICLE IX – ELECTION OF CHAIR AND VICE CHAIRS

Principle 31

Elections for the GAC Chair shall take place during the final meeting of every second year (even years) unless the Chair can no longer perform the functions of the office. If the Chair can no longer perform the functions during the first year in the office, the elections shall be organized for the remaining term in the office during the next GAC meeting. If the Chair can no longer perform the functions during the second year in the office, the GAC shall decide which of the Vice Chairs should replace the Chair until the regular elections are held.

Elections for the five Vice Chairs shall normally take place during the final meeting of the year. If a Vice Chair can no longer perform the functions before the full term has finished, new elections shall be organized for the remaining term in the office during the next GAC meeting. The results of each election shall normally be announced at the end of any meeting in which an election has taken place and shall take effect at the end of the next GAC meeting.

Principle 32

In the event of a single candidate, he or she shall be elected by acclamation. If there is more than one candidate for the position of Chair or more than five (5) candidates for the positions of Vice Chairs, an election will be held. For elections, the candidate or candidates with the most votes shall be elected to the position(s) that he or she has stood for.

In case of a tie ballot for two leading candidates, an additional ballot shall be held restricted to these candidates after an interval of at least one hour.

Elections shall be valid if more than 1/3 of the GAC members participate in the voting in person and by electronic mail. In case of the second round of voting, only those present at the meeting GAC members participate.

Principle 33

Nominations for candidates to the official position of Chair and/or Vice Chair of the GAC shall normally start during the GAC meeting which precedes the meeting in which the confirmation is due to take place. In any event, the nomination procedure will close 45 days before the start of the meeting at which the confirmation of appointment is due to take place and a list of candidates should be posted on the GAC website within 14 days. In the event that there are more candidates than positions available, the GAC Chair will notify members that an election will be organized in accordance with principles 34 to 36 of this document.

Principle 34

For elections votes shall be taken by secret ballot which shall be a matter for each voting Member to decide if they wish to make his or her choice public. This includes the taking of votes in person or ballots transmitted by electronic mail. The GAC Secretariat will organize the voting procedure and count the votes under the supervision of the Chair or Vice Chairs who do not stand for reelection.

Principle 35

For votes to be taken in person the GAC Secretariat will distribute ballot papers to Members' accredited representatives at that meeting and arrange for a ballot box to be placed in the conference room.

Principle 36

Members unable to attend in person should notify the Secretariat no less than 7 days before the beginning of the meeting in which the election is due to take place. They will then be provided with the opportunity to cast their votes by electronic mail addressed to the Secretariat which shall then be added to the votes cast by other members during the meeting. Any Member from whom a vote has not been received within such a time limit shall be regarded as not voting.

ARTICLE X – CONDUCT OF BUSINESS

Principle 40

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.

A Member may initiate an online discussion of a question by forwarding to the Chair a request for the opening of an online discussion on a specific topic. The GAC Secretariat will initiate this discussion and all Members may post their contributions during a period of time established by the Chair, the period of which is to be no longer than sixty (60) calendar days. At the end of this discussion period the Chair will summarise the results of the discussion and may forward the results to the ICANN Board. Nothing in this Principle overrides the decision making processes set out elsewhere in these Operating Principles.

Principle 41

Representatives of Members shall endeavour to the extent that a situation permits to keep their oral statements brief. Representatives wishing to develop their position on a particular matter in further detail may circulate a written statement for distribution to Members.

Principle 42

Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record.

Principle 43

In order to expedite the conduct of business the Chair may invite representatives who wish to express their support for a given proposal to show their hands in order to be duly recorded in the records of the GAC as supporting statements; thus only representatives with dissenting view or wishing to make explicit points or proposals would actually be invited to make a statement. This procedure shall only be applied in order to avoid undue repetition of points already made and will not preclude any representative who so wishes from taking the floor.

ARTICLE XI – THE SECRETARIAT

Principle 44

The Secretariat of the Governmental Advisory Committee shall undertake such administrative, coordination, liaison and research activities as shall be necessary for the efficient functioning of the GAC. The Secretariat shall facilitate communications among the GAC Chair, Vice Chairs, other Officers, the GAC membership and with ICANN. The Secretariat participates in all GAC meetings.

Principle 45

The Secretariat shall be financed by such means as shall be agreed by the GAC members.

ARTICLE XII – PROVISION OF ADVICE TO THE ICANN BOARD

Principle 46

Advice from the GAC to the ICANN Board shall be communicated through the Chair.

Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice^[1] consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible the

Chair shall convey the full range of views expressed by members to the CANN Board

Principle 48

The GAC may deliver advice on any other matter within the functions and responsibilities of CANN at the request of the CANN Board or on its own initiative. The CANN Board shall consider any advice from the GAC prior to taking action.

ARTICLE XII – RECORDS

Principle 49

Records of the meetings of the GAC shall be in the form of Executive Minutes.

ARTICLE XIII – PUBLICITY OF MEETINGS

Principle 50

The meetings of the GAC shall ordinarily be held in private. The Chair may decide that a particular meeting or part of a particular meeting should be held in public.

Principle 51

After a private meeting has been held, the Chair may issue a communiqué to the Media, such communiqué having been approved by the GAC beforehand.

ARTICLE XIV – REVISION

Principle 52

The GAC may decide at any time to revise these Operating Principles or any part of them.

Principle 53

A Member or Members may move at a meeting for these Operating Principles to be open to revision. If so moved, the Chair shall call for the movement to be seconded. If so seconded, then the Chair shall call for a vote to support the resolution. The deciding vote may be by ballot, by the raising of hands, or by roll call, and shall constitute a simple majority of the Members who are present at the meeting at which it was moved for these Operating Principles to be revised. If so resolved in favour of a revision of these Operating Principles, then the proposal shall sit for consultation for a period of sixty (60) days. At the next meeting following the sixty days, the Chair shall call for a vote for or against the proposal. The deciding vote may be taken by ballot, by the raising of hands, or by roll call, and shall be a simple majority of the Members who are present at the meeting at which the vote takes place.

ARTICLE XV – GENERAL PROVISIONS

Principle 54

Whenever there is a difference in interpretation between the principles set out in these Operating Principles and CANN's Articles of Incorporation and Bylaws, CANN's Articles of Incorporation and Bylaws shall prevail.

[1] In United Nations practice, the concept of "consensus" is understood to mean the practice of adoption of resolutions or decisions by general agreement without resort to voting in the absence of any formal objection that would stand in the way of a decision being declared adopted in that manner. Thus, in the event that consensus or general agreement is achieved, the resolutions and decisions of the United Nations meetings and conferences have been adopted without a vote. In this connection, it should be noted that the expressions "without a vote," "by consensus," and "by general agreement" are, in the practice of the United Nations, synonymous and therefore interchangeable.

Previous Versions of the GAC Operating Principles:

[GAC Operating Principles Mar De Plata 2005](#)

[GAC Operating Principles Nairobi 2010](#)

[GAC Operating Principles Dakar 2011.pdf](#)

GAC Operating Princip es Buenos Aires 2015

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

10 *Attorneys for Plaintiff*
 11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST
 15
 16 Plaintiff,
 17
 18 v.
 19 INTERNET CORPORATION FOR
 20 ASSIGNED NAMES AND NUMBERS
 21 and DOES 1 through 50, inclusive,
 22 Defendants.

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

**NOTICE OF MOTION AND
 MOTION FOR PRELIMINARY
 INJUNCTION; MEMORANDUM
 OF POINTS AND AUTHORITIES**

Date: April 4, 2016
 Hearing: 9:00 a.m.
 Courtroom: 850

[Filed concurrently: Declarations of
 Sophia Bekele Eshete, Ethan J. Brown
 & Sara C. Colón; Application for
 Leave to File Under Seal; [Proposed]
 Order; and [Proposed] Order for
 Application for Leave to File Under
 Seal]

23
 24
 25
 26
 27
 28
 NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 4, 2016 at 9:00 a.m. or as soon
3 thereafter as the matter may be heard, before the Honorable R. Gary Klausner of
4 the United States District Court for the Central District of California, Western
5 Division, Courtroom 850, located at 255 E. Temple Street, Los Angeles, CA
6 90012-3332, Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) will and does
7 move for a preliminary injunction ordering Defendant Internet Company for
8 Assigned Names and Numbers (“ICANN”) from issuing the .Africa generic top
9 level domain (“gTLD”) until this case has been resolved.

10 This Motion is made pursuant to Federal Rule of Civil Procedure 65 on the
11 grounds that ICANN has failed to follow a binding arbitration order against it and
12 has denied DCA the fair and unbiased gTLD application process it is entitled to.
13 Therefore, ICANN should be prevented from issuing the .Africa gTLD until this
14 case has been resolved. The .Africa gTLD is a unique asset and DCA will suffer
15 irreparable harm if the .Africa gTLD is awarded to another party.

16 This Motion is based on this Notice of Motion and Motion, the papers,
17 records, and pleadings on file in this case, and on such oral argument as the Court
18 allows.

19
20 Dated: March 1, 2016

BROWN NERI & SMITH LLP

21
22 By: /s/ Ethan J. Brown

23 Ethan J. Brown

24
25 *Attorneys for Plaintiff*
26 DOTCONNECTAFRICA TRUST

27
28

TABLE OF CONTENTS

1 **I. INTRODUCTION** 1

2 **II. RELEVANT FACTS** 2

3 **A. ICANN** 2

4 **B. DCA and The Top-Level Domain Application** 3

5 **C. ZACR and AUC’s Top Level Domain Application** 4

6 **D. The Geographic Names Panel and InterConnect**

7 **Communications** 5

8 **E. The GAC** 6

9 **F. The Independent Review Process** 7

10 **G. ICANN Ignores the IRP’s Authority** 9

11 **H. ICANN’s Processing of DCA’s Application After the IRP**

12 **Declaration** 9

13 **I. ICANN’s Issuance of the .Africa gTLD is Imminent** 9

14 **III. LEGAL STANDARD** 10

15 **IV. ARGUMENT** 11

16 **A. DCA will prevail on the merits for declaratory relief**

17 **and the injunction will preserve the status quo.** 10

18 i. **DCA meets the elements under the traditional**

19 **test for a preliminary injunction.** 12

20 1. **DCA demonstrates a strong likelihood of success on**

21 **the merits of its ninth cause of action** 12

22 2. **DCA will suffer irreparable injury if the .Africa gTLD**

23 **is awarded to another party.** 13

24 3. **ICANN suffers no injury by having to follow its own**

25 **rules.** 14

26 4. **A preliminary injunction is in the public interest.** 15

27 **B. The alternative test takes into consideration the same issues**

28 **and a preliminary injunction should also issue under this test.** 15

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

C. ICANN’s waiver argument is void...... 15

- i. A waiver of fraudulent acts and intentional acts is void...... 16
- ii. ICANN’s Prospective Release is unconscionable. 17
 - 1. The Prospective Release is procedurally unconscionable ... 18
 - 2. The contract is substantively unconscionable...... 19
- iii. ICANN’s Prospective Release was procured by fraud. 19

V. CONCLUSION 20

TABLE OF AUTHORITIES

CASES

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

Aguirre v. Chula Vista Sanitary Service & Sani-Tainer, Inc.,
542 F.2d 779 (9th Cir. 1976)14

Alliance For The Wild Rockies v. Cottrell 632 F.3d 1127 (9th Cir. 2011)..... 15

Baker Pacific Corp. v. Suttles, 220 Cal.App.3d 1148 (1990)..... 17

Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668 (9th Cir. 1988) 14

Edgewater Place, Inc. v. Real Estate Collateral Mgmt. Co. (In Re Edgewater Place, Inc.), 1999 U.S. Dist. LEXIS 23692, Case No. ED CV 98-281 RT (C.D. Cal., May 19, 1999)20

Ferguson v. Countrywide Credit Indus., 298 F.3d 778 (9th Cir. 2002)..... 18

Grillo v. California, 2006 U.S. Dist. LEXIS 15255 (N.D. Cal. Feb. 13, 2006) ... 16

Imperial v. Castruita, 418 F.Supp.2d 1174 (C.D. Cal. 2006)..... 10, 15

Ingle v. Circuit City Stores, Inc., 328 F.3d 1165 (9th Cir. 2003) 18,19

Jewelers Mut. Ins. Co. v. Adt Sec. Servs. (N.D.Cal. July 9, 2009),
No. C 08-02035 JW, 2009 U.S. Dist. LEXIS 5869120

Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.,
319 F.Supp.2d 1040 (C.D. Cal. 2003) 17, 18

Ours Tech, Inc. v. Data Drive Thru, Inc., 645 F.Supp.2d 830 (2009)..... 12

Reudy v. Clear Channel Outdoors, Inc.,
693 F.Supp.2d 1091 (N.D. Cal. 2007) 16, 17

Sampson v. Murray, 415 U.S. 61 (1974) 13

San Diego Hospice v. County of San Diego, 31 Cal.App.4th 1048 (1995) 16

Skrbina v. Flemin Cos., 45 Cal.App.4th 1353 (1996)..... 16

Stern v. Cingular Wireless Corp., 453 F.Supp.2d 1138 (C.D. Cal. 2006)..... 18, 19

Towery v. Brewer, 672 F.3d 650 (9th Cir. 2012) 11

Tunkl v. Regents of California, 60 Cal.2d 92 (1963) 17

Washington Capitals Basketball Club, Inc. v. Barry,
419 F.2d 472 (9th Cir. 1969) 11

Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982) 10

Winet v. Price, 4 Cal.App.4th 1159 (1992)..... 16

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

///

Statutes

28 U.S.C. §2201(a)	12
Cal. Civ. Code §1668.....	16
Cal. Civ. Code §1670.5(a)	17

1 intends to do at its upcoming March 5-10 Board meeting in Marrakech, Morocco.
2 Indeed, DCA recently asked for assurance from ICANN's counsel that .Africa
3 would not be granted at the meeting; the assurance was refused. ICANN already
4 once hastily granted ZACR the rights in March 2014 before it was enjoined by the
5 IRP panel during the pendency of the IRP review. History is repeating itself.
6 Once .Africa is granted and rights to use it are granted to users, DCA's rights to
7 this highly unique asset will be forever lost.

8 Given DCA's overwhelming victory before the IRP panel and ICANN's
9 continued bad faith conduct refusing it fair treatment, DCA has a high likelihood
10 of success on the merits. Indeed, ICANN's primary defense appears to be a self-
11 serving prospective release and waiver of all rights to a judicial remedy, which
12 ICANN forces all applicants to execute given its monopolistic power to grant the
13 use of gTLDs. But, ICANN's "silver bullet" prospective release goes too far,
14 purporting to absolve ICANN for even the grossest intentional misconduct and is
15 thus void as a matter of law.

16 All the relevant factors favor the issuance of a preliminary injunction barring
17 ICANN from issuing the rights to .Africa until this case is resolved, and DCA
18 respectfully requests this Court grant that very relief.

19 **II. RELEVANT FACTS**

20 **A. ICANN**

21 ICANN is a California non-profit established for the benefit of the Internet
22 community and is tasked with carrying out its activities in conformity with relevant
23 principles law and through open and transparent processes that enable competition
24 and open-entry in Internet-related markets. (Declaration of Sophia Bekele ("Bekele
25 Decl."), Ex. 1 at ¶4). ICANN is the only organization in the world that assigns
26 rights to Generic Top-level Domains ("gTLDs"). It therefore yields monopolistic
27 power and can and does force participants in the market for gTLDs to play by its
28 onerous and sometimes self-serving rules.

1 The following core principles guide the decisions and actions of ICANN: (a)
2 Preserve and enhance the operational stability of the Internet; (b) Employ open and
3 transparent policy development mechanisms that promote well-informed decisions;
4 (c) Make decisions by applying documented policies neutrally and objectively with
5 integrity and fairness; and (d) Remain accountable to the Internet community
6 through mechanisms that enhance ICANN's effectiveness. (Bekele Decl. ¶12, Ex.
7 4 at Art. 1 § 2). ICANN's own Bylaws state that it shall not apply its standards
8 inequitably or single out any particular party for disparate treatment. (Bekele Decl.
9 ¶12, Ex. 4 at Art. 2 § 3). ICANN is accountable to the Internet community for
10 operating in a manner consistent with its Bylaws and Articles of Incorporation as a
11 whole. (Bekele Decl. ¶12, Ex. 4 at Art. 4 § 1).

12 **B. DCA and the Top-Level Domain Application**

13 DCA was formed with the charitable purpose of advancing information
14 technology education in Africa and providing a continental Internet domain name
15 to provide access to internet services for the people of Africa. (Bekele Decl. ¶5,
16 Ex. 1 ¶2). In March 2012, DCA applied to ICANN for the delegation of the
17 .Africa top-level domain name in its 2012 General Top-Level Domains ("gTLD")
18 Internet Expansion Program (the "New gTLD Program"), an internet resource
19 available for delegation under that program. (Bekele Decl. ¶5, Ex. 1 ¶3). In order
20 to submit an application for a gTLD, all applicants were required to agree to the
21 terms of the gTLD Applicant's Guidebook (the "Guidebook"). (See Bekele Decl.
22 ¶¶7-11). In consideration of ICANN's promises to abide by its own Bylaws, the
23 Guidebook, and in conformity with the laws of fair competition, Plaintiff paid
24 ICANN a \$185,000.00 mandatory application fee. (See Bekele Decl. ¶4).

25 ICANN required that applicants for the rights to a geographic gTLD such as
26 .Africa obtain endorsements from 60% of the national governments in the region,
27 and no more than one written statement of objection to the application from
28 relevant governments in the region and/or public authorities associated with the the

1 region. (Bekele Decl. ¶7, Ex. 3 at § 2.2.1.4.2). As part of its bid to apply for the
2 delegation rights of the .Africa gTLD, Plaintiff obtained the endorsements of the
3 African Union Commission (hereinafter the “AUC”) and the United Nations
4 Economic Commission for Africa (UNECA) (Bekele Decl. ¶14, Ex. 6; ¶16, Ex. 8).
5 Plaintiff was the first to obtain official endorsements/letters of support for the
6 .Africa Internet domain name from these organizations.

7 In April 2010, nearly a year later, AUC wrote DCA and informed DCA that
8 it had “reconsidered its approach in implementing the subject Internet Domain
9 Name (.Africa) and no longer endorses individual initiatives in this matter[.]”
10 However, the letter did not expressly withdraw its endorsement of DCA. (Bekele
11 Decl. ¶15, Ex. 7). Section 2.2.1.4.3 of the Guidebook states that a governmental
12 entity may only withdraw its endorsement if the conditions of its endorsement have
13 not been satisfied: “...government may withdraw its support for an application at a
14 later time...*if the registry operator has deviated from the conditions of original*
15 *support or non-objection.*” (emphasis added) (Bekele Decl. ¶7, Ex. 1 at §
16 2.2.1.4.3). There were no conditions on the AUC or UNECA endorsements to
17 DCA. (See Bekele Decl. ¶14, Ex. 6; ¶16, Ex. 8).

18 **C. ZACR and AUC’s Top Level Domain Application**

19 AUC presumably tried to withdraw its support of DCA because AUC itself
20 attempted in 2011 to obtain the rights to .Africa by requesting that ICANN include
21 .Africa in the List of Top-Level Reserved Names. (See Bekele Decl. ¶22, Ex. 14 at
22 1). This would mean that the .Africa gTLD and its equivalent in other languages
23 would be unavailable for delegation under the New gTLD Program, which in turn
24 would enable AUC to benefit from a special legislative protection that would allow
25 AUC to delegate .Africa to itself. DCA protested that this would not be in
26 compliance with the gTLD guidelines. ICANN denied AUC’s request to reserve
27 .Africa but assisted AUC in obtaining the .Africa delegation rights through ZACR
28 as AUC’s proxy. (See Bekele Decl. ¶22, Ex. 14 at 2). In violation of its duties to

MEMORANDUM OF POINTS AND AUTHORITIES

1 act independently and transparently, ICANN, explained to AUC in a letter exactly
2 how to combat a competing application using the Governmental Advisory
3 Committee process. (*Id.*) In exchange for AUC’s endorsement, ZACR agreed to
4 allow AUC to “retain all rights relating to dotAfrica TLD.” (Bekele Decl. ¶32,
5 Ex. 20 at 616–17). The AUC also had other motives for favoring ZACR. The
6 members of the AUC committee formed to choose who to endorse for the .Africa
7 gTLD were individuals who were also members of other organizations affiliated
8 with ZACR. (Bekele Decl. ¶31).

9 ZACR represented that it was applying for the .Africa gTLD on behalf of the
10 “African community.” (*See* Bekele Decl. ¶33, Ex. 21). However, it failed to
11 submit the required type of application for organizations applying on behalf of a
12 “community” which is a term of designation and differentiation for gTLDs. (*See*
13 Bekele Decl. ¶32, Ex. 20 at 616). Nevertheless, ICANN processed ZACR’s
14 “standard” application. ZACR also made multiple misrepresentations to ICANN
15 to edge DCA out including that it had the large number of qualifying endorsements
16 from African governments sufficient to meet the 60% threshold under ICANN
17 rules. (*See* Bekele Decl. ¶32, Ex. 20; ¶34; ¶5, Ex. 1 at ¶80). In fact, ZACR’s
18 purported governmental endorsements were not qualifying. (*See Id.*)

19 **D. The Geographic Names Panel and InterConnect Communications**

20 ICANN contracted with a private company InterConnect Communications
21 (“ICC”) to perform a review of geographic name applications as ICANN’s
22 Geographic Name Panel. (*See* Bekele Decl. ¶35, Ex. at 22). The ICC warned that
23 if ICANN did not accept endorsement letters from regional authorities like the
24 AUC and UNECA, ZACR’s application would fail. (*See* Bekele Decl. ¶36, Ex.
25 23). ICANN asserted during the IRP that it had taken both the AUC and UNECA
26 endorsements into account in evaluating DCA’s application. (Bekele Decl. ¶ 5,
27 Ex. 1 ¶90). However, had ICANN treated DCA’s and ZACR’s AUC endorsements
28 equally, both DCA and ZACR should have either passed or failed the endorsement

1 requirement. (*See* Bekele Decl. ¶36, Ex. 23.) Rather, ICANN conspired to accept
2 ZACR’s endorsements as sufficient while disregarding Plaintiff’s endorsements.

3 **E. The GAC**

4 ICANN has a Governmental Advisory Committee (“GAC”) whose purpose,
5 according to ICANN’s Bylaws, is to “consider and provide advice on the activities
6 of ICANN as they relate to concerns of governments.” (*See* Bekele Decl. ¶12, Ex.
7 4 at Art. 11 § 2(1)(a)). By invitation, membership on the GAC is open to
8 “[e]conomies as recognized in the international fora, and multinational
9 governmental organizations.” (*See* Bekele Decl. ¶12, Ex. 4 at Art. 11 § 2(1)(b)).
10 The AUC became a member of the GAC in 2012, apparently on the advice of
11 ICANN. (*See* Bekele Decl. ¶22, Ex. 14 at 1). Having encouraged the AUC’s
12 membership, and having given the AUC instructions on how to use GAC
13 proceedings to derail DCA, ICANN then allowed AUC to use the GAC as a
14 vehicle for the issuance of advice against DCA’s application by DCA’s only
15 competitor for .Africa, the AUC through ZACR, effectively ensuring that the rights
16 to .Africa would be delegated to ZACR. (*See* Bekele Decl. ¶22, Ex. 14).

17 Specifically, ICANN allowed the GAC to issue a “consensus advice” that
18 DCA’s application should not proceed due to issues with the regional
19 endorsements. (*See* Bekele Decl. ¶39, Ex. 26 at 3). Under ICANN’s rules, the
20 GAC can recommend that ICANN cease reviewing an application if *all* of the
21 GAC members agree that an application should not proceed because an applicant is
22 sensitive, violates national law or is problematic. (*See* Bekele Decl. ¶5, Ex. 1 ¶88;
23 ¶42, Ex. 29 at Art. 12, Principle 47). However, not all of the members of the GAC
24 agreed that DCA’s application should be stopped. Kenya’s representative was not
25 even present at the GAC meeting when the advice was issued, but ICANN
26 nonetheless allowed the AUC (through Alice Munyua) to make a statement on
27 Kenya’s behalf denouncing DCA’s application, even though the current Kenya
28 GAC advisor wrote to the GAC chairperson to inform her that Ms. Munyua did not

1 represent Kenya or its viewpoints and that he objected to a GAC consensus advice
2 on .Africa. (*See* Bekele Decl. ¶37, Ex. 24; ¶38, Ex. 25].

3 Moreover, the GAC gave no indication that it considered the DCA's
4 application was problematic, violated law or was sensitive - the required standard.
5 (*See* Bekele Decl. ¶5, Ex. 1 ¶104 (“[ICANN’s witness] also stated that the GAC
6 made its decision without providing any rationale and primarily based on politics
7 and not on potential violations of national laws and sensitivities.”)) In June 2013,
8 the New gLTD Program Committee (“NGPC”) accepted the GAC’s advice despite
9 the aforementioned flaws in the GAC’s process. (*See* Bekele Decl. ¶ 5, Ex. 1 ¶
10 106). ICANN rejected DCA’s application on the basis of the GAC advice while
11 ZACR’s application continued. (*See* Bekele Decl. ¶5, Ex. 1 ¶¶ 80, 106; ¶40, Ex.
12 27). Although ICANN could have reconsidered this decision under its rules, it
13 refused to do so. (*See* Bekele Decl. ¶5, Ex. 1 ¶6; ¶7, Ex. 3 at Art. 4 § 2.2).

14 Meanwhile, ZACR passed the initial evaluation and entered into the
15 contracting phase with ICANN. (*See* Bekele Decl. ¶5, Ex. 1 ¶13; ¶40, Ex. 27).
16 ZACR did not have sufficient country specific endorsements to meet the ICANN
17 requirements for geographic gTLDs. (*See* Bekele Decl. ¶36, Ex. 23). ZACR filed
18 purported support letters endorsing the AUC’s “Reserved Names” initiative, along
19 with declarations made by the AUC regarding its intention to reserve .Africa for its
20 own use along with its appointment letter from the AUC as evidence of such
21 support. (*See* Bekele Decl. ¶32, Ex. 20). Only five of the purported endorsement
22 letters submitted by ZACR from African governments actually referenced ZACR
23 by name. (*See* Bekele Decl. ¶34). Presumably, given the clear limitations of these
24 purported endorsements, ZACR passed on the basis of the same regional
25 endorsements that ICANN and GAC had used to derail Plaintiff’s application.

26 **F. The Independent Review Process**

27 The Guidebook terms DCA agreed to upon submitting its gTLD application
28 contained a release and covenant not to sue (the “Prospective Release”):

1 “Applicant hereby releases ICANN...from any and all claims by applicant that
2 arise out of, are based upon, or are in any way related to, any action, or failure to
3 act, by ICANN...in connection with ICANN’s or an ICANN Affiliated Party’s
4 review of this application, investigation or verification, and any characterization or
5 description of applicant or the information in this application, any withdrawal of
6 this application or the decision by ICANN to recommend, or not to recommend,
7 the approval of applicant’s gTLD application. APPLICANT AGREES NOT TO
8 CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY
9 FINAL DECISION MADE BY ICANN WITH RESPECT TO THE
10 APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR
11 PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF
12 ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFILIATED
13 PARTIES WITH RESPECT TO THE APPLICATION.” (See Bekele Decl. ¶7, Ex.
14 3 at Module 6, ¶6).

15 ICANN instead purports to provide applicants with an independent review
16 process (“IRP”), as a means to challenge ICANN’s actions with respect to a gTLD
17 application: (See Bekele Decl. ¶7, Ex. 3 §§ 3.2.3; 6). The IRP is effectively an
18 arbitration, operated by the International Centre for Dispute Resolution of the
19 American Arbitration Association, comprised of an independent panel of
20 arbitrators. (See Bekele Decl. ¶7, Ex. 3 § 3.2.3).

21 In October 2013, DCA successfully sought an IRP to review ICANN’s
22 processing of its application, including ICANN’s handling of the GAC opinion.
23 (See Bekele Decl. ¶5, Ex. 1 at ¶9). DCA’s panel was comprised of the Honorable
24 William J. Cahill (Ret.)(who replaced the Honorable Richard C. Neal (Ret.) after
25 his passing), Babak Barin, and Professor Catherine Kessedjian. (See Bekele Decl.
26 ¶5, Ex. 1 at 1). Judge Cahill is a JAMS arbitrator and former judge in San
27 Francisco County Superior Court. Mr. Barin and Ms. Kessedjian are both
28 experienced professors of international law as well as experienced arbitrators.

MEMORANDUM OF POINTS AND AUTHORITIES

1 **G. ICANN Ignores the IRP’s Authority**

2 Despite the initiation of the IRP, ICANN continued to review ZACR’s
3 application – *even going so far as to sign a contract for the operation of .Africa*
4 *with ZACR.* (Bekele Decl. ¶5, Ex. 1 ¶¶12– 20; ¶9, Ex. 9. The IRP panel, during
5 emergency proceedings, found that this was improper and enjoined further
6 issuance of .Africa to ZACR. (*See id.*). The IRP panel issued a final and thorough
7 63-page declaration in the matter on July 9, 2015. The panel found, *inter alia*, that:

- 8 a. The IRP arbitration was binding, despite ICANN’s protests to the contrary.
9 (Bekele Decl. ¶5, Ex. 1 ¶23).
- 10 b. ICANN’s actions and inactions with respect to DCA’s application were
11 inconsistent with ICANN’s bylaws and articles of incorporation. (Bekele
12 Decl. ¶5, Ex. 1 ¶109).
- 13 c. ICANN should “continue to refrain from delegating the .Africa gTLD and
14 permit DCA Trust’s application to proceed through the remainder of the new
15 gTLD application process.” (Bekele Decl. ¶5, Ex. 1 ¶133).

16 This was the first time in its new gTLD history that ICANN was *not* the
17 prevailing party in an IRP.

18 **H. ICANN’s Processing of DCA’s Application After the IRP**
19 **Declaration**

20 ICANN did not act in accordance with the IRP’s Final Declaration. (*See*
21 *Bekele Decl. ¶5, Ex. 1 ¶23*). Instead of allowing DCA’s application to proceed
22 through the remainder of the application process, ICANN restarted DCA’s
23 application and re-reviewed its endorsements. (Bekele Decl. ¶¶ 23–24, Ex. 15).
24 ICANN intended to deny DCA’s application. For example, in September 2015
25 ICANN issued DCA clarifying questions regarding its endorsements and then
26 indicated that DCA’s responses were inadequate. Hoping to gain insight into what
27 exactly was allegedly wrong with its application, DCA agreed to an extended
28 evaluation. (Bekele Decl. ¶29). But, ICANN merely asked the exact same

1 questions without further guidance or clarification, clearly a pretext to deny DCA's
2 application. (*Id.*). After all, ICANN had already entered into a registry agreement
3 with ZACR, as ICANN's general counsel had made public *after* the IRP
4 Declaration issuance. In short, the process ICANN put Plaintiff through was a
5 sham with a predetermined ending – ICANN's denial of Plaintiff's application so
6 that ICANN could steer the gTLD to ZACR.

7 **I. ICANN's Issuance of the .Africa gTLD is Imminent**

8 In February 2016, ICANN rejected DCA's application after the extended
9 evaluation. (Bekele Decl. ¶28, Ex. 18). It is believed that ICANN is on the verge
10 of awarding .Africa to ZACR. On March 5, 2016, ICANN is holding a board
11 meeting in Morocco, Africa where it is expected to officially give the .Africa rights
12 to ZACR. (Bekele Decl. ¶41, Ex. 28). In fact, when DCA sought assurance from
13 ICANN's counsel that .Africa would not be granted at the meeting, the assurance
14 was refused. (Declaration of Ethan J. Brown ¶2). Now, despite its pending
15 complaint against ICANN, DCA stands to face another wrongful and unfair
16 delegation of the .Africa gTLD.

17 **III. LEGAL STANDARD**

18 Federal Rule of Civil Procedure 65 provides that: (1) The court may issue a
19 preliminary injunction only on notice to the adverse party and (2) before or after
20 beginning a hearing on a motion for a preliminary injunction, the court may
21 advance the trial on the merits and consolidate it with the hearing. Fed. R. Civ. P.
22 65. "The basis for injunctive relief [] in the federal courts has always been
23 irreparably injury and the inadequacy of legal remedies." *Weinberger v. Romero-*
24 *Barcelo*, 456 U.S. 305, 312 (1982). "District courts in the Ninth Circuit use two
25 tests when analyzing a request for a temporary or preliminary injunction: the
26 'traditional-' and 'alternative-' criteria tests." *Imperial v. Castruita*, 418 F.Supp.2d
27 1174, 1177-78 (C.D. Cal. 2006).

1 Under the former test, the plaintiff must show "(1) a strong likelihood of
2 success on the merits, (2) the possibility of irreparable injury to plaintiff if
3 preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff,
4 and (4) advancement of the public interest (in certain cases)." *Id.* Under the
5 alternative, or "serious questions" test, "a preliminary injunction is appropriate
6 when a plaintiff demonstrates that "serious questions going to the merits were
7 raised and the balance of hardships tips sharply in the plaintiff's favor." *Towery v.*
8 *Brewer*, 672 F.3d 650, 657 (9th Cir. 2012). This approach requires that the
9 elements of the preliminary injunction test be balanced, so that a stronger showing
10 of one element may offset and a weaker showing of another." *Id.* Under either test,
11 DCA is likely to succeed on the merits and is likely to suffer irreparable harm,
12 balancing the scales heavily in its favor. Given the public nature of ICANN and
13 the internet as a whole, issuing gTLDs in a fair, transparent process is in the
14 public's interest. A preliminary injunction should issue.

15 **IV. ARGUMENT**

16 **A. DCA will prevail on the merits for declaratory relief and the** 17 **injunction will preserve the status quo.**

18 DCA has already demonstrated that it is entitled to the relief it seeks (as
19 evidenced by the IRP decision) and satisfies the elements for a preliminary
20 injunction under either standard. DCA only moves for a preliminary injunction
21 under its ninth cause of action against ICANN for declaratory relief. "The function
22 of a preliminary injunction is to maintain the *status quo ante litem* pending a
23 determination of the action on the merits. The status quo is the last uncontested
24 status preceding the commencement of the controversy." *Washington Capitals*
25 *Basketball Club, Inc. v. Barry*, 419 F.2d 472, 476 (9th Cir. 1969). ICANN has not
26 issued the rights to the .Africa gTLD. Until DCA is afforded the relief determined
27 by ICANN's own IRP Declaration, the .Africa gTLD should not issue. For the
28

1 reasons demonstrated below, and determined by ICANN’s IRP, DCA has already
2 largely succeeded on the merits of its claim before the IRP.

3 i. DCA meets the elements under the traditional test
4 for a preliminary injunction.

5 1. DCA demonstrates a strong likelihood of success on
6 the merits of its ninth cause of action.

7 DCA’s ninth cause of action seeks a declaration from the Court that it is
8 entitled to proceed through the remainder of the .Africa gTLD application process
9 as expressed by the IRP findings. As an initial matter, DCA’s claim for
10 declaratory relief is proper. The federal Declaratory Judgment Act provides that
11 “[i]n a case of actual controversy within its jurisdiction...any court of the United
12 States...may declare the rights and other legal relations of any interested party
13 seeking such declaration, whether or not further relief is or could be sought.” 28
14 U.S.C. §2201(a). In determining whether a plaintiff’s claim properly invokes the
15 [Declaratory Judgment] Act, courts consider “whether the facts alleged, under all
16 of the circumstances, show that there is a substantial controversy, between the
17 parties having adverse legal interests, of sufficient immediacy and reality to
18 warrant the issuance of a declaratory judgment.” *Ours Tech, Inc. v. Data Drive*
19 *Thru, Inc.*, 645 F.Supp.2d 830, 834 (internal cites omitted).

20 An actual dispute exists between DCA and ICANN because ICANN is
21 denying DCA the proper application processing according to the IRP. The IRP
22 ruled that ICANN failed to follow its articles of incorporation, by-laws, and other
23 guidelines for processing DCA’s application. The IRP also ruled that DCA should
24 be allowed to “proceed through the *remainder* of the new gTLD process (emphasis
25 added).” ICANN refused to follow the IRP ruling, and placed DCA back to the
26 start of the application. (*See Bekele Decl.* ¶24, Ex. 15). DCA complained that this
27 was not proper. The controversy is not conjectural, but actual.

28

MEMORANDUM OF POINTS AND AUTHORITIES

1 Moreover, DCA will be able to show that it met ICANN's geographic
2 endorsement standards, or at the very least that its endorsements were no less
3 adequate than ZACR's¹, ICANN's favored applicant. (See Bekele Decl. ¶14, Ex. 6;
4 ¶16, Ex. 8; ¶36, Ex. 23). At the time the IRP proceeding commenced, DCA's
5 endorsers (AUC and UNECA) had been approved as endorsers by ICANN. (See
6 Bekele Decl. ¶5, Ex. 1 at ¶45). Both of those entities are representative of nearly
7 all the nations in Africa, far more than 60% (See Bekele Decl. ¶30, Ex. 19 at 601).
8 Although ICANN has asserted that the AUC and UNECA withdrew their
9 endorsements from DCA, a withdrawal is only permitted after an applicant applies
10 if an applicant has failed to meet one of the conditions of its endorsement. (See
11 Bekele Decl. ¶7, Ex. 3 at § 2.2.1.4.3) There were no conditions on either the AUC
12 or UNECA endorsements; therefore any attempted withdrawal of those
13 endorsements is improper. (See Bekele Decl. ¶7, Ex. 3 at § 2.2.1.4.3; ¶14, Ex. 6;
14 ¶16, Ex. 8).

15 Accordingly, DCA demonstrates a strong likelihood of success on the merits
16 with regard to its claim for declaratory relief that it is entitled to the gTLD
17 application process it was promised.

18 2. DCA will suffer irreparable injury if the .Africa gTLD
19 is awarded to another party.

20 Plaintiff will suffer irreparable injury because the .Africa gTLD is a unique
21 asset for which Plaintiff cannot be compensated through monetary damages. "The
22 key word in this consideration is *irreparable*." *Sampson v. Murray*, 415 U.S. 61,
23 90-91 (1974). The rights to .Africa cannot be issued again. There is but one
24 holder to the delegation rights to .Africa, and if ZACR is granted those rights after
25 DCA has been improperly denied the fair and transparent gTLD application
26 process ICANN was required to provide, DCA will not be able to obtain those
27

28

¹ *Infra*, Section II.E.

1 rights elsewhere. (*See* Bekele Decl. ¶2). If ICANN issues the .Africa gTLD
2 delegation rights to ZACR or any other party, DCA will be irreparably harmed.

3 Furthermore, the irreparable harm that DCA will suffer tips the balance in
4 favor of a preliminary injunction, regardless of whether the court finds less weight
5 in DCA's likelihood of success. "In some cases, we have stated that a plaintiff
6 may meet its burden by demonstrating a combination of probable success on the
7 merits and a possibility of irreparable injury. At other times, we have stated that
8 where the balance of hardships tips decidedly toward the plaintiff, the district court
9 need not require a robust showing of likelihood of success on the merits, and may
10 grant preliminary injunctive relief if the plaintiff's moving papers raise "serious
11 questions" on the merits." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d
12 668, 674 (9th Cir. 1988). Plaintiff has demonstrated both a likelihood of success
13 on the merits (based upon the IRP decision granting Plaintiff the relief it seeks
14 here) and inevitable irreparable injury if ICANN is not enjoined from issuing the
15 .Africa gTLD.

16 3. ICANN suffers no injury by having to follow its own
17 rules.

18 ICANN cannot demonstrate any harm, because no harm occurs if the .Africa
19 gTLD is not issued.² "[T]he district court should balance the relative hardships to
20 the parties that would result from granting or denying a preliminary injunction. If
21 the balance tips decidedly toward plaintiffs, and if plaintiffs have raised serious
22 enough questions to require litigation, the injunction **should** issue." *Aguirre v.*
23 *Chula Vista Sanitary Service & Sani-Tainer, Inc.*, 542 F.2d 779, 781 (9th Cir.
24 1976) [emphasis added]. As demonstrated above, the lack of harm to ICANN and
25
26

27 ² Since ZACR presently possesses no right to .Africa it will not be materially
28 harmed either. It has also contributed to this delay by its own collusion with AUC
and ICANN to derail DCA's application and cannot complain of further delay.

1 permanent, irreparable, and irreversible injury - coupled with the likelihood of
2 success - warrants the granting of Plaintiff's request for a preliminary injunction.

3 4. A preliminary injunction is in the public interest.

4 "The public interest analysis for the issuance of a preliminary injunction
5 requires us to consider whether there exists some critical public interest that would
6 be injured by the grant of preliminary relief. *Alliance For The Wild Rockies v.*
7 *Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011). The fair and transparent application
8 process that ICANN touts is indisputably in the public interest; in addition to the
9 fact that ICANN regulates the largest public domain in the world (the internet). No
10 public interest would be injured here, but rather it would be preserved and fostered.
11 DCA only seeks to obtain a fair and transparent application processing – the
12 processing it contracted for, was denied as determined by ICANN's IRP, and is
13 entitled to as also determined by ICANN's IRP. Ensuring that the proper party
14 holds the rights to the .Africa gTLD is more important than forcing a process
15 where the gTLD will end up in the hands of an improper party.

16 **B. A preliminary injunction should issue under the alternative test.**

17 DCA has already established probable success on the merits and the
18 inevitable irreparable injury necessary as elements under either test. Under the
19 latter test, the plaintiff must show either "a combination of probable success on the
20 merits and the possibility of irreparable injury or that serious questions are raised
21 and the balance of hardships tips sharply in his favor." *Imperial v. Castruita*, 418
22 F.Supp.2d 1174, 1177-78 (C.D. Cal. 2006) [internal citations omitted].

23 As stated above, DCA seeks declaratory relief with respect to the claim that
24 it is entitled to proceed through the remainder of the .Africa gTLD application
25 process as expressed by the IRP findings. ICANN's IRP accepted DCA's
26 argument and ordered ICANN to do what DCA seeks here. This is an actual
27 controversy, with sufficient immediacy, proper for Court action.
28

1 In addition to meeting the likelihood of success, the unique character of the
2 .Africa gTLD guarantees irreparable injury will occur if ICANN is allowed to issue
3 the gTLD without first complying with the IRP Declaration and processing DCA's
4 application at a point beyond the initial evaluation. DCA's application is rendered
5 meaningless if the .Africa gTLD is issued.

6 Accordingly, under either test, the scale balance in favor of DCA and a
7 preliminary injunction should issue.

8 **C. ICANN's waiver argument is void.**

9 DCA believes ICANN will assert as its primary defense to this Motion that
10 the Guidebook's Prospective Release prohibits this Court from ruling on this case.
11 The Prospective Release quoted in Section II.F, *supra*, however, is not enforceable
12 because it violates California Code of Civil Procedure §1668, is unconscionable,
13 and was procured by fraud. ICANN can cite to no authority for the proposition
14 that the Prospective Release is enforceable.³

15 i. A waiver of fraudulent acts and intentional acts is void.

16 ICANN's Prospective Release is void in that it waives and releases any
17 redress in a court of law, including fraudulent and intentional actions. "All
18 contracts which have for their object, directly or indirectly, to exempt anyone from
19 responsibility for his own fraud, or willful injury to the person or property of
20 another, or violation of law, whether willful or negligent, are against the policy of
21 the law." Cal. Civ. Code §1668; *See also Reudy v. Clear Channel Outdoors, Inc.*,
22 693 F.Supp.2d 1091, 1116 (N.D. Cal. 2007) ["a party [cannot] contract away
23

24 ³ In its motion to dismiss, currently on file with this Court, ICANN provides
25 inapposite case law to support its position. The California case law ICANN uses in
26 support of its argument involve settlement agreement mutual releases – not one-
27 sided prospective releases. *See San Diego Hospice v. County of San Diego*, 31
28 Cal.App.4th 1048, 1050 (1995); *Winet v. Price*, 4 Cal.App.4th 1159 (1992);
Skrbina v. Flemin Cos., 45 Cal.App.4th 1353 (1996); *Grillo v. California*, 2006
U.S. Dist. LEXIS 15255 (N.D. Cal. Feb. 13, 2006).

1 liability for his fraudulent or intentional acts or for his negligent violations of
2 statutory law, regardless of whether the public interest is affected” (internal
3 citations and quotations omitted).]⁴

4 ICANN’s Prospective Release encompasses every claim that arises from its
5 actions – necessarily including, fraud and intentional violations of law: “Applicant
6 hereby releases ICANN and the ICANN affiliated Parties ... from any and all
7 claims by applicant that arise out of, are based upon, or are in any way related to,
8 any action, or failure to act, by ICANN...in connection with ICANN’s...review of
9 this application, investigation or verification, any characterization or description of
10 this application or the decision by ICANN to recommend, or not to recommend,
11 the approval of applicant’s gTLD application.” *See Baker Pacific Corp. v. Suttles*,
12 220 Cal.App.3d 1148, 1153 (1990) [holding a covenant not to sue that released
13 “for, from and against any and all liability whatsoever” of “any and all claims of
14 every nature” void for excluding fraud, intentional acts, and negligent violations of
15 statutory law.]; Bekele Decl. ¶7 Ex. 3 at Module 6, ¶6. ICANN’s Prospective
16 Release purports to waive fraud and intentional violations of law, and thus, is void.

17 ii. ICANN’s Prospective Release is unconscionable.

18 The Prospective Release is also unenforceable because it is unconscionable.
19 “If the court as a matter of law finds the contract or any clause of the contract to
20 have been unconscionable at the time it was made the court may refuse to enforce
21 the contract, or it may enforce the remainder of the contract without the
22 unconscionable clause, or it may so limit the application of any unconscionable
23 clause as to avoid any unconscionable result.” Cal. Civ. Code §1670.5(a); *See also*
24 *Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*, 319 F.Supp.2d 1040, 1054 (C.D.

25 _____
26 ⁴ Although often cited for the claim that public policy must be implicated for a
27 release to be void, *Tunkl v. Regents of California*, 60 Cal.2d 92 (1963) does not
28 support that proposition. *See Reudy v. Clear Channel Outdoors, supra*. Even
under the standard expressed in *Tunkl v. Regents of California, supra*, DCA can
establish that ICANN’s prospective release is void.

1 Cal. 2003). “[T]he test for unconscionability is whether the clauses involved are so
2 one-sided as to be unconscionable under the circumstances existing at the time of
3 the making of the contract. [...] To determine unconscionability, courts look to
4 whether the allocation of the burdens and benefits are so one-sided as to shock the
5 conscience or whether there is an ‘absence of meaningful choice on the part of one
6 of the parties together with the contract terms which are unreasonably favorable to
7 the other party.’” *Nat’l Rural Telcoms. Coop. v. DIRECTV, Inc.*, supra.

8 “In order to render a contract unenforceable under the doctrine of
9 unconscionability, there must be both a procedural and substantive element of
10 unconscionability. These two elements, however, need not both be present to the
11 same degree.” *Ferguson v. Countrywide Credit Indus.*, 298 F.3d 778, 783 (9th Cir.
12 2002) [internal citations omitted]. “[C]ourts use a sliding scale, ‘such that the
13 greater the degree of unfair surprise or unequal bargaining power, the less the
14 degrees of substantive unconscionability required to annul the contract and vice
15 versa.’” *Stern v. Cingular Wireless Corp.* (“Stern”) 453 F.Supp.2d 1138, 1146
16 (C.D. Cal. 2006) at 1146. ICANN’s contract is both procedurally and
17 substantively unconscionable.

18 1. The Prospective Release is procedurally unconscionable.

19 All bargaining power was in the hands of ICANN and there was no
20 negotiation. “A contract is procedurally unconscionable if at the time the contract
21 was formed there was ‘oppression’ or ‘surprise.’ Oppression exists if an inequality
22 of bargaining power between the parties results in the absence of real negotiation
23 and meaningful choice. Surprise ‘involves the extent to which the supposedly
24 agreed-upon terms are hidden in a prolix printed form drafted by the party seeking
25 to enforce them.’” *Stern*, supra at 1145; *See also Ingle v. Circuit City Stores, Inc.*
26 (“*Ingle*”), 328 F.3d 1165, 1172 (9th Cir. 2003) [“When a party who enjoys greater
27 bargaining power than another party presents the weaker party with a contract
28

1 without a meaningful opportunity to negotiate, ‘oppression and, therefore,
2 procedural unconscionability, are present.’”]

3 DCA had no bargaining power because ICANN holds a monopoly on
4 gTLDs. ICANN is the *only* gTLD provider in the world; .Africa could not be
5 obtained from anyone else. (Bekele Decl. ¶3). In order to apply, DCA was forced
6 to agree to the Guidebook that contained the Prospective Release. (Bekele Decl.
7 ¶8). DCA was not invited to negotiate any provision of the Guidebook nor did
8 DCA contribute the language in the Prospective Release. (Bekele Decl. ¶9). The
9 Guidebook does not encourage the parties to consult with an attorney, nor did
10 DCA do so. (Bekele Decl. ¶7, Ex. 3; ¶11). Accordingly, the Prospective Release is
11 procedurally unconscionable.

12 2. The Prospective Release is substantively unconscionable.

13 The Prospective Release is also substantively unconscionable. “A contract
14 is substantively unconscionable if the contract or a provision thereof is overly
15 harsh or one-sided.” *Stern, supra*. “Substantive unconscionability centers on the
16 “terms of the agreement and whether those terms are so one-sided as to shock the
17 conscience.” *Ingle, supra* at 1172. The Prospective Release is a textbook example
18 of a one-sided agreement. It requires that DCA give up its right to sue ICANN for
19 ***any and all*** acts relating to the application but does not require ICANN to give up
20 any right to sue DCA. ICANN is not prevented from suing DCA for any violation
21 of law, negligence, fraud or otherwise. The Prospective Release absolves ICANN
22 of all wrongdoing – and provides no benefit to applicants. Because the contract is
23 both procedurally and substantively unconscionable, the agreement is
24 unenforceable.

25 iii. ICANN’s Prospective Release was procured by fraud.

26 ICANN’s Prospective Release was procured by fraud and cannot be relied
27 upon to ICANN’s benefit. “Fraud in the inducement is a subset of the tort of fraud
28 whereby ‘the promisor knows what he is signing but his consent is induced by

1 fraud, mutual assent is present and a contract is formed, which by reason of the
2 fraud is voidable.” *Jewelers Mut. Ins. Co. v. Adt Sec. Servs.* (N.D. Cal. July 9,
3 2009, No. C 08-02035 JW) 2009 U.S. Dist. LEXIS 58691, at *7-8. [internal
4 citations omitted]. “Where the plaintiff proves fraudulent inducement (which
5 requires a showing of justifiable reliance), none of [the fraudulently induced
6 agreement’s] provisions have any legal or binding effect.” *Edgewater Place, Inc.*
7 *v. Real Estate Collateral Mgmt. Co. (In Re Edgewater Place, Inc.)*, 1999 U.S. Dist.
8 LEXIS 23692, Case No. ED CV 98-281 RT at *12 (C.D. Cal., May 19, 1999).

9 ICANN required DCA to agree to the terms of its guidebook and pay
10 \$185,000 in order to apply for the .Africa gTLD. DCA agreed only because it was
11 falsely led to believe that the IRP process provided for real redress through the IRP
12 in lieu of court review. (See Bekele Decl. ¶7, Ex. 3 at Module 6, ¶6). After the
13 IRP ruled against it, ICANN failed to follow the directives in the IRP ruling,
14 making the above statement false. (See Bekele Decl. ¶7, Ex. 3 at Module 6, ¶6).
15 DCA was provided no redress and would not have agreed to the Guidebook terms
16 or paid the \$185,000 fee, if it knew that ICANN would not follow the IRP
17 decision. ICANN procured the provision by fraud, and it would be inequitable and
18 to DCA’s detriment to find the Prospective Release binding.

19 Accordingly, under any of the grounds stated above, ICANN’s Prospective
20 Release is void and unenforceable.

21 V. CONCLUSION

22 For the foregoing reasons, DCA is entitled to the issuance of a preliminary
23 injunction and respectfully requests that this Court grant such.

24 Dated: March 1, 2016

BROWN NERI & SMITH LLP

25
26 By: /s/ Ethan J. Brown

Ethan J. Brown

Attorneys for Plaintiff

27
28 DOTCONNECTAFRICA TRUST

MEMORANDUM OF POINTS AND AUTHORITIES

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

CERTIFICATE OF SERVICE

I, Ethan J. Brown, hereby declare under penalty of perjury as follows:

I am a partner at the law firm of Brown, Neri & Smith LLP, with offices at 11766 Wilshire Blvd., Los Angeles, California 90025. On March 1, 2016, I caused the foregoing **NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES** to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on March 1, 2016

/s/ Ethan J. Brown

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

6 *Attorneys for Plaintiff*
 7 DOT CONNECT AFRICA TRUST

8
 9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11
 12 DOTCONNECT AFRICA TRUST

13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR
 16 ASSIGNED NAMES AND NUMBERS
 and DOES 1 through 50, inclusive,

17 Defendants.

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

**DECLARATION OF ETHAN J.
 BROWN IN SUPPORT OF
 PLAINTIFF'S MOTION FOR
 PRELIMINARY INJUNCTION**

Date: April 4, 2016
 Hearing: 9:00 a.m.
 Courtroom: 850

[Filed concurrently: Declaration of
 Sophia Bekele; Motion for Preliminary
 Injunction; [Proposed] Order]

18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 BROWN DECLARATION

DECLARATION OF ETHAN J. BROWN

I Ethan J. Brown hereby declare as follows:

1. I am an attorney at law licensed to practice in California and a partner at the law firm of Brown, Neri & Smith LLP, counsel of record for Plaintiff DotConnectAfrica Trust (“DCA”). The matters referred to in this declaration are based upon my personal knowledge, and/or when reference documents, such documents were reviewed by me, and if called as a witness, I could and would testify competently thereto.

2. On February 23, 2016 I spoke to Jeffrey Levee, counsel of record for Defendant Internet Corporation for Assigned Names and Numbers (“ICANN”). I asked Mr. Levee for the status of ICANN’s granting of the .Africa gTLD and informed Mr. Levee that DCA would be forced to move for injunctive relief absent assurance that .Africa would not be granted to another party during the pendency of the litigation. Mr. Levee failed to give any such assurance and instead reminded me that ICANN had denied DCA’s application and stated that the board of ICANN could take action on .Africa at any time and that ICANN had a scheduled board meeting in Marrakesh, Morocco that would begin on March 5, 2016.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 29, 2016 at Los Angeles, California.



Ethan J. Brown

4828-4144-0046, v. 1

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

Ethan J. Brown (SBN 218814)
ethan@bnslawgroup.com
Sara C. Colón (SBN 281514)
sara@bnslawgroup.com
BROWN NERI & SMITH LLP
11766 Wilshire Boulevard, Suite 1670
Los Angeles, California 90025
Telephone: (310) 593-9890
Facsimile: (310) 593-9980

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

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; DOES 1 through 50,
inclusive;

Defendants.

Case No. 2:16-cv-00862-RGK-JC
**PLAINTIFF’S FIRST AMENDED
COMPLAINT FOR:**

1) **Breach of Contract;**
2) **Intentional
Misrepresentation;**
3) **Negligent
Misrepresentation;**
4) **Fraud & Conspiracy to
Commit Fraud;**
5) **Unfair Competition
(Violation of Cal. Bus. &
Prof. Code §17200);**
6) **Negligence;**
7) **Intentional Interference
with Contract;**
8) **Confirmation of IRP
Award;**
9) **Declaratory Relief;**
10) **Declaratory Relief;**
11) **Declaratory Relief.**

Complaint Filed: January 20, 2016
REQUEST FOR JURY TRIAL

1 Plaintiff DOTCONNECTAFRICA TRUST (hereinafter “Plaintiff”) alleges
2 as follows:

3 **INTRODUCTION**

4 1. Plaintiff was formed for the purpose of applying to the Internet
5 Corporation for Assigned Names and Numbers (“ICANN”) for the right to operate
6 the generic top-level domain (“gTLD”) .Africa. Plaintiff spent years and countless
7 resources aimed at achieving that goal. At each stage of the process, Plaintiff has
8 worked diligently to follow the rules and procedures promulgated by ICANN.

9 2. However, although ICANN put in place rules that ostensibly
10 regulate the delegation of new gTLDs in order to ensure that rights to new gTLDs
11 are awarded transparently through fair competition among applicants, ICANN not
12 only disregarded and acted in contravention of these rules with respect to
13 Plaintiff’s application, but actively picked sides and worked to ensure that a
14 different applicant, UniForum SA, now known as ZA Central Registry (“ZACR”),
15 would obtain the rights to .Africa despite ZACR’s defective application. ICANN
16 even went so far as to draft an endorsement for the AUC to submit in support of
17 ZACR.

18 3. Instead of functioning as a disinterested regulator of a fair and
19 transparent gTLD application process, ICANN used its authority and oversight
20 over that process to unfairly assist ZACR and to wrongfully eliminate its only
21 competitor, Plaintiff, from the process to the great detriment of Plaintiff.

22 4. As a result, ICANN and ZACR deprived Plaintiff of the right to
23 compete for .Africa in accordance with the rules ICANN has established for the
24 new gTLD program, in breach of ICANN’s Articles of Incorporation and Bylaws
25 as previously determined by ICANN’s own Independent Review Process after an
26 extensive arbitration.

27 **JURISDICTION AND VENUE**

28 5. This Court has jurisdiction over the subject matter of this action

FIRST AMENDED COMPLAINT

1 pursuant to 28 U.S.C. §1332(a).

2 6. This Court has personal jurisdiction of Defendants and venue is
3 proper under 28 U.S.C. §§1965(a); 1391. Defendant ICANN is a California non-
4 profit which is headquartered in California. Defendant ZACR contracted with
5 ICANN and directed the wrongful conduct alleged herein to California.

6 **PARTIES**

7 7. Plaintiff DOTCONNECTAFRICA TRUST was at all times relevant
8 to this matter a non-profit organization established under the laws of the Republic
9 of Mauritius with its Internet registry operation - DCA Registry Services (Kenya)
10 Limited - as its principal place of business in Nairobi, Kenya.

11 8. Defendant INTERNET CORPORATION FOR ASSIGNED
12 NAMES AND NUMBERS (“ICANN”) was at all times relevant to this matter a
13 non-profit corporation under the laws of the State of California and headquartered
14 in Los Angeles County, California.

15 9. Defendant ZA Central Registry (“ZACR”) is a South African non-
16 profit corporation. It was formed as a not-for-profit organization for the purpose of
17 applying to ICANN for the right to operate the generic top-level domain (“gTLD”)
18 .Africa. ZACR has applied for the gTLD, .Africa, in this District and specifically
19 engaged in the wrongful conduct discussed herein in this District.

20 10. Plaintiff is ignorant of the true names and capacities, whether
21 individual, corporate, associate, or otherwise, of the Defendants sued herein as
22 DOES 1 through 50 inclusive, and therefore sues said Defendants by such fictitious
23 names. Plaintiff will amend this Complaint to allege their true names and
24 capacities when the same have been ascertained.

25 11. At all times herein mentioned each of the Defendants was the agent,
26 employee, partner, principal, representative, alter ego, and/or affiliate of each of
27 the remaining Defendants and, was at all times herein mentioned, acting within the
28 course and scope of such relationship. Moreover, at all times herein mentioned,

FIRST AMENDED COMPLAINT

1 each of the Defendants did confirm, conspire to, consent to, affirm, direct,
2 authorize, acknowledge, and ratify the acts of each and every of the Defendants
3 herein as to each of the acts hereinafter alleged.

4 **FACTUAL BACKGROUND**

5 **ICANN and Generic Top-Level Domains**

6 12. ICANN was established on September 30, 1998 for the benefit of
7 the Internet community as a whole and is tasked with carrying out its activities in
8 conformity with relevant principles of California law, international law,
9 international conventions, and through open and transparent processes that enable
10 competition and open-entry in Internet-related markets.

11 13. ICANN is the sole organization worldwide that assigns rights to
12 Generic Top-level Domains. It therefore yields monopolistic power and can and
13 does force participants in the market for gTLDs to play by its onerous and
14 sometimes self-serving rules.

15 14. ICANN is not an ordinary California non-profit organization.
16 Rather, ICANN's purpose is to operate for the benefit of the Internet community as
17 a whole.

18 15. The following core principles guide the decisions and actions of
19 ICANN: (a) Preserve and enhance the operational stability, reliability, security, and
20 global interoperability of the Internet; (b) Employ open and transparent policy
21 development mechanisms that promote well-informed decisions based on expert
22 advice and ensure that those entities most affected can assist in the policy
23 development process; (c) Make decisions by applying documented policies
24 neutrally and objectively with integrity and fairness; and (d) Remain accountable
25 to the Internet community through mechanisms that enhance ICANN's
26 effectiveness.

27 16. Additionally, ICANN's own Bylaws state that it shall not apply its
28 standards, policies, procedures, or practices inequitably or single out any particular

1 party for disparate treatment.

2 17. ICANN is accountable to the Internet community for operating in a
3 manner that is consistent with the above stated policies and with ICANN's Bylaws
4 and Articles of Incorporation as a whole.

5 18. In or about 2011 ICANN approved the expansion of the number of
6 Generic Top Level Domains (hereinafter "gTLD") available to eligible applicants
7 as part of its 2012 Generic Top-Level Domains Internet Expansion Program.
8 Examples of gTLDs are .Africa and .Asia

9 **DCA and the Top-Level Domain Application**

10 19. As part of this expansion, eligible parties were invited to submit
11 applications to obtain the rights to operate various new gTLDs including, but not
12 limited to: .Lat (Latin America), .Wales, .Africa, .Swiss.

13 20. In return, ICANN promised to conduct the bid process in a
14 transparent manner, ensure competition, and abide by its own Bylaws and the rules
15 set forth in the gTLD Applicant's Guidebook.

16 21. In or about March 2012 Plaintiff submitted an application to
17 ICANN for the delegation rights of the .Africa gTLD as part of the 2012 new
18 gTLD Internet Expansion Program.

19 22. In consideration of ICANN's promises to abide by its own Bylaws,
20 Articles of Incorporation and the rules and procedures set forth in the gTLD
21 Applicant's Guidebook, and in conformity with the laws of fair competition,
22 Plaintiff paid ICANN the sum of \$185,000.00 - the mandatory application fee.

23 23. According to the Guidebook, a geographic name application for a
24 gTLD such as .Africa would be evaluated by a Geographic Names Evaluation
25 Panel. The evaluation criteria for geographic names requiring government support
26 are stipulated in Section 2.2.1.4.2 of the Guidebook. ICANN required that
27 applicants for the rights to a geographic name such as .Africa obtain endorsements
28 from 60% of the national governments in the region, and no more than one written

1 statement of objection to the application from relevant governments in the region
2 and/or public authorities associated with the continent or the region.

3 24. As part of its bid to apply for the delegation rights of the .Africa
4 gTLD, Plaintiff obtained the endorsements of the African Union Commission
5 (hereinafter the “AUC”) in August 2009 and the United Nations Economic
6 Commission for Africa (hereinafter the “UNECA”) in August 2008. Plaintiff was
7 the first to request and obtain official endorsements/letters of support for the
8 .Africa Internet domain name from these organizations. In April 2010, nearly a
9 year later, AUC wrote DCA and informed DCA that it had “reconsidered its
10 approach in implementing the subject Internet Domain Name (.Africa) and no
11 longer endorses individual initiatives in this matter related to continental resource.”
12 However, the letter did not withdraw its endorsement of DCA.

13 25. Further, the Section 2.2.1.4.3 of the Guidebook states that a
14 government may only withdraw its endorsement if the conditions of its
15 endorsement have not been satisfied: “It is also possible that a government may
16 withdraw its support for an application at a later time, including after the new
17 gTLD has been delegated, *if the registry operator has deviated from the conditions*
18 *of original support or non objection.*” (emphasis added). There were no conditions
19 on the AUC or UNECA endorsements to DCA.

20 **ZACR and the AUC’s Top Level Domain Application**

21 26. AUC itself attempted in 2011 in Dakar, Senegal, to obtain the rights
22 to .Africa by requesting from ICANN to include .Africa in the List of Top-Level
23 Reserved Names. This would mean that the .Africa name and its equivalent in
24 other languages would be unavailable for delegation under the ICANN new gTLD
25 Program, which would enable the AUC benefit from a special legislative
26 protection that would allow the AUC to delegate .Africa new gTLD itself.

27 27. When ICANN denied AUC’s request to reserve .Africa at the
28 immediate insistence of DCA and in compliance with the gTLD guidebook rules,

1 the AUC and ZACR conspired to improperly obtain the rights to .Africa through a
2 third-party company, Uniform ZA Central Registry (ZACR) for their own benefit,
3 in violation of the new gTLD program guidelines.

4 28. ZACR wrongfully campaigned against DCA's application both to
5 ICANN and the AUC. ZACR also represented to AUC that DCA should not have
6 AUC's endorsement because it was not a community organization, even though an
7 application by an individual organization is perfectly acceptable under ICANN's
8 rules. ZACR also invited the ICANN Independent Objector ("IO") to object to
9 DCA even though DCA was not subject to the IO's review because DCA's
10 application was not a community application.

11 29. ICANN then breached its agreement with Plaintiff to review
12 Plaintiff's .Africa application in accordance with its Bylaws, Articles of
13 Incorporation, and the new gTLD rules and procedures by improperly advising
14 and conspiring with the AUC on how to defeat any applications for .Africa other
15 than its own (via its improper proxy, ZACR).

16 30. In exchange for AUC's endorsement, ZACR signed a contract with
17 AUC allowing AUC to "retain all rights relating to dotAfrica gTLD," in
18 contravention of the gTLD Guidebook." The AUC also had other motives for
19 favoring ZACR. The members of the AUC committee formed to choose who to
20 endorse for the .Africa gTLD were individuals who were also members of various
21 organizations affiliated with ZACR.

22 31. ZACR represented that it was applying for the .Africa gTLD on
23 behalf of the African "community." However, it failed to submit the required type
24 of application for organizations applying on behalf of a "community," which is a
25 term of designation and differentiation for gTLDs. Nevertheless, ICANN
26 processed ZACR's "standard" application. A "standard" application does not
27 require an applicant to show that it represents a community.

28 32. ZACR also made multiple misrepresentations to ICANN in an

1 effort to edge DCA out including (1) that it had the a large number of qualifying
2 endorsements from African governments sufficient to meet the 60% threshold
3 under ICANN rules, and (2) that it had the requisite financial capability to operate
4 as a gTLD operator.

5 **The Geographic Names Panel and InterConnect Communications**

6 33. ICANN’S Geographic Names Panel independently evaluates and
7 determines which governments or organizations can give endorsements to gTLD
8 applicants.

9 34. InterConnect Communications (“ICC”) is the organization that
10 ICANN contracted with to perform string similarity and geographic review during
11 the initial evaluation stage of the gLTD application process

12 35. For each application, the Geographic Names Panel will determine
13 which governments are relevant based on the inputs of the applicant, governments,
14 and its own research and analysis. ICC’s staffer Marl McFadden explained to
15 ICANN staff that if the endorsements of regional organizations like the AUC and
16 UNECA were not applied towards the 60% requirement, then neither DCA nor
17 Defendant ZACR would have sufficient geographic support.

18 36. Therefore, the ICC recommended that ICANN take endorsement
19 letters from regional authorities like the AUC and UNECA for both applicants,
20 Plaintiff and Defendant ZACR.

21 37. After some back and forth between ICANN and the ICC, and after
22 both entities changed their positions on the endorsements, ICANN decided to
23 accept endorsements from the AUC. Mr. McFadden emphasized in an email that
24 its position was that criteria that included the AUC would also require accepting
25 UNECA. In 2014 and 2015 during an independent review process, explained more
26 fully below, ICANN asserted that it had accepted UNECA as an endorser.

27 38. Thus, ICANN and not ICC determined that only the AUC
28 endorsements (and not the UNECA endorsements) would be taken into account for

1 the geographic evaluation for both applications.

2 39. Had ICANN treated DCA's and ZACR's endorsements equally,
3 both DCA and ZACR should have either passed or failed the endorsement
4 requirement. Rather, as shown below, ICANN conspired to accept ZACR's
5 regional endorsements as sufficient while disregarding Plaintiff's endorsements,
6 although the plaintiff received the endorsement earlier than ZACR from AUC.

7 40. Additionally, the ICC did not inform DCA of any problems with
8 their endorsements during the initial evaluation, as the ICC was required to do.
9 DCA's application should have completed the process first. Although filed after
10 DCA's application, ZACR's application was initially placed ahead of DCA by
11 virtue of a lottery system employed by ICANN. However, ICANN put off
12 completing the initial evaluation on ZACR's application because ZACR did not
13 have the required endorsements and would have failed if ICANN had completed its
14 initial valuation when it came up for evaluation. ICANN thus delayed ZACR to
15 give it more time to submit qualifying endorsements.

16 41. The Guidebook states that the evaluation panels are required to act
17 impartially and transparently; however, the communications and engagements
18 during the evaluation of .Africa applications deviated substantially from the
19 expected code of conduct.

20 **The GAC**

21 42. ICANN has a Governmental Advisory Committee ("GAC") whose
22 purpose, according to the bylaws, is to "consider and provide advice on the
23 activities of ICANN as they relate to concerns of governments." Membership on
24 the GAC is open to all representatives of all national governments and, at the
25 invitation through its chair "[e]conomies as recognized in the international fora,
26 and multinational governmental organizations and treaty organizations."

27 43. The AUC became a member of the GAC in June 2012, apparently
28 on the advice of ICANN. However, its status as a voting member is improper

1 because, unlike the European Union (EU), it has no regulatory authority over its
2 member states.

3 44. Having encouraged the AUC's membership, ICANN then allowed
4 the GAC to be used as a vehicle for the issuance of advice against DCA's
5 application by DCA's only competitor for .Africa, the AUC through ZACR,
6 effectively ensuring that the rights to .Africa would be delegated to AUC's chosen
7 proxy ZACR. Specifically, ICANN allowed the GAC to issue a "consensus
8 advice" that DCA's application should not proceed due to issues with the regional
9 endorsements. Under ICANN's rules, the GAC can recommend that ICANN cease
10 reviewing an application if *all* of the GAC members agree that an application
11 should not proceed because an applicant is sensitive or problematic. However, not
12 all of the members of the GAC agreed that DCA's application should be stopped
13 and the GAC did not issue any statement that DCA was problematic or sensitive.

14 45. For example, Kenya's representative was not even present at the
15 GAC meeting when the advice was issued, but was informed that at a meeting of
16 the GAC and ICANN Board on 9 April 2013, Alice Munyua, Kenya's former GAC
17 advisor and a member of the ZACR Steering Committee as well as a GAC
18 representative for the AUC, made a statement purportedly on behalf of Kenya
19 denouncing DCA's application for .Africa. The current Kenya GAC advisor wrote
20 to the GAC Chairperson later that evening to inform her that Ms. Munyua no
21 longer represented Kenya and that Kenya did not share her viewpoints on .Africa
22 but ICANN Board nonetheless accepted the GAC advice rendered without a
23 consensus.

24 46. In June 2013, the New gTLD Program Committee ("NGPC")
25 accepted the GAC's advice even though DCA informed them that several members
26 of the committee had conflicts of interest with DCA and even though ZACR's
27 application should also have been halted if the GAC's rationale about regional
28

1 endorsements were to be applied equally. Nevertheless, ICANN rejected DCA's
2 application on the basis of the improper GAC advice while ZACR's continued.

3 47. ICANN therefore waited to inform DCA of the status of its Initial
4 Evaluation (IE) until after the wrongful GAC Advise was procured on the
5 Plaintiff's application to stop it from processing further.

6 48. Although ICANN under its rules could have reconsidered this
7 decision, it refused to do so. Meanwhile, ZACR passed the initial evaluation and
8 entered into the contracting phase with ICANN. ZACR did not have sufficient
9 country specific endorsements to meet the ICANN requirements for geographic
10 gTLDs. Only five of the purported endorsement letters submitted by ZACR from
11 African governments actually referenced ZACR by name. Presumably, ZACR
12 passed on the basis of the same regional endorsements that ICANN and GAC had
13 used to derail Plaintiff's application. ZACR filed purported support letters where
14 African governments were endorsing the AUC's "Reserved Names" initiative,
15 along with declarations made by the AUC regarding its intention to reserve .Africa
16 for its own use along with its appointment letter from the AUC as evidence of such
17 support. Had ICANN used fair and even-handed criteria, DCA's application
18 would have passed.

19 **The Independent Review Process**

20 49. ICANN provides applicants with an independent review process
21 ("IRP"), as a means to challenge ICANN's actions with respect to a gTLD
22 application. The IRP is a binding arbitration, operated by the International Centre
23 for Dispute Resolution, comprised of an independent panel of arbitrators.
24 Nonetheless, once its wrongful conduct came to light ICANN took the position that
25 the IRP was not in fact binding.

26 50. Mr. McFadden, an ICC employee, stated in an email to ICANN that
27 he was monitoring the press "on the .dotafrica application," and added "so far, so
28

1 good, I think. The ball is now in Sophia’s court – if she wants to invoke
2 Independent Review, then good luck to her.”

3 51. In October 2013, DCA successfully sought an IRP to review
4 ICANN’s processing of its application, including ICANN’s handling of the GAC
5 opinion.

6 52. DCA’s panel was comprised of the Honorable William J. Cahill
7 (Ret.)(who replaced the Honorable Richard C. Neal (Ret.) after his passing), Babak
8 Barin, and Professor Catherine Kessedjian. The Honorable William J. Cahill is a
9 JAMS arbitrator who spent nearly ten years as a judge in San Francisco County
10 Superior Court. Mr. Barin is an experienced attorney, professor, and author on
11 international arbitration. Ms. Kessedjian is a professor of law at the University
12 Pantheon-Assas Paris II and a deputy director of the European College of Paris –
13 she has also acts as an arbitrator for ICSID, ICC, LCIA and AAA.

14 53. Despite the initiation of the IRP, ICANN continued to review
15 ZACR’s application and went so far as to sign a contract for the operation of
16 .Africa with ZACR.

17 54. The IRP panel issued a final and thorough 63-page declaration in
18 the matter in July 2015, finding against ICANN. The panel found, *inter alia*, that:

- 19 a. The IRP arbitration was binding, despite ICANN’s protests to
20 the contrary.
- 21 b. ICANN’s actions and inactions with respect to DCA’s
22 application were inconsistent with ICANN’s bylaws and
23 articles of incorporation.
- 24 c. ICANN should “continue to refrain from delegating the
25 .Africa gTLD and permit DCA Trust’s application to proceed
26 through the remainder of the new gTLD application process.”

27 The IRP Panel did not conclude that there were any deficiencies with DCA’s
28 application. Rather, the arbitration panel concluded that “both the actions and

1 inactions of the Board [of ICANN] with respect to the application of DCA Trust
2 relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation
3 and Bylaws of ICANN.”

4 55. This was the first time in its history of the new gTLDs that ICANN
5 was not the prevailing party in an IRP arbitration.

6 56. A true and correct copy of the IRP panel’s declaration is attached
7 hereto as Exhibit A.

8 **ICANN’s Processing of DCA’s Application After the IRP Declaration**

9 57. Despite the IRP’s express ruling against ICANN, ICANN did not
10 act in accordance with the IRP’s Declaration.

11 58. Instead of allowing DCA’s application to proceed through the
12 remainder of the application process – referred to as the delegation phase --
13 ICANN restarted ICANN’s application and re-reviewed its endorsements.

14 59. ICANN intended to deny DCA’s application on any pretext. For
15 example, in September 2015 ICANN Geographic Name Evaluators issued DCA
16 clarifying questions regarding its endorsements, which it intentionally did not send
17 during the initial evaluation, more than two years after the IRP Panel declared
18 ICANN’s wrongful suspension of its application, and then indicated that DCA’s
19 responses to those questions were inadequate.

20 60. Hoping to gain insight into what exactly was allegedly wrong with
21 its application, DCA agreed to an extended evaluation. But, ICANN merely asked
22 the exact same questions without further guidance or clarification - clearly a
23 pretext to deny DCA’s application. After all, ICANN had already entered into a
24 registry agreement with ZACR, as ICANN’s general counsel had made public after
25 the IRP Declaration issuance. In short, the process ICANN put Plaintiff through
26 was a sham with a predetermined ending – ICANN’s denial of Plaintiff’s
27 application so that ICANN could steer the gTLD to ZACR.
28

1 and the new gTLD rules as evidenced by the IRP Declaration. For example,
2 ICANN improperly advised the AUC on how to defeat any application for .Africa
3 other than its own (via its improper proxy, ZACR).

4 69. In a letter dated 8 March 2012, ICANN Board Chairman Stephen
5 Crocker explained to the AUC that although ICANN could not reserve .Africa for
6 AUC's use because the Reserved Names list was already closed, the AUC could
7 "play a prominent role in determining the outcome of any application" for .Africa:
8 first, as a "public authorit[y] associated with the continent," the AUC could block
9 a competing application by filing "one written statement of objection;" second, the
10 AUC could file a Community Objection (a type of formal objection recognized by
11 ICANN and decided by an independent evaluator); or finally, the AUC could
12 utilize the GAC to combat a competing application for .Africa.

- 13 a. ICANN prevented DCA's application from proceeding through
14 the new gTLD review process and by coordinating with the
15 AUC and the ICANN Governmental Advisory Committee
16 (hereinafter the "GAC") and others, to ensure that the AUC
17 obtained the rights to .Africa, in a manner that violated
18 Defendant's obligations of independence, transparency, and due
19 process contained in ICANN's Articles of Incorporation and
20 Bylaws and the gTLD Guidebook.
- 21 b. ICANN has also failed to abide by the results of its own IRP
22 process in contravention of its agreement with DCA.
- 23 c. ICANN further breached its agreement with Plaintiff by failing
24 to permit competition for .Africa and by abusing its regulatory
25 authority in its differential treatment of ZACR.
- 26 d. ICANN breached its agreement with Plaintiff by working with
27 InterConnect Communications (ICC), an independent evaluator
28 of the applications for ICANN, to ensure that ZACR, but not

- 1 Plaintiff, would be able to pass a crucial evaluation process.
- 2 e. ICANN breached the agreement by drafting a letter supporting
- 3 ZACR for the AUC to submit back to ICANN.
- 4 f. ICANN breached their agreement with Plaintiff by failing to
- 5 conduct the necessary due diligence into recommendations and
- 6 decision by Defendant's advisory councils.
- 7 g. In violation of the new gTLD Program rules of transparency
- 8 and fair competition, the GAC sent steady messages to
- 9 ICANN's Board that it must ensure that nothing interferes with
- 10 the delegation of .Africa to ZACR. During ICANN's 50th
- 11 International Conference in London, UK, the AUC GAC
- 12 members threatened that ICANN would not get the African
- 13 Union's support, which ICANN was seeking for its Internet
- 14 transition plans away from National Telecommunications and
- 15 Information Administration oversight, if Plaintiff's application
- 16 was approved.

17 70. A representative of ICANN, who was also called to testify on
18 behalf of the ICANN during the IRP, Ms. Heather Dryden, admitted under
19 questioning and cross examination that ICANN breached its agreement with
20 Plaintiff. Specifically, Ms. Dryden admitted that the GAC did not act with
21 transparency or in a manner designed to ensure fairness. See Exhibit A,
22 International Centre for Dispute Resolution, Independent Review Panel, Case # 50
23 2013 001083, Final Declaration, pgs. 43-45.

24 71. The Plaintiff alleges on information and belief that ICANN
25 willfully committed wrongful actions in a manner that was detrimental to the
26 Plaintiff's application for the .Africa new gTLD, and refused to take corrective
27 actions to redress such evident wrongdoing satisfactorily even after the conclusion
28 of the IRP Proceeding.

1 any applicant who desired to initiate an IRP process in order to
2 ensure that applicants received proper due process.

3 d. ICANN represented that all applicants for the .Africa gTLD
4 would be subject to the same agreement, rules, and procedures.

5 75. However, ICANN:

6 a. Had no intention of following its Bylaws, Articles of
7 Incorporation, or the rules outlined in the gTLD Applicant
8 Guidebook. ICANN's rules state that three criteria are used to
9 object to a specific applicant by the GAC: problematic,
10 potentially violating national law, and raises sensitivities.
11 However, ICANN's Board representative testified on behalf of
12 ICANN during the IRP hearing that the GAC and ICANN's
13 Board did not in fact follow the published rules for issuing a
14 GAC objection. See Exhibit A, IRP Declaration, pgs. 43-52.

15 b. ICANN had no intention of ever participating in an IRP process
16 in good-faith and at all times believed it would do whatever it
17 wanted. And when forced to participate in IRP proceedings,
18 ICANN argued that the IRP was not binding. After the IRP
19 Declaration, ICANN followed through with its intention to act
20 according to its own wishes and desires regardless of the IRP
21 ruling and procedure. For example, ICANN's CEO, Mr. Fadi
22 Chehade, wrote to the AUC's Infrastructure and Energy
23 Commissioner on or about June 15, 2014 and said that ICANN
24 not only did not approve of the IRP proceedings but also that
25 ICANN promised to proceed expeditiously with delegating
26 .Africa to the AUC's improper proxy ZACR.

27 76. ICANN never had any intention of treating applicants the same or
28 making them follow the same rules. Instead, ICANN simply chose applicants

1 based on its own wishes and in exchange for political favors. As an example,
2 ICANN allowed ZACR to break its rules and procedures by not requiring ZACR to
3 submit a Community Top Level Domain application for .Africa even though the
4 AUC had claimed that it had endorsed ZACR to apply on behalf of the African
5 community.

6 77. When ICANN made these representations they knew them to be
7 false and made these representations with the intention to induce Plaintiff to act in
8 reliance on these representations.

9 78. In doing the acts herein alleged, ICANN acted with oppression,
10 fraud, and malice, and Plaintiff is entitled to punitive damages.

11 **THIRD CAUSE OF ACTION**

12 **(Negligent Misrepresentations—Against ICANN)**

13 79. Plaintiff incorporates by reference Paragraphs 1 through 78 as
14 though set forth in full herein.

15 80. ICANN made the following misrepresentations through its website
16 and the Guidebook to Plaintiff or to Plaintiff's agents or representatives and on
17 which Plaintiff relied to its detriment:

- 18 a. ICANN represented to Plaintiff that Plaintiff's application for
19 .Africa would be reviewed in accordance with, ICANN's
20 Articles of Incorporation, and the new gTLD Applicant
21 Guidebook; all of which promise a fair and transparent bid
22 process, fair competition, and non-interference with an
23 applicant's application by a competitor or third-party.
- 24 b. ICANN represented that it had in place an Accountability
25 Mechanism including an Independent Review Panel (IRP)
26 process to ensure that Plaintiff would be provided proper due
27 process in the event of a dispute regarding any decisions by
28 ICANN regarding Plaintiff's application under the new gTLD

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

Program.

- c. ICANN represented that it would participate in good-faith with any applicant who desired to initiate an IRP process in order to ensure that applicants received proper due process.
- d. ICANN represented that all applicants for the .Africa gTLD would be subject to the same agreement, rules, and procedures.

81. However, ICANN:

- a. Had no intention of following its Bylaws, Articles of Incorporation, or the rules outlined in the gTLD Applicant Guidebook. ICANN’s rules state that three criteria are used to object to a specific applicant by the GAC: problematic, potentially violating national law, and raises sensitivities. However, ICANN’s Board representative testified on behalf of ICANN during the IRP hearing that the GAC and ICANN’s Board did not in fact follow the published rules for issuing a GAC objection. See Exhibit A, IRP Declaration, pgs. 43-52.
- b. ICANN had no intention of ever participating in an IRP process in good-faith and at all times believed it would do whatever it wanted. And when forced to participate in IRP proceedings, ICANN argued that the IRP was not binding. After the IRP Declaration, ICANN followed through with its intention to act according to its own wishes and desires regardless of the IRP ruling and procedure. For example, ICANN’s CEO, Mr. Fadi Chehade, wrote to the AUC’s Infrastructure and Energy Commissioner on or about June 15, 2014 and said that ICANN not only did not approve of the IRP proceedings but also that ICANN promised to proceed expeditiously with delegating .Africa to the AUC’s improper proxy ZACR.

1 89. Plaintiff is informed and believes that ICANN allowed the AUC to
2 unilaterally appoint its proxy applicant as the chosen registry operator for .Africa
3 in contravention of new gTLD Program guidelines and ICANN’s agreement with
4 Plaintiff.

5 90. As per Article 1 (Delegation and Operation of Top-Level Domain:
6 Representation and Warranties) of the new gTLD Registry Agreement, only
7 ICANN can designate a registry operator for any Top Level Domain.

8 91. ZACR’s improper relationship with the AUC is evident in the
9 signed contract in which ZACR signed over all its rights to .Africa to the AUC.
10 Specifically, that “the AUC shall retain all the rights relating to the dotAfrica TLD
11 [Top Level Domain], including in particular, intellectual property and other rights
12 to the registry databases required to ensure the implementation of the agreement
13 between the AUC and the ZACR, and the right to re-designate the registry
14 function.”

15 92. ICANN allowed ZACR to break its rules and procedures by not
16 requiring ZACR to submit a Community Top Level Domain application for .Africa
17 even though the AUC had claimed that it had endorsed ZACR to apply on behalf
18 of the African community.

19 93. These fraudulent acts in violation of Plaintiff’s agreement with
20 ICANN prevented the only proper application [Plaintiff’s] from proceeding
21 through the new gTLD process and prevented Plaintiff from acquiring the
22 delegation rights of the .Africa new gTLD.

23 94. In doing the acts herein alleged, ICANN acted with oppression,
24 fraud, and malice, and Plaintiff is entitled to punitive damages.

25 95. Furthermore, the registry agreement ICANN signed with ZACR
26 should be declared null and void as that contract was the result of a fraudulent
27 application that was accepted and approved by ICANN in violation of due process
28 and while Plaintiff was in the IRP

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

FIFTH CAUSE OF ACTION

(Unfair Competition (Violation of Cal. Bus. & Prof. Code §17200—Against All Defendants))

96. Plaintiff incorporates by reference Paragraphs 1 through 95 as though fully set forth herein.

97. Defendant’s conduct as alleged herein constitutes unlawful, unfair, or fraudulent business acts or practices in violation of California Business and Professions Code § 17200 et seq.

98. Unless Defendants are restrained from continuing these unlawful, unfair, and fraudulent business acts or practices Plaintiff will suffer irreparable harms and injuries.

99. As a direct and proximate result of the foregoing conduct, Defendants have been unjustly enriched. Plaintiff is entitled to full disgorgement of all profits obtained by Defendants as a result of their unlawful, unfair, and fraudulent acts as alleged herein.

SIXTH CAUSE OF ACTION

(Negligence – Against ICANN)

100. Plaintiff incorporates by reference Paragraphs 1 through 99 as though fully set forth herein.

101. ICANN owed Plaintiff a duty to act with proper care in processing Plaintiff’s application in accordance with its own Bylaws, Articles of Incorporation, and rules and procedures as stated in the gTLD Applicant’s guidebook.

102. ICANN owed Plaintiff a duty to refrain from anticompetitive and unfair business practices under California and Federal law.

103. ICANN breached the duty owed to Plaintiff by accepting a fraudulent application submitted by Uniform/ZACR.

1 104. ICANN breached the duty owed to Plaintiff by failing to conduct
2 due diligence and an investigation concerning GAC's recommendation to not
3 approve Plaintiff's application.

4 105. ICANN breached the duty owed to Plaintiff by allowing the GAC
5 to disregard its established rules and procedures and by failing to provide a
6 rationale for the GAC advice regarding Plaintiff's application.

7 106. ICAN breached the duty owed to Plaintiff by moving forward with
8 the registry agreement with ZACR even while the IRP proceedings were on-going.

9 107. ICANN breached the duty owed to Plaintiff, as admitted by
10 ICANN's own witness at the IRP proceeding, by failing to act in a transparent
11 manner and consistent with procedures designed to ensure fairness and
12 accountability.

13 **SEVENTH CAUSE OF ACTION**

14 **(Intentional Interference with Contract Against ZACR)**

15 108. Plaintiff incorporates by reference Paragraphs 1 through 107 as
16 though fully set forth herein.

17 109. A contract existed between Plaintiff and ICANN in the form of the
18 Guidebook.

19 110. ZACR knew of this contract.

20 111. ZACR's conduct as described herein, including its improper
21 lobbying efforts to AUC and ICANN, induced breach of the contact and/or
22 prevented performance of the contract and/or made its performance more difficult.

23 112. ZACR intended to disrupt performance of the contract because it
24 wanted to obtain the delegation rights to .Africa for itself.

25 113. ZACR's actions were a substantial factor in causing Plaintiff's
26 harms.

27 114. In doing the acts herein alleged, ICANN acted with oppression,
28 fraud, and malice, and Plaintiff is entitled to punitive damages.

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

EIGHTH CAUSE OF ACTION

(Confirmation of IRP Declaration)

115. Plaintiff incorporates by reference Paragraphs 1 through 114 as though fully set forth herein.

116. As set forth herein, the IRP is a binding proceeding.

117. As set forth herein, the IRP issued an arbitration award in favor of Plaintiff in July 2015.

118. Accordingly, Plaintiff requests that the court confirm the IRP’s award.

NINTH CAUSE OF ACTION

(Declaratory Relief Against ICANN)

119. Plaintiff incorporates by reference Paragraphs 1 through 118 as though fully set forth herein.

120. As set forth herein, the IRP Declaration mandates that ICANN allow DCA’s application to proceed through the remainder of the new gTLD application process.

121. As set forth herein, ICANN did not allow DCA’s application to proceed through the remainder of the new gTLD application process but instead forced DCA to proceed through parts of the process that it had already completed, including review of its geographic endorsements.

122. The holdings and findings of fact found in the IRP are conclusive for purposes of this proceeding based on principals of res judicata.

123. An actual controversy exists among the parties as to the proper implementation of the directives in the IRP declaration.

124. Plaintiff seeks a judicial declaration that ICANN follow the IRP Declaration and allow the DCA application to proceed through the delegation phase of the application process.

1 “Applicant hereby releases ICANN and the ICANN Affiliated Parties [i.e.,
2 ICANN’s affiliates, subsidiaries, directors, officers, employees, consultants,
3 evaluators, and agents] from any and all claims by applicant that arise out of, are
4 based upon, or are in any way related to, any action, or failure to act, by ICANN or
5 any ICANN Affiliated Party in connection with ICANN’s or an ICANN Affiliated
6 Party’s review of this application, investigation or verification, and any
7 characterization or description of applicant or the information in this application,
8 any withdrawal of this application or the decision by ICANN to recommend, or not
9 to recommend, the approval of applicant’s gTLD application. APPLICANT
10 AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL
11 FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE
12 APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR
13 PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF
14 ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED
15 PARTIES WITH RESPECT TO THE APPLICATION.”

16 135. Plaintiff could not obtain the rights to .Africa from anyone but
17 ICANN. ICANN maintained monopolistic power over gTLDs on the Internet.
18 The covenant not to sue was non-negotiable.

19 136. The covenant not to sue is void as a matter of California public
20 policy and law (See Cal. Civ. Code §1668).

21 137. The covenant not to sue is unconscionable. It is a contract of
22 adhesion, entirely one-sided and not subject to negotiation. It allows ICANN to
23 absolve itself of wrongdoing while affording no remedy to applicants. It does not
24 equally apply to applicants because it does not prevent ICANN from resorting to
25 Court or litigation against applicants.

26 138. The covenant not to sue was procured by fraud. ICANN’S website
27 and guidebook describe the IRP as an “Independent Third-Party REVIEW OF
28 Board actions alleged by an affected party to be inconsistent with ICANN’s

1 Articles of Incorporation or Bylaws.” In addition, the covenant not to sue in the
2 Guidebook presents the IRP as an alternative to hold ICANN accountable for any
3 wrongdoing: “PROVIDED THAT APPLICANT MAY USE ANY
4 ACCOUNTABILITY MECHANISM SET FORTH IN ICANN’S BYLAWS FOR
5 PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN
6 WITH RESPECT TO THE APPLICATION.”

7 139. In fact, ICANN denies in practice that the IRP is binding and does
8 not respect or follow its decisions. ICANN induces and intends to induce
9 applicants to sign the guidebook covenant by falsely representing it has a real and
10 effective dispute resolution mechanism outside of court. However, ICANN has
11 failed to act in accordance with the IRP ruling against it. Plaintiff relied on those
12 misrepresentations in applying to ICANN for .Africa and in instituting the IRP
13 process and investing time and resources in it.

14 140. As set forth herein, ICANN did not comply with its obligations
15 under the Guidebook.

16 141. An actual controversy exists among the parties as to the
17 enforceability of the covenant not to sue.

18 142. Plaintiff seeks a judicial declaration that the covenant not to sue is
19 unenforceable, unconscionable, procured by fraud and/or or void as a matter of law
20 and public policy.

21
22 **WHEREFORE**, Plaintiff DOTCONNECTAFRICA TRUST prays for
23 relief as follows:

- 24 1. For compensatory damages according to proof at the time of trial;
- 25 2. For general damages according to proof;
- 26 3. For punitive damages according to proof;
- 27 4. For confirmation of the IRP Declaration;
- 28 5. For specific performance of the IRP Declaration;

FIRST AMENDED COMPLAINT

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

- 6. For rescission of ICANN’s registry agreement with ZACR as a null and void contract;
- 7. An injunction requiring ICANN to consider DCA’s application in accordance with the IRP ruling;
- 8. An injunction requiring ICANN to refrain from processing the ZACR application until they have processed DCA’s application in accordance with the IRP ruling;
- 9. For legal interest on said sums;
- 10. Attorneys’ fees and costs to the extent permitted by law; and
- 11. For such other and further relief as the Court deems just and proper against all Defendants.

Dated: February 26, 2016

BROWN NERI & SMITH LLP

By: /s/ Ethan J. Brown
Ethan J. Brown

Attorneys for Plaintiff
DOTCONNECTAFRICA TRUST

4837-3717-4830, v. 9-3717-4830, v. 5-3717-4830, v. 4

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

CERTIFICATE OF SERVICE

I, Ethan J. Brown, hereby declare under penalty of perjury as follows:

I am a partner at the law firm of Brown, Neri & Smith LLP, with offices at 11766 Wilshire Blvd., Los Angeles, California 90025. On February 26, 2016, I caused the foregoing **PLAINTIFF'S FIRST AMENDED COMPLAINT FOR: 1) Breach of Contract; 2) Intentional Misrepresentation; 3) Negligent Misrepresentation; 4) Fraud and Conspiracy to Commit Fraud; 5) Unfair Competition (Violation of Cal. Bus. & Prof. Code §17200); 6) Negligence; 7) Intentional Interference with Contract; 8) Confirmation of IRP Award; 9) Declaratory Relief; 10) Declaratory Relief; 11) Declaratory Relief** to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on February 26, 2016

/s/ Ethan J. Brown

1 Jeffrey A. LeVee (State Bar No. 125863)
 2 jlevee@jonesday.com
 3 Kate Wallace (State Bar No. 234949)
 4 kwallace@jonesday.com
 5 Rachel Zernik (State Bar No. 281222)
 6 rzernik@jonesday.com
 7 JONES DAY
 8 555 South Flower Street
 9 Fiftieth Floor
 10 Los Angeles, CA 90071.2300
 11 Telephone: +1.213.489.3939
 12 Facsimile: +1.213.243.2539

13 *Attorneys for Defendant*
 14 Internet Corporation for Assigned
 15 Names and Numbers

16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 DOTCONNECTAFRICA TRUST
 19 Plaintiff,

20 v.

21 INTERNET CORPORATION FOR
 22 ASSIGNED NAMES AND
 23 NUMBERS and DOES 1 through 50,
 24 inclusive
 25 Defendants.

Case No. 2:16-cv-00862

NOTICE OF REMOVAL

NOTICE OF REMOVAL

1
2 Please take notice that Defendant Internet Corporation for Assigned Names and Numbers
3 (“ICANN”) hereby removes the above-captioned action (“Action”) to this Court from the
4 Superior Court of the State of California, County of Los Angeles. As set forth below, ICANN
5 has complied with the statutory requirements for removal under 28 U.S.C. §§ 1441 and 1446, and
6 this Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

BACKGROUND

7
8 1. On January 20, 2016, Plaintiff DotConnectAfrica Trust (“DCA”) filed a Complaint
9 (“Complaint”) against ICANN in the Superior Court of the State of California, County of Los
10 Angeles, Case Number BC607494. Plaintiff brings claims for: (1) breach of contract;
11 (2) intentional misrepresentation; (3) negligent misrepresentation; (4) fraud and conspiracy to
12 commit fraud; (5) unfair competition in violation of California Business & Professions Code
13 § 17200, *et seq.*; and (6) negligence. Plaintiff’s Complaint relates to ICANN’s consideration of
14 an application that Plaintiff submitted to ICANN to operate the .AFRICA top-level domain.
15 Among other relief, Plaintiff seeks compensatory, general, and punitive damages. (*See Exhibit A*
16 *(Complaint).*)

17 2. ICANN received a copy of the Complaint on January 21, 2016 and was served on
18 February 6, 2016. Consequently, this removal petition is timely filed. *See* 28 U.S.C. § 1446(b)
19 (requiring removal within 30 days of receipt of initial pleading).

20 3. Removal to the Central District of California is proper because this District
21 includes Los Angeles County, California. 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 84(c)(2)
22 (providing that the Central District of California, Western Division, includes Los Angeles
23 County).

24 4. Defendants will file a copy of this Notice of Removal with the clerk of the
25 Superior Court of the State of California, County of Los Angeles, and will serve a copy on
26 Plaintiff, as required by 28 U.S.C. § 1446(d).

REMOVAL BASED ON TRADITIONAL DIVERSITY JURISDICTION

1
2 5. ICANN’s basis for removal is diversity jurisdiction. ICANN and Plaintiff are
3 citizens of different states, and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).

4 6. According to paragraph 1 of the Complaint, Plaintiff is a non-profit organization
5 incorporated in the Republic of Mauritius with its principal place of business in Nairobi, Kenya.
6 (Compl. ¶ 1.)

7 7. According to paragraph 2 of the Complaint (and confirmed by ICANN), ICANN is
8 a California nonprofit public benefit corporation with its principal place of business in Los
9 Angeles, California. (*Id.* ¶ 2.)

10 8. Thus, diversity of citizenship exists between Plaintiff, a citizen of the Republic of
11 Mauritius and Kenya, and ICANN, a citizen of California.

12 9. The \$75,000 amount-in-controversy requirement under § 1332(a) is also met here.
13 Among other relief, Plaintiff seeks damages in the amount no less than \$9,000,000. (*Id.* ¶ 40.)

RESERVATION OF RIGHTS

14
15 10. ICANN denies the allegations contained in Plaintiff’s Complaint and files this
16 Notice of Removal without waiving any defenses, objections, exceptions, or obligations that may
17 exist in its favor in either state or federal court.

18 11. Further, in making the allegations in this Notice of Removal, ICANN does not
19 concede in any way that the allegations in the Complaint are accurate, that Plaintiff has asserted
20 claims upon which relief can be granted, or that recovery of any of the amounts sought is
21 authorized or appropriate.

22 12. ICANN also reserves the right to amend or supplement this Notice of Removal. If
23 any questions arise as to the propriety of the removal of this Action, ICANN expressly requests
24 the opportunity to present such further evidence as necessary to support its position that this
25 Action is removable.

26 13. For the reasons stated above, ICANN removes this Action, Civil Case No.
27 BC607494, currently pending in the Superior Court of the State of California, County of Los
28

1 Angeles, to this Court. ICANN respectfully requests that this Court assume jurisdiction over this
2 matter and grant ICANN such other and further relief as this Court deems just and proper.

3
4 Dated: February 8, 2016

JONES DAY

5
6 By: 

Jeffrey A. LeVee

7
8 *Counsel for Defendant*
9 INTERNET CORPORATION FOR ASSIGNED
10 NAMES AND NUMBERS
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 Brandon Schantz, SBN 278116
2 SCHANTZ LAW FIRM
3 30882 Rivera Place
4 Laguna Niguel, CA 92677
5 TEL: 949-378-3651
6 EMAIL: bschantz@schantzlegal.com

A-029
92677

FILED
Superior Court Of California
County Of Los Angeles

JAN 20 2016

Sherri K. Carter, Executive Officer/Clerk
By Kristina Vargas, Deputy

6 Attorney for DOTCONNECTAFRICA TRUST

7 *D-72 Ruth Annkwan*
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 CITY AND COUNTY OF LOS ANGELES

10 UNLIMITED JURISDICTION

11 DOTCONNECTAFRICA TRUST

Case No. **BC 6 0 7 4 9 4**

12 Plaintiff,

**PLAINTIFFS' COMPLAINT FOR:
BREACH OF CONTRACT; INTENTIONAL
MISREPRESENTATION; NEGLIGENT
MISREPRESENTATION; FRAUD;
CONSPIRACY TO COMMIT FRAUD;
UNFAIR COMPETITION (VIOLATION OF
CAL. BUS. & PROF. CODE §17200);
NEGLIGENCE**

13 v.

14 INTERNET CORPORATION FOR ASSIGNED
15 NAMES AND NUMBERS and DOES 1 through
16 50, inclusive,

17 Defendants.

18 Complaint Filed:

19 **REQUEST FOR JURY TRIAL**

20 Plaintiff DOTCONNECTAFRICA TRUST (hereinafter "Plaintiff") alleges as follows:

21 **PARTIES**

22 1. Plaintiff DOTCONNECTAFRICA TRUST was at all times relevant to this matter a
23 non-profit organization established under the laws of the Republic of Mauritius with its principal
24 registry operation-DCA Registry Services (Kenya) Limited—as its principal place of business in
25 Nairobi, Kenya. Plaintiff also maintains a representative office in the State of California.

26 2. ICANN INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS
27 was at all times relevant to this matter a non-profit corporation under the laws of the State of
28 California and headquartered in Los Angeles County, California.

01/20/2016

PLAINTIFFS' COMPLAINT

CGC-

\$0.00
\$0.00
\$0.00
\$435.00

CIT/CASE: BC607494
LEA/DEF#: 01/20/16
RECEIVED: 01/20/16
DATE FILED: 01/20/16
CLOCK # : 04:24 PM
CASH: \$0.00
CHECK: \$0.00
CREDIT: \$435.00
TOTAL: \$435.00

1 consistent with the above stated policies and with ICANN’s Bylaws and Articles of Incorporations as
2 a whole.

3 10. In or about 2011 ICANN approved a program to expand the Generic Top Level
4 Domains (hereinafter “gTLD”) through which such domains will be applied for by eligible applicants
5 and made available as part of its 2012 Generic Top-Level Domains Internet Expansion Program.

6 11. As part of this expansion, eligible registry operator were invited to submit applications
7 to obtain the rights to operate various new gTLDs including, but not limited to: Lat (Latin America)
8 and .Africa.

9 12. As part of the gTLD application process, applicants promised to pay the sum of One-
10 Hundred Eighty-Five Thousand dollars (\$185,000) to ICANN as application fee.

11 13. In return, ICANN promised to conduct the bid process in a transparent manner, ensure
12 competition, and abide by its own Bylaws and the rules set forth in the gTLD Applicant’s Guidebook.

13 **FIRST CAUSE OF ACTION**

14 **(Breach of Contract—Against ICANN ICANN)**

15 14. Plaintiff incorporates by reference Paragraphs 1 through 13 as though set forth in full
16 herein.

17 15. In or about May 2012 Plaintiff submitted an application to ICANN for the delegation
18 rights of the .Africa gTLD as part of the 2012 new gTLD Internet Expansion Program.

19 16. In consideration of ICANN’s promises to abide by its own Bylaws, Articles of
20 Incorporation and the rules and procedures set forth in the gTLD Applicant’s Guidebook, and in
21 conformity with the laws of fair competition, Plaintiff paid ICANN the sum of \$185,000.00.

22 17. Plaintiff additionally agreed to abide by all rules and regulations as those rules and
23 regulations pertained to what constituted proper paperwork for applying for the .Africa gTLD.

24 18. In consideration of Plaintiff paying the sum of \$185,000.00, ICANN promised to
25 conduct the bid process for the .Africa gTLD in a manner consistent with ICANN’s own Bylaws,
26 Articles of Incorporation, the rules and procedures set forth in the gTLD Applicant’s Guidebook, and
27 in conformity with the laws of fair competition in business/commercial transactions.

28 19. Plaintiff would not have paid the sum of \$185,000 absent the mutual consideration and

01/20/2016

1 promises.

2 20. Plaintiff performed all conditions, covenants, and promises required on its part to be
3 performed in accordance with the agreed upon terms of participating in the new gTLD Program.

4 21. As part of its application for the delegation rights of the .Africa gTLD, Plaintiff
5 obtained the prior support of the African Union Commission (hereinafter the "AUC") and the United
6 Nations Economic Commission for Africa (UNECA). This support for a geographic name such as
7 .Africa was a necessary requirement for Plaintiff to apply for .Africa and was one of the requirements
8 that Plaintiff fulfilled with ICANN as part of the new gTLD Application Process. The Plaintiff indeed
9 was the first to approach the both organizations introducing the .Africa and to request official
10 endorsements/letters of support for the .Africa Internet domain name.

11 22. The AUC had attempted in 2011 in Dakar, Senegal, to improperly obtain the rights to
12 .Africa by requesting from ICANN to include .Africa in the List of Top-Level Reserved Names so that
13 the .Africa name and its equivalent in other languages would be unavailable for delegation under the
14 ICANN new gTLD Program, which would enable the AUC benefit from a special legislative
15 protection that would allow the AUC to delegate the new .Africa gTLD to a structure the AUC would
16 identify and approve. Plaintiff had immediately complained to ICANN that approving such a request
17 would be a violation of the new gTLD program guidebook which already included the approved Top-
18 Level Reserved Names of which .Africa was not part of it.

19 23. When that request by the AUC was not approved by ICANN, the AUC later attempted
20 to improperly obtain the rights to .Africa through a third-party front company, Uniform ZA Central
21 Registry (hereinafter "ZACR) for their own commercial benefit in violation of the new gTLD program
22 guidelines.

23 24. ICANN breached its agreement with Plaintiff to review Plaintiff's .Africa application in
24 accordance with ICANN's Bylaws, Articles of Incorporation, and the new gTLD rules and procedures
25 by improperly advising the AUC on how to defeat any applications for .Africa other than its own (via
26 its improper proxy, ZACR).

27 25. ICANN breached their agreement with Plaintiff by preventing DCA's application from
28 proceeding through the new gTLD review process and by coordinating with the AUC and the

51 / 20 / 2016

1 ICANN’s Governmental Advisory Committee (hereinafter the “GAC”) and others, to ensure that the
2 AUC obtained the rights to .Africa, in a manner that violated ICANN’s obligations of independence,
3 transparency, and due process contained in ICANN’s Articles of Incorporation and Bylaws and the
4 gTLD Guidebook.

5 26. The proper observance of ICANN’s Bylaws, Articles of incorporation and the gTLD
6 Application Guidebook constituted the core legal consideration that ICANN exchanged with Plaintiff
7 for Plaintiff’s covenant to pay the \$185,000.00 application fee in expectation that ICANN will act with
8 utmost good faith.

9 27. ICANN further breached its agreement with Plaintiff by failing to permit competition
10 for .Africa and by abusing its regulatory authority in its differential treatment of ZACR.

11 28. ICANN breached its agreement with Plaintiff by working with InterConnect
12 Communications (ICC), an evaluator of the applications who was acting as an agent of ICANN, to
13 ensure that ZACR, but not Plaintiff, would be able to pass a crucial evaluation process. Specifically,
14 ICANN breached the agreement by drafting a letter supporting ZACR for the AUC to submit back to
15 ICANN for acceptance and approval. Furthermore, ICANN did not provide clarification questions in
16 time for the Plaintiff to process and only did so after much damage to the .Africa process had been
17 committed and after the Independent Review Process.

18 29. ICANN breached their agreement with Plaintiff by failing to conduct the necessary due
19 diligence into recommendations and decision by ICANN’s advisory councils.

20 30. Specifically, based on Article III (Transparency), Section 1 of ICANN’s Bylaws (which
21 are an integral part of the agreement with Plaintiff), ICANN’s is bound to the transparency and
22 fairness obligations of the above section of ICANN’s Bylaws which obligates the GAC to “operate to
23 the maximum extent feasible in an open and transparent manner and consistent with procedures
24 designed to ensure fairness.”

25 31. The GAC’s purpose is to consider and provide advice on the activities of ICANN as
26 they relate to concerns of governments.

27 32. The AUC, as a member of the GAC, improperly used the GAC to ensure that Plaintiff’s
28 .Africa new gTLD application was not properly considered and then denied.

01/20/2016

1 33. As the GAC is a constituent body of ICANN, any violation of the rules of transparency
2 and fair competition by the GAC constitutes a violation by ICANN as a whole.

3 34. ICANN further breached their agreement with Plaintiff by failing to perform the proper
4 due diligence of GAC's actions which would have uncovered GAC's violation of the agreement
5 ICANN had with Plaintiff.

6 35. In consideration of the GAC Objection Advice, ICANN had also violated the new
7 gTLD Applicants Guidebook by failing to obtain the independent opinion of a third-party expert such
8 as those that are mandated to look into such matters under the new gTLD Dispute Resolution
9 Procedures as specified in the applicant Guidebook.

10 36. A representative of ICANN, who was also called to testify on behalf of the ICANN,
11 Ms. Heather Dryden, admitted under questioning and cross examination that ICANN breached its
12 agreement with Plaintiff during a prior arbitration (known internally as an Independent Review
13 Process (IRP) Panel) proceeding on this matter. Specifically, Ms. Dryden admitted that the GAC did
14 not act with transparency or in a manner designed to ensure fairness. See Exhibit A, International
15 Centre for Dispute Resolution, Independent Review Panel, Case # 50 2013 001083, Final Declaration,
16 pgs. 43-45.

17 37. In violation of the new gTLD Program rules of transparency and fair competition, the
18 GAC sent steady messages to ICANN's Board that it must ensure that nothing interferes with the
19 delegation of .Africa to ZACR. In fact, during ICANN's 50th International Conference in London,
20 UK, the AUC GAC members threatened that the ICANN would not get the African Union's support,
21 which ICANN was seeking for its Internet transition plans away from National Telecommunications
22 and Information Administration oversight, if Plaintiff's application was approved.

23 38. The IRP Panel decided that "both the actions and inactions of the Board [of ICANN]
24 with respect to the application of DCA Trust [Plaintiff] relating to the .AFRICA gTLD were
25 inconsistent with the Articles of Incorporation and Bylaws of ICANN [ICANN]." *Id.* at 61.

26 39. The Plaintiff alleges on information and belief that the ICANN willfully committed
27 wrongful actions in a manner that was detrimental to the Plaintiff's application for the .Africa new
28 gTLD, and refused to take corrective actions to redress such evident wrongdoing satisfactorily even

01 / 20 / 2016

1 after the conclusion of the IRP Proceeding.

2 40. As a direct, foreseeable, and proximate result of ICANN's breach of the Agreement,
3 Plaintiff has suffered harms and injuries that are causally and directly connected to ICANN's actions
4 and inactions, and been damaged and continues to be damaged in an amount to be determined at trial
5 but not less than nine-million United States of America dollars (\$9,000,000.00), plus interest.
6 Additionally, as a result of the breach by ICANN of the Agreement, Plaintiff has incurred legal fees
7 and costs. Plaintiffs reserve the right to amend this Complaint to state the true nature and extent of his
8 damages when ascertained or at time of trial.

9 **SECOND CAUSE OF ACTION**

10 **(Intentional Misrepresentation—Against ICANN)**

11 41. Plaintiff incorporates by reference Paragraphs 1 through 40 as though set forth in full
12 herein.

13 42. ICANN's made the following intentional misrepresentations to Plaintiff or to Plaintiff's
14 agents or representatives and on which Plaintiff relied to its detriment:

- 15 a. ICANN represented to Plaintiff that Plaintiff's application for .Africa new gTLD would
16 be reviewed in accordance with ICANN's Bylaws, ICANN's Articles of Incorporation,
17 and the new gTLD Applicant Guidebook; all of which promise a fair and transparent
18 bid process, fair competition, and non-interference with an applicant's application by a
19 competitor or third-party.
- 20 b. ICANN represented that it had in place an Accountability Mechanism including an
21 Independent Review Panel (IRP) arbitration process to ensure that applicants were
22 provided proper due process in the event of a dispute regarding any decisions by the
23 ICANN that pertain to the Plaintiff's application under the new gTLD Program.
- 24 c. ICANN represented that ICANN would participate in good-faith with any applicant
25 who desired to initiate an Independent Review Panel arbitration in order to ensure that
26 applicants received proper due process.
- 27 d. ICANN represented that all applicants for the .Africa gTLD would be subject to the
28 same agreement, rules, procedures and transparent treatment.

02/08/2016

1 43. The representations by ICANN and described above were false. When ICANN made
2 these representations the true facts were that ICANN:

3 a. Had no intention of following its Bylaws, Articles of Incorporation, or the rules
4 outlined in the gTLD Applicant Guidebook. ICANN's rules state that three criteria are
5 used to object to a specific applicant by the GAC: problematic, potentially violating
6 national law, and raises sensitivities. However, ICANN's representative testified on
7 behalf of ICANN during the arbitration hearing that the GAC and ICANN's Board do
8 not in fact follow the published rules for issuing a GAC objection. See Exhibit A, IRP
9 Arbitration Declaration, pgs. 43-52.

10 b. ICANN had no intention of ever participating in an Independent Review Panel
11 arbitration in good-faith and at all times believed it would do whatever it wanted. And
12 when forced to participate in arbitration proceedings, ICANN followed through with its
13 intention to act according to its own wishes and desires regardless of the arbitration
14 ruling. The following indicate ICANN's non-intention of complying with its own
15 Independent Review process:

- 16 1. ICANN's CEO, Mr. Fadi Chehade, wrote to the AUC's Infrastructure and Energy
17 Commissioner on or about June 15, 2014 and said that ICANN not only did not
18 approve of the proceedings but also that ICANN promised to proceed expeditiously
19 with delegating .Africa to the AUC's improper proxy ZACR.
- 20 2. On or about March 23, 2014, "Plaintiff learned via email that ZACR would sign a
21 registry agreement with ICANN in three days' time (on March 26) to be registry
22 operator for .Africa. The very same day, the arbitration panel sent a letter to
23 ICANN on behalf of Plaintiff telling ICANN to refrain from executing the registry
24 agreement with ZACR in light of the pending arbitration proceedings. Instead,
25 ICANN entered into the registry agreement with ZACR the very next day—two
26 days ahead of schedule. Later that same day, ICANN responded to the request to
27 not sign the registry agreement by treating the execution of the contract as a *fait*
28 *accompli*."

50173072018

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

c. ICANN never had any intention of treating applicants the same or making them follow the same rules. Instead, ICANN simply chose applicant's based on its own wishes and in exchange for political favors. As an example, ICANN allowed ZACR to break its rules and procedures by not requiring ZACR to submit a Community Top Level Domain application for .Africa even though the AUC had claimed that it had endorsed ZACR to apply on behalf of the African community.

44. When ICANN made these representations they knew them to be false and made these representations with the intention to induce Plaintiff to act in reliance on these representations.

45. In doing the acts herein alleged, ICANN acted with oppression, fraud, and malice, and, in consideration of the harms and injuries suffered by Plaintiff on account of ICANN's actions, Plaintiffs are entitled to compensatory damages, punitive damages, legal fees, and costs.

THIRD CAUSE OF ACTION

(Negligent Misrepresentations—Against ICANN)

46. Plaintiff incorporates by reference Paragraphs 39 through 45 as though set forth in full herein.

47. ICANN's made the following misrepresentations to Plaintiff or to Plaintiff's agents or representatives and on which Plaintiff relied to its detriment:

- a. ICANN represented to Plaintiff that Plaintiff's application for the delegation rights of .Africa new gTLD would be reviewed in accordance with ICANN's Bylaws, ICANN's Articles of Incorporation, and the gTLD Applicant Guidebook; all of which promise a fair and transparent bid process, fair competition, and non-interference with an applicant's application by a competitor or third-party.
- b. ICANN represented that ICANN had in place an Independent Review Process to ensure that applicants were provided proper due process in the event of a dispute regarding the new gTLD.
- c. ICANN represented that ICANN would participate in good-faith with any applicant who desired to initiate an Independent Review Process in order to ensure that applicants received proper due process.

01/20/2016

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

d. ICANN represented that all applicants for the .Africa gTLD would be subject to the same agreement, rules, and procedures.

48. The representations by ICANN and described above were false. When ICANN made these representations the true facts were that ICANN:

- a. ICANN did not follow its Bylaws, Articles of Incorporation, or the rules outlined in the gTLD Applicant Guidebook. ICANN's rules state that three criteria are used to object to a specific applicant: problematic, potentially violating national law, and raises sensitivities. However, ICANN's representative testified at the arbitration proceeding that the GAC and ICANN's Board do not in fact follow the published rules for issuing an objection. See Exhibit A, IRP Arbitration Declaration, pgs. 43-52.
- b. ICANN represented that ICANN had in place an Accountability Mechanism including an Independent Review Panel (IRP) Process to ensure that applicants were provided proper due process in the event of a dispute regarding any decisions by the ICANN that pertain to the Plaintiff's application under the new gTLD Program.
- c. ICANN had not actually set up an Omnibus Standing Panel for the Independent Review Process (IRP) and instead, via internal committees sought to be the judge of its own actions in violation of an applicant's due process rights.
- d. ICANN did not participate in the Independent Review Process in good-faith and at all times believed it could do whatever it wanted. And when forced to participate in arbitration proceedings, ICANN followed through with its intention to act according to its own wishes and desires regardless of the arbitration ruling and procedures. The following indicate ICANN's negligence misrepresentations of complying with its own Independent Review Process:
- e. ICANN did not treat all applicants the same or make them follow the same rules. Instead, ICANN simply chose applicant's based on its own wishes and in exchange for political favors. As an example, ICANN allowed ZACR to break its rules and procedures by not requiring ZACR to submit a Community Top Level Domain application for .Africa even though the AUC had claimed that it had endorsed ZCR to

01/20/2016

1 apply on behalf of the African community.

2 49. When ICANN negligently made these representations and Plaintiff relied upon them to
3 its detriment.

4 50. Plaintiffs are entitled to compensatory damages, legal fees, and costs.

5 **FORTH CAUSE OF ACTION**

6 **(Fraud & Conspiracy to Commit Fraud—Against All Defendants)**

7 51. Plaintiff incorporates by reference Paragraphs 1 through 50 as though fully set forth
8 herein.

9 52. ICANN conspired with the AUC and its proxy company ZACR to defraud Plaintiff of a
10 fair evaluation process for the .Africa gTLD and did in fact commit fraud by acting together to
11 improperly deny Plaintiff's application.

12 53. Plaintiff complained to ICANN that its competitor UniForum/ZACR had submitted a
13 fraudulent application, but the ICANN did not take any action against ZACR. Plaintiff believes that by
14 not taking any action to check the willful infractions committed by ZACR in its application, the
15 ICANN was complicit in this act of accepting and approving a fraudulent application.

16 54. No provision in the gTLD Applicant's Guidebook allows for a third-party organization
17 such as the AUC, a non-applicant, and an organization that is not a registry operator, to have all rights
18 to a Top Level Domain and other rights over registry databases and the right to re-designate the
19 registry function.

20 55. In contravention of the established rules, Plaintiff is informed and believes that ICANN
21 allowed the AUC and its proxy company ZACR to violate the rules and procedures for acquiring the
22 delegation rights of a new gTLD in exchange for the AUC's political support in favor of ICANN's
23 efforts to become a non-regulated organization that would have overall stewardship of the Internet
24 domain technical management functions.

25 56. Plaintiff is informed and believes that ICANN allowed the AUC to unilaterally appoint
26 its proxy company as the chosen registry operator for .Africa in contravention of new gTLD Program
27 guidelines and ICANN's agreement with Plaintiff.

28 57. As per Article 1 (Delegation and Operation of Top-Level Domain: Representation and

0
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

1 Warranties) of the new gTLD Registry Agreement, only ICANN can designate a registry operator for
2 any Top Level Domain.

3 58. ZACR’s improper relationship with the AUC is evident in a signed contract in which
4 ZACR signed over all its rights to .Africa to the AUC. Specifically, that “the AUC shall retain all the
5 rights relating to the dotAfrica TLD [Top Level Domain], including in particular, intellectual property
6 and other rights to the registry databases required to ensure the implementation of the agreement
7 between the AUC and the ZACR, and the right to re-designate the registry function.”

8 59. ICANN allowed ZACR to break its rules and procedures by not requiring ZACR to
9 submit a Community Top Level Domain application for .Africa even though the AUC had claimed
10 that it had endorsed ZACR to apply on behalf of the African community.

11 60. These fraudulent acts in violation of Plaintiff’s agreement with ICANN prevented the
12 only proper application [Plaintiff’s] from proceeding through the new gTLD-process and prevented
13 Plaintiff from acquiring the delegation rights of the .Africa new gTLD.

14 61. In doing the acts herein alleged, ICANN acted with oppression, fraud, and malice, and
15 Plaintiffs are entitled to compensatory damages, punitive damages, legal fees, and costs.

16 62. Furthermore, the registry agreement ICANN signed with ZACR should be declared null
17 and void as that contract was the result of a fraudulent application that was accepted and approved by
18 the ICANN in violation of due process.

19 **FIFTH CAUSE OF ACTION**

20 **(Unfair Competition (Violation of Cal. Bus. & Prof. Code §17200—Against All Defendants)**

21 63. Plaintiff incorporates by reference Paragraphs 1 through 62 as though fully set forth
22 herein.

23 64. Defendant’s conduct as alleged herein constitutes unlawful, unfair, or fraudulent
24 business acts or practices in violation of California Business and Professions Code § 17200 *et seq.*

25 65. Unless Defendant’s are restrained from continuing these unlawful, unfair, and
26 fraudulent business acts or practices Plaintiff will suffer irreparable harms and injuries.

27 66. As a direct and proximate result of the foregoing conduct, Defendants have been
28

01/20/2016

1 unjustly enriched. Plaintiff is entitled to full disgorgement of all profits obtained by Defendants as a
2 result of their unlawful, unfair, and fraudulent acts as alleged herein.

3 **SIXTH CAUSE OF ACTION**

4 **(Negligence—Against ICANN)**

5 67. Plaintiff incorporates by reference Paragraphs 1 through 67 as though fully set forth
6 herein.

7 68. ICANN owed Plaintiff a duty to act with proper care in processing Plaintiff's
8 application in accordance with its own Bylaws, Articles of Incorporation, and the rules and procedures
9 as stated in the gTLD Applicant's guidebook.

10 69. ICANN owed Plaintiff a duty to refrain from anticompetitive and unfair business
11 practices under California and Federal law.

12 70. ICANN breached the duty owed Plaintiff by accepting a fraudulent application
13 submitted by Uniforum/ZACR.

14 71. ICANN breached the duty owed Plaintiff by failing to conduct due diligence and an
15 investigation concerning the GAC's recommendation to not approve Plaintiff's application.

16 72. ICANN breached the duty owed Plaintiff by allowing the GAC to disregard its
17 established rules and procedures and by failing to provide a rationale for the GAC advice regarding
18 Plaintiff's application.

19 73. ICANN breached the duty owed Plaintiff by moving forward with the registry
20 agreement with ZACAR even while the arbitration proceedings were ongoing.

21 74. ICANN breached the duty owed Plaintiff, as admitted by ICANN's own witness at
22 arbitration, by failing to act in a transparent manner and consistent with procedures designed to ensure
23 fairness and accountability.

24 //
25 //
26 //
27 //
28 //

01 / 20 / 2016

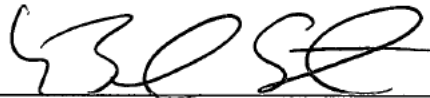
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Plaintiff DOTCONNECT AFRICA TRUST prays for relief as follows:

1. For compensatory damages according to proof at the time of trial;
2. For general damages according to proof;
3. For punitive damages according to proof;
4. For rescission of ICANN's registry agreement with ZACR as a null and void contract predicated on fraud.
5. For legal interest on said sums; and
6. For such other and further relief as the Court deems just and proper against all Defendants

Dated: January 20, 2016

SCHANTZ LAW FIRM



Brandon Schantz
Attorney for Plaintiff DotConnectAfrica Trust

01/20/2016

EXHIBIT A

01/20/2016

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

CASE #50 2013 001083

FINAL DECLARATION

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 20005, 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***

01/29/2016

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.

01/20/2016

9. In an effort to safeguard its rights pending the ongoing constitution of the IRP Panel, on 22 January 2014, DCA Trust wrote to ICANN requesting that it immediately cease any further processing of all applications for the delegation of the .AFRICA gTLD, failing which DCA Trust would seek emergency relief under Article 37 of the ICDR Rules.
10. DCA Trust also indicated that it believed it had the right to seek such relief because there was no standing panel as anticipated in the Supplementary Procedures for ICANN Independent Review Process ("Supplementary Procedures"), which could otherwise hear requests for emergency relief.
11. In response, on 5 February 2014, ICANN wrote:

Although ICANN typically is refraining from further processing activities in conjunction with pending gTLD applications where a competing applicant has a pending reconsideration request, ICANN does not intend to refrain from further processing of applications that relate in some way to pending independent review proceedings. In this particular instance, ICANN believes that the grounds for DCA's IRP are exceedingly weak, and that the decision to refrain from the further processing of other applications on the basis of the pending IRP would be unfair to others.
12. In its Request for Emergency Arbitrator and Interim Measures of Protection subsequently submitted on 28 March 2014, DCA Trust pleaded, *inter alia*, that, in an effort to preserve its rights, in January 2014, DCA requested that ICANN suspend its processing of applications for .AFRICA during the pendency of this proceeding. ICANN, however, summarily refused to do so.
13. DCA Trust also submitted that "on 23 March 2014, DCA became aware that ICANN intended to sign an agreement with DCA's competitor (a South African company called ZACR) on 26 March 2014 in Beijing [...] Immediately upon receiving this information, DCA contacted ICANN and asked it to refrain from signing the agreement with ZACR in light of the fact that this proceeding was still pending. Instead, according to ICANN's website, ICANN *signed its agreement with ZACR the very next day, two days ahead of plan, on 24 March instead of 26 March.*"
14. According to DCA Trust, that same day, "ICANN then responded to DCA's request by presenting the execution of the contract as a *fait accompli*, arguing that DCA should have sought to stop ICANN from proceeding with ZACR's application, as ICANN had already informed DCA of its intention [to] ignore its obligations to participate in this proceeding in good faith."

01/20/2016

15. DCA Trust also submitted that on 25 March 2014, as per ICANN's email to the ICDR, "ICANN for the first time informed DCA that it would accept the application of Article 37 of the ICDR Rules to this proceeding contrary to the express provisions of the Supplementary Procedures of ICANN has put in place for the IRP Process."
16. In its Request, DCA Trust argued that it "is entitled to an accountability proceeding with legitimacy and integrity, with the capacity to provide a meaningful remedy. [...] DCA has requested the opportunity to compete for rights to .AFRICA pursuant to the rules that ICANN put into place. Allowing ICANN to delegate .AFRICA to DCA's only competitor – which took actions that were instrumental in the process leading to ICANN's decision to reject DCA's application – would eviscerate the very purpose of this proceeding and deprive DCA of its rights under ICANN's own constitutive instruments and international law."
17. Finally, among other things, DCA Trust requested the following interim relief:
 - a. An order compelling ICANN to refrain from any further steps toward delegation of the .AFRICA gTLD, including but not limited to execution or assessment of pre-delegation testing, negotiations or discussions relating to delegation with the entity ZACR or any of its officers or agents; [...]
18. On 24 April and 12 May 2014, the Panel issued Procedural Order No. 1, a Decision on Interim Measures of Protection, and a list of questions for the Parties to answer.
19. In its 12 May 2014 Decision on Interim Measures of Protection, the Panel required ICANN to "immediately refrain from any further processing of any application for .AFRICA until [the Panel] heard the merits of DCA Trust's Notice of Independent Review Process and issued its conclusions regarding the same".
20. In the Panel's unanimous view, among other reasons, it would have been "unfair and unjust to deny DCA Trust's request for interim relief when the need for such a relief...[arose] out of ICANN's failure to follow its own Bylaws and procedures." The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.
21. On 27 May and 4 June 2015, the Panel issued Procedural Order No. 2 and a Decision on ICANN's request for Partial Reconsideration of certain portions of its Decision on Interim Measures of Protection.

01/20/2016

22. In its 4 June 2014 Decision on ICANN's request for Partial Reconsideration, the Panel unanimously concluded that ICANN's request must be denied. In that Decision, the Panel observed:

9. After careful consideration of the Parties' respective submissions, the Panel is of the unanimous view that ICANN's Request must be denied for two reasons.

10. First, there is nothing in ICANN's Bylaws, the International Dispute Resolution Procedures of the ICDR effective as at 1 June 2009 or the Supplementary Procedures for ICANN Independent Review Process that in any way address the Panel's ability to address ICANN's Request. The Panel has not been able to find any relevant guidance in this regard in any of the above instruments and ICANN has not pointed to any relevant provision or rule that would support its argument that the Panel has the authority to reconsider its Decision of 12 May 2014.

11. Moreover, ICANN has not pointed to any clerical, typographical or computation error or shortcoming in the Panel's Decision and it has not requested an interpretation of the Panel's Decision based on any ambiguity or vagueness. To the contrary, ICANN has asked the Panel to reconsider its prior findings with respect to certain references in its Decision that ICANN disagrees with, on the basis that those references are in ICANN's view, inaccurate.

12. Second, even if the Panel were to reconsider based on any provision or rule available, its findings with respect to those passages complained of by ICANN as being inaccurate in its Decision – namely paragraphs 29 to 33 – after deliberation, the Panel would still conclude that ICANN has failed to follow its own Bylaws as more specifically explained in the above paragraphs, in the context of addressing which of the Parties should be viewed as responsible for the delays associated with DCA Trust's Request for Interim Measures of Protection. It is not reasonable to construe the By-law proviso for consideration by a provider-appointed *ad hoc* panel when a standing panel is not in place as relieving ICANN indefinitely of forming the required standing panel. Instead, the provider appointed panel is properly viewed as an interim procedure to be used before ICANN has a chance to form a standing panel. Here, more than a year has elapsed, and ICANN has offered no explanation why the standing panel has not been formed, nor indeed any indication that formation of that panel is in process, or has begun, or indeed even is planned to begin at some point.

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

23. On 14 August 2014, the Panel issued a Declaration on the IRP Procedure ("2014 Declaration") pursuant to which it (1) ordered a reasonable documentary exchange, (2) permitted the Parties to benefit from additional filings and supplementary briefing, (3) allowed a video hearing, and (4) permitted both Parties at the hearing to

01/20/2016

challenge and test the veracity of any written statements made by witnesses.

The Panel also concluded that its Declaration on the IRP and its future Declaration on the Merits of the case were binding on the Parties. In particular, the Panel decided:

98. Various provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the Panel's decisions, opinions and declarations are binding. There is certainly nothing in the Supplementary Rules that renders the decisions, opinions and declarations of the Panel either advisory or non-binding.

[...]

100. Section 10 of the Supplementary Procedures resembles Article 27 of the ICDR Rules. Whereas Article 27 refers to "Awards", section 10 refers to "Declarations". Section 10 of the Supplementary Procedures, however, is silent on whether Declarations made by the IRP Panel are "final and binding" on the parties.

101. As explained earlier, as per Article IV, Section 3, paragraph 8 of the Bylaws, the Board of Directors of ICANN has given its approval to the ICDR to establish a set of operating rules and procedures for the conduct of the IRP set out in section 3. The operating rules and procedures established by the ICDR are the ICDR Rules as referred to in the preamble of the Supplementary Procedures. These Rules have been supplemented with the Supplementary Procedures.

102. This is clear from two different parts of the Supplementary Procedures. First, in the preamble, where the Supplementary Procedures state that: "These procedures supplement the International Centre for Dispute Resolution's International Arbitration Rules in accordance with the independent review procedures set forth in Article IV, Section 3 of the ICANN Bylaws".

103. And second, under section 2 entitled (Scope), that states that the "ICDR will apply these Supplementary Procedures, in addition to the INTERNATIONAL DISPUTE RESOLUTION PROCEDURES, in all cases submitted to the ICDR in connection with the Article IV, Section 3(4) of the ICANN Bylaws". It is therefore clear that ICANN intended the operating rules and procedures for the independent review to be an international set of arbitration rules supplemented by a particular set of additional rules.

104. There is also nothing inconsistent between section 10 of the Supplementary Procedures and Article 27 of the ICDR Rules.

105. One of the hallmarks of international arbitration is the binding and final nature of the decisions made by the adjudicators. Binding arbitration is the essence of what the ICDR Rules, the ICDR itself and its parent, the American Arbitration Association, offer. The selection of the ICDR Rules as the baseline set of procedures for IRP's, therefore, points to a binding adjudicative process.

02/08/2016

106. Furthermore, the process adopted in the Supplementary Procedures is an adversarial one where counsel for the parties present competing evidence and arguments, and a panel decides who prevails, when and in what circumstances. The panellists who adjudicate the parties' claims are also selected from among experienced arbitrators, whose usual charter is to make binding decisions.

107. The above is further supported by the language and spirit of section 11 of ICANN's Bylaws. Pursuant to that section, the IRP Panel has the authority to summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious. Surely, such a decision, opinion or declaration on the part of the Panel would not be considered advisory.

[...]

110. ICANN points to the extensive public and expert input that preceded the formulation of the Supplementary Procedures. The Panel would have expected, were a mere advisory decision, opinion or declaration the objective of the IRP, that this intent be clearly articulated somewhere in the Bylaws or the Supplementary Procedures. In the Panel's view, this could have easily been done.

111. The force of the foregoing textual and construction considerations as pointing to the binding effect of the Panel's decisions and declarations are reinforced by two factors: 1) the exclusive nature of the IRP whereby the non-binding argument would be clearly in contradiction with such a factor; and, 2) the special, unique, and publicly important function of ICANN. As explained before, ICANN is not an ordinary private non-profit entity deciding for its own sake who it wishes to conduct business with, and who it does not. ICANN rather, is the steward of a highly valuable and important international resource.

[...]

115. Moreover, assuming for the sake of argument that it is acceptable for ICANN to adopt a remedial scheme with no teeth, the Panel is of the opinion that, at a minimum, the IRP should forthrightly explain and acknowledge that the process is merely advisory. This would at least let parties know before embarking on a potentially expensive process that a victory before the IRP panel may be ignored by ICANN. And, a straightforward acknowledgment that the IRP process is intended to be merely advisory might lead to a legislative or executive initiative to create a truly independent compulsory process. The Panel seriously doubts that the Senators questioning former ICANN President Stuart Lynn in 2002 would have been satisfied had they understood that a) ICANN had imposed on all applicants a waiver of all judicial remedies, and b) the IRP process touted by ICANN as the "ultimate guarantor" of ICANN accountability was only an advisory process, the benefit of which accrued only to ICANN. [Underlining is from the original decision.]

The Panel also reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

24. On 5 September and 25 September 2014, the Panel issued Procedural Orders No. 3 and No. 4. In Procedural Order No. 3, the Panel notably required the Parties to complete their respective filing of briefs in accordance with the IRP Procedure Guidelines by 3 November 2014 for DCA Trust and 3 December 2014 for ICANN.
25. In Procedural Order No. 4 dated 25 September 2014, the Panel reached a decision regarding document production issues.
26. On 3 November 2014 and 3 December 2014, the Parties filed their Memorial and Response Memorial on the Merits in accordance with the timetable set out in Procedural Order No. 3.
27. On 26 February 2015, following the passing away of the Hon. Richard C. Neal (Ret.) and confirmation by the ICDR of his replacement arbitrator, the Hon. William J. Cahill (Ret.), ICANN requested that this Panel consider revisiting the part of this IRP relating to the issue of hearing witnesses addressed in the Panel's 2014 Declaration.
28. In particular, ICANN submitted that given the replacement of Justice Neal, Article 15.2 of the ICDR Rules together with the Supplementary Procedures permitted this IRP to in its sole discretion, determine "whether all or part" of this IRP should be repeated.
29. According to ICANN, while it was not necessary to repeat all of this IRP, since the Panel here had exceeded its authority under the Supplementary Procedures when it held in its 2014 Declaration that it could order live testimony of witnesses, the Panel should then at a minimum consider revisiting that issue.
30. According to ICANN, panelists derived "their powers and authority from the relevant applicable rules, the parties' requests, and the contractual provisions agreed to by the Parties (in this instance, ICANN's Bylaws, which establish the process of independent review). The authority of panelists is limited by such rules, submissions and agreements."
31. ICANN emphasized that "compliance with the Supplementary Procedures [was] critical to ensure predictability for ICANN, applicants for and objectors to gTLD applications, and the entire ICANN community...", and while "ICANN [was] committed to fairness and accessibility...ICANN [was] also committed to predictability and the like treatment of all applicants. For this Panel to change the rules

01/20/2015

for this single applicant [did] not encourage any of these commitments."

32. ICANN also pleaded that, DCA specifically agreed to be bound by the Supplementary Procedures when it initially submitted its application, the Supplementary Procedures apply to both ICANN and DCA alike, ICANN is now in the same position when it comes to testing witness declarations and finally, in alternative dispute resolution proceedings where cross examination of witnesses is allowed, parties often waive cross-examination.
33. Finally, ICANN advanced that:

[T]he Independent Review process is an alternative dispute resolution procedure adapted to the specific issues to be addressed pursuant to ICANN's Bylaws. The process cannot be transformed into a full-fledged trial without amending ICANN's Bylaws and the Supplementary Procedures, which specifically provide for a hearing that includes counsel argument only. Accordingly, ICANN strongly urges the Panel to follow the rules for this proceeding and to declare that the hearing in May will be limited to argument of counsel.

34. On 24 March 2015, the Panel issued its Declaration on ICANN's Request for Revisiting of the 14 August Declaration on the IRP Procedure following the Replacement of Panel Member. In that Declaration, the newly constituted Panel unanimously concluded that it was not necessary for it to reconsider or revisit its 2014 Declaration.
35. In passing and not at all as a result of any intended or inadvertent reconsideration or revisiting of its 2014 Declaration, the Panel referred to Articles III and IV of ICANN's Bylaws and concluded:

Under the general heading, Transparency, and title "Purpose", Section 1 of Article III states: "ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." Under the general heading, Accountability and Review, and title "Purpose", Section 1 of Article IV reads: "In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws." In light of the above, and again in passing only, it is the Panel's unanimous view, that the filing of fact witness statements (as ICANN has done in this IRP) and limiting telephonic or in-person hearings to argument only is inconsistent with the objectives setout in Articles III and IV setout above.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

36. On 24 March and 1 April 2015, the Panel rendered Procedural Orders No. 5 and 6, in which, among other things, the Panel recorded the Parties' "agreement that there will no cross-examination of any of the witnesses" at the hearing of the merits.

37. On 20 April 2015, the Panel rendered its Third Declaration on the IRP Procedure. In that Declaration, the Panel decided that the hearing of this IRP should be an in-person one in Washington, D.C. and required all three witnesses who had filed witness statements to be present at the hearing.

38. The Panel in particular noted that:

13. [...] Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, an accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.

14. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with comparing* contested actions of the Board [...], and with *declaring* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.

15. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

"Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM."

Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.

16. Accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.

[...]

21. In order to keep the costs and burdens of independent review as low as possible, ICANN's Bylaws, in Article IV, Section 3 and Paragraph 12, suggests that the IRP Panel conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible, and where necessary the IRP Panel may hold meetings by telephone. Use of the words "should" and "may" versus "shall" are demonstrative of this point. In the same paragraph, however, ICANN's Bylaws state that, "in the unlikely event that a telephonic or in-person hearing is convened, the hearing *shall* be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance."

22. The Panel finds that this last sentence in Paragraph 12 of ICANN's Bylaws, unduly and improperly restricts the Panel's ability to conduct the "independent review" it has been explicitly mandated to carryout in Paragraph 4 of Section 3 in the manner it considers appropriate.

23. How can a Panel compare contested actions of the Board and declare whether or not they are consistent with the provisions of the Articles of Incorporation and Bylaws, without the ability to fact find and make enquiries concerning those actions in the manner it considers appropriate?

24. How can the Panel for example, determine, if the Board acted without conflict of interest, exercised due diligence and care in having a reasonable amount of facts in front of it, or exercised independent judgment in taking decisions, if the Panel cannot ask the questions it needs to, in the manner it needs to or considers fair, just and appropriate in the circumstances?

25. How can the Panel ensure that the parties to this IRP are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case with respect to the mandate the Panel has been given, if as ICANN submits, "ICANN's Bylaws do not permit any examination of witnesses by the parties or the Panel during the hearing"?

26. The Panel is unanimously of the view that it cannot. The Panel is also of the view that any attempt by ICANN in this case to prevent it from carrying out its independent review of ICANN Board's actions in the manner that the Panel considers appropriate under the circumstances deprives the accountability and review process set out in the Bylaws of any meaning.

27. ICANN has filed two 'Declarations' in this IRP, one signed by Ms. Heather Dryden, a Senior Policy Advisor at the International Telecommunications Policy and Coordination Directorate at Industry Canada, and Chair of ICANN Government Advisory Committee from 2010 to 2013, and the other by Mr. Cherine Chalaby, a member of the Board of Directors of ICANN since 2010. Mr. Chalaby is also, since its inception, one of three members of the Subcommittee on Ethics and Conflicts of ICANN's Board of Governance Committee.

28. In their respective statements, both individuals have confirmed that they "have personal knowledge of the matters set forth in [their] declaration and [are] competent to testify to these matters *if called as a witness*."

01 / 20 / 2016

[...]

29. In his Declaration, Mr. Chalaby states that "all members of the NGPC were asked to and did specifically affirm that they did not have a conflict of interest related to DCA's application for .AFRICA when they voted on the GAC advice. In addition, the NGPC asked the BGC to look into the issue further, and the BGC referred the matter to the Subcommittee. After investigating the matter, the Subcommittee concluded that Chris Disspain and Mike Silber did not have conflicts of interest with respect to DCA's application for .AFRICA."

30. The Panel considers it important and useful for ICANN's witnesses, and in particular, Mr. Chalaby as well as for Ms. Sophia Bekele Eshete to be present at the hearing of this IRP.

31. While the Panel takes note of ICANN's position depicted on page 2 of its 8 April 2015 letter, the Panel nonetheless invites ICANN to reconsider its position.

32. The Panel also takes note of ICANN's offer in that same letter to address written questions to its witnesses before the hearing, and if the Panel needs more information after the hearing to clarify the evidence presented during the hearing. The Panel, however, is unanimously of the view that this approach is fundamentally inconsistent with the requirements in ICANN's Bylaws for it to act openly, transparently, fairly and with integrity.

33. As already indicated in this Panel's August 2014 Declaration, analysis of the propriety of ICANN's decisions in this case will depend at least in part on evidence about the intentions and conduct of ICANN's top personnel. Even though the Parties have explicitly agreed that neither will have an opportunity to cross-examine the witnesses of the other in this IRP, the Panel is of the view that ICANN should not be allowed to rely on written statements of its top officers attesting to the propriety of their actions and decisions without an opportunity for the Panel and thereafter DCA Trust's counsel to ask any follow-up questions arising out of the Panel's questions of ICANN's witnesses. The same opportunity of course will be given to ICANN to ask questions of Ms. Bekele Eshete, after the Panel has directed its questions to her.

34. The Parties having agreed that there will be no cross-examination of witnesses in this IRP, the procedure for asking witnesses questions at the hearing shall be as follows:

- a) The Panel shall first have an opportunity to ask any witness any questions it deems necessary or appropriate;
- b) Each Party thereafter, shall have an opportunity to ask any follow-up questions the Panel permits them to ask of any witness.

The Panel again reserved its decision on the issue of costs relating to that stage of the proceeding until the hearing of the merits.

39. On 27 April and 4 May 2015, the Panel issued its Procedural Order No. 7 and 8, and on that last date, it held a prehearing conference call with the Parties as required by the ICDR Rules. In Procedural

01/20/2015

Order No. 8, the Panel set out the order of witness and party presentations agreed upon by the Parties.

40. On 18 May 2015, and in response to ZA Central Registry's (ZACR) request to have two of its representatives along with a representative from the African Union Commission (AUC) attend at the IRP hearing scheduled for 22 and 23 May 2015 in Washington, D.C., the Panel issued its Procedural Order No. 9, denying the requests made by ZACR and AUC to be at the merits hearing of this matter in Washington, D.C.
41. In a letter dated 11 May 2015, ZACR and AUC's legal representative had submitted that both entities had an interest in this matter and it would be mutually beneficial for the IRP to permit them to attend at the hearing in Washington, D.C.
42. ZACR's legal representative had also argued that "allowing for interests of a materially affected party such as ZACR, the successful applicant for the dotAfrica gTLD, as well as broader public interests, to be present enhances the legitimacy of the proceedings and therefore the accountability and transparency of ICANN and its dispute resolution procedures."
43. For the Panel, Article 20 of the ICDR Rules, which applied in this matter, stated that the hearing of this IRP was "private unless the parties agree otherwise". The Parties in this IRP did not consent to the presence of ZACR and AUC. While ICANN indicated that it had no objection to the presence of ZACR and AUC, DCA Trust was not of the same view. Therefore, ZACR and AUC were not permitted to attend.
44. The in-person hearing of the merits of this IRP took place on 22 and 23 May 2015 at the offices of Jones Day LLP in Washington, D.C. All three individuals who had filed witness statements in this IRP, namely Ms. Sophia Bekele Eshete, representative for DCA Trust, Ms. Heather Dryden and Mr. Cherine Chalaby, representatives for ICANN, attended in person and answered questions put to them by the Panel and subsequently by the legal representatives of both Parties. In attendance at the hearing was also Ms. Amy Stathos, Deputy General Counsel of ICANN.
45. The proceedings of the hearing were reported by Ms. Cindy L. Sebo of TransPerfect Legal Solutions, who is a Registered Merit Real-Time Court Reporter.

01/20/2015

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

01/29/2016

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

mechanisms or, in other words, the Reconsideration process and the Independent Review Process. If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

50. On 25 June 2015, the Panel issued its Procedural Order No. 10, directing the Parties to by 1 July 2015 simultaneously file their detailed submissions on costs and their allocation in these proceedings.
51. The additional factual background and reasons in the above decisions, procedural orders and declarations rendered by the Panel are hereby adopted and incorporated by reference in this Final Declaration.
52. On 1 and 2 July 2015, the Parties filed their respective positions and submissions on costs.

II. BRIEF SUMMARY OF THE PARTIES' POSITIONS ON THE MERITS & REQUEST FOR RELIEF

53. According to DCA Trust and as elaborated on in its Memorial on Merits dated 3 November 2014, the central dispute between it and ICANN in this IRP may be summarized as follows:

32. By preventing DCA'S application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

54. According to DCA Trust, among other things, "instead of functioning as a disinterested regulator of a fair and transparent gTLD application process, ICANN used its authority and oversight over that process to assist ZACR and to eliminate its only competitor, DCA, from the process."
55. DCA Trust also advanced that, "as a result, ICANN deprived DCA of the right to compete for .AFRICA in accordance with the rules ICANN established for the new gTLD program, in breach of the Applicant Guidebook ("AGB") and ICANN's Articles of Incorporation and Bylaws."

01 / 20 / 2015

56. In its 3 December 2014 Response to DCA's Memorial on the Merits, among other things, ICANN submitted that, "ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN also pleaded that it acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration."
57. ICANN advanced that, "DCA is using this IRP as a mean to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook."
58. ICANN also added that, "ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world."
59. In its Final Request for Relief filed on 23 May 2015, DCA Trust asked this Panel to:
 1. Declare that the Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB);
 2. Declare that DCA Trust is the prevailing party in this IRP and, consequently entitled to its costs in this proceeding; and
 3. Recommend as a result of the Board violations a course of action for the Board to follow going forward.
60. In its response letter of 1 June 2015, ICANN confirmed that it did not object to the form of DCA Trust's requests above, even though it believes that the evidence does not support the declarations that DCA Trust seeks. ICANN did, however, object to the appropriateness of the request for recommendations on the ground that they are outside of the Panel's authority as set forth in the Bylaws.

III. THE ISSUES RAISED AND THE PANEL'S DECISION

61. After carefully considering the Parties' written and oral submissions, perusing the three witness statements filed and hearing *viva voce* the testimonies of the witnesses at the in-person hearing of this IRP in Washington, D.C., the Panel answers the following four questions put to it as follows:

01/29/2016

1. Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

Answer: Yes.

2. Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook (AGB)?

Answer: Yes.

3. Who is the prevailing party in this IRP?

Answer: DCA Trust

4. Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

Answer: ICANN, in full.

Summary of Panel's Decision

For reasons explained in more detail below, and pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

Finally, DCA Trust is the prevailing party in this IRP and ICANN is responsible for bearing, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.

As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

IV. ANALYSIS OF THE ISSUES AND REASONS FOR THE PANEL'S DECISION

1) Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

62. Before answering this question, the Panel considers it necessary to quickly examine and address the issue of "standard of review" as referred to by ICANN in its 3 December 2014 Response to DCA's Memorial on the Merits or the "law applicable to these proceedings" as pleaded by DCA Trust in its 3 November 2014 Memorial on the Merits.

63. According to DCA Trust:

30. The version of ICANN's Articles of Incorporation and its Bylaws in effect at the time DCA filed its Request for IRP applies to these proceedings. [Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (21 November 1998) and Bylaws of the Internet Corporation for Assigned Names and Numbers (11 April 2013)]. ICANN's agreement with the U.S. Department of Commerce, National Telecommunications & Information Administration ("NTIA"), the "Affirmation of Commitments," is also instructive, as it explains ICANN's obligations in light of its role as regulator of the Domain Name System ("DNS"). The standard of review is a *de novo* "independent review" of whether the actions of the Board violated the Bylaws, with focus on whether the Board acted without conflict of interest, with due diligence and care, and exercised independent judgment in the best interests of ICANN and its many stakeholders. (Underlining added).

31. All of the obligations enumerated in these documents are to be carried out *first* in conformity with "relevant principles of international law" and *second* in conformity with local law. As explained by Dr. Jack Goldsmith in his Expert Report submitted in *ICM v. ICANN*, the reference to "principles of international law" in ICANN's Articles of Incorporation should be understood to include both customary international law and general principles of law.

64. In response, ICANN submits that:

11. The IRP is a unique process available under ICANN's Bylaws for persons or entities that claim to have been materially and adversely affected by a decision or action of the ICANN Board, but only to the extent that Board action was inconsistent with ICANN's Bylaws or Articles. This IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN's Bylaws or Articles. ICANN's Bylaws specifically identify the deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, focusing on:

01/20/2016

- a. Did the Board act without conflict of interest in taking its decision?;
- b. Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c. Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

12. DCA disregards the plain language of ICANN's Bylaws and relies instead on the IRP Panel's declaration in a prior Independent Review proceeding, *ICM v. ICANN*. However, *ICM* was decided in 2010 under a previous version of ICANN's Bylaws. In its declaration, the *ICM* Panel explicitly noted that ICANN's then-current Bylaws "d[id] not specify or imply that the [IRP] process provided for s[hould] (or s[hould] not) accord deference to the decisions of the ICANN Board." As DCA acknowledges, the version of ICANN's Bylaws that apply to this proceeding are the version as amended in April 2013. The current Bylaws provide for the deferential standard of review set forth above. [Underlining is added]

- 65. For the following reasons, the Panel is of the view that the standard of review is a *de novo*, objective and independent one examining whether the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation and Bylaws.
- 66. ICANN is not an ordinary California nonprofit organization. Rather it has a large international purpose and responsibility to coordinate and ensure the stable and secure operation of the Internet's unique identifier systems.
- 67. Indeed, Article 4 of ICANN's Articles of Incorporation require ICANN to "operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets." ICANN's Bylaws also impose duties on it to act in an open, transparent and fair manner with integrity.
- 68. ICANN's Bylaws (as amended on 11 April 2013) which both Parties explicitly agree that applies to this IRP, reads in relevant parts as follows:

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.

[...]

4. Requests for such independent review shall be referred to an Independent Review Process Panel [...], which shall be charged with comparing contested actions of the Board to Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

69. Section 8 of the Supplementary Procedures similarly subject the IRP to the standard of review set out in subparagraphs a., b., and c., above, and add:

If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the internet community and the global public interest, the requestor will have established proper grounds for review.

70. In the Panel's view, Article IV, Section 3, and Paragraph 4 of ICANN's Bylaws (reproduced above) – the Independent Review Process – was designed and set up to offer the Internet community, a *de novo, objective and independent* accountability process that would ensure that ICANN acted in a manner consistent with ICANN's Articles of Incorporation and Bylaws.

71. Both ICANN's Bylaws and the Supplementary Rules require an IRP Panel to *examine* and *decide* whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws. As ICANN's Bylaws explicitly put it, an IRP Panel is "*charged with comparing contested actions of the Board [...], and with declaring whether the Board has acted consistently with the provisions of the Articles of Incorporation and Bylaws.*"

72. The IRP is the only independent third party process that allows review of board actions to ensure their consistency with the Articles of Incorporation or Bylaws. As already explained in this Panel's 14 August 2014 Declaration on the IRP Procedure ("August 2014 Declaration"), the avenues of accountability for applicants that have disputes with ICANN do *not* include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts:

Applicant hereby releases ICANN [...] from any and all claims that arise out of, are based upon, or are in any way related to, any action or failure to act by ICANN [...] in connection with ICANN's review of this application, investigation, or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN ON THE BASIS OF ANY OTHER LEGAL CLAIM.

73. Thus, assuming that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.
74. As previously decided by this Panel, such accountability requires an organization to explain or give reasons for its activities, accept responsibility for them and to disclose the results in a transparent manner.
75. Such accountability also requires, to use the words of the IRP Panel in the *Booking.com B.V. v. ICANN* (ICDR Case Number: 50-20-1400-0247), this IRP Panel to "objectively" determine whether or not the Board's actions are in fact consistent with the Articles of Incorporation, Bylaws and Guidebook, which this Panel, like the one in *Booking.com* "understands as requiring that the Board's conduct be appraised independently, and without any presumption of correctness."
76. The Panel therefore concludes that the "standard of review" in this IRP is a *de novo, objective and independent* one, which does not require any presumption of correctness.
77. With the above in mind, the Panel now turns it mind to whether or not the Board in this IRP acted or failed to act in a manner inconsistent

01 / 20 / 2016

with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

DCA Trust's Position

78. In its 3 November 2014 Memorial on the Merits, DCA Trust criticizes ICANN for variety of shortcomings and breaches relating to the Articles of Incorporation, Bylaws and Applicant Guidebook. DCA Trust submits:

32. By preventing DCA's application from proceeding through the new gTLD review process and by coordinating with the AUC and others to ensure that the AUC obtained the rights to .AFRICA, ICANN breached its obligations of independence, transparency and due process contained in its Articles of Incorporation and Bylaws, including its obligation to conduct itself consistent with its duty of good faith under relevant principles of international law.

79. DCA Trust also pleads that ICANN breached its Articles of Incorporation and Bylaws by discriminating against DCA Trust and failing to permit competition for the .AFRICA gTLD, ICANN abused its Regulatory authority in its differential treatment of the ZACR and DCA Trust applications, and in contravention of the rules for the New gTLD Program, ICANN colluded with AUC to ensure that the AUC would obtain control over .AFRICA.

80. According to DCA Trust:

34. ICANN discriminated against DCA and abused its regulatory authority over new gTLDs by treating it differently from other new gTLD applicants without justification or any rational basis— particularly relative to DCA's competitor ZACR—and by applying ICANN's policies in an unpredictable and inconsistent manner so as to favor DCA's competitor for .AFRICA. ICANN staff repeatedly disparaged DCA and portrayed it as an illegitimate bidder for .AFRICA, and the Board failed to stop the discriminatory treatment despite protests from DCA.

35. Moreover, ICANN staff worked with InterConnect to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation, even going so far as to draft a letter supporting ZACR for the AUC to submit back to ICANN. While ICANN staff purported to hold DCA to the strict geographic support requirement set forth in the AGB, once DCA was removed from contention for .AFRICA, ICANN staff immediately bypassed these very same rules in order to allow ZACR's application to pass the GNP evaluation. After DCA's application was pulled from processing on 7 June 2013, ICANN staff directed InterConnect to equate the AUC's support for ZACR's application as support from 100% of African governments. This was a complete change of policy for ICANN, which had insisted (until DCA's application was no longer being considered) that the AUC endorsement was not material to the geographic requirement.

01/25/2016

36. However, none of the AUC statements ZACR submitted were adequate endorsements under the AGB, either. ICANN staff then took the remarkable step of drafting the AUC endorsement letter in order to enable ZACR to pass review. The Director of gTLD Operations, Trang Nguyen, personally composed an endorsement letter corresponding to all the AGB requirements for Commissioner Ibrahim's signature. Once Commissioner Ibrahim responded with a signed, stamped copy of the letter incorporating minor additions, ICANN staff rushed to pass ZACR's application just over one week later.

37. In its Response to the GAC Advice rendered against its application, DCA raised concerns that the two .AFRICA applications had been treated differently, though at the time it had no idea of just how far ICANN was going or would go to push ZACR's application through the process. Apparently the NGPC failed to make any inquiry into those allegations. .AFRICA was discussed at one meeting only, and there is no rationale listed for the NGPC's decision in the "Approved Resolutions" for the 4 June 2013 meeting. An adequate inquiry into ICANN staff's treatment of DCA's and ZACR's application—even simply asking the Director of gTLD Operations whether there was any merit to DCA's concerns—would have revealed a pattern of discriminatory behavior against DCA and special treatment by both ICANN staff and the ICANN Board in favor of ZACR's application.

38. In all of these acts and omissions, ICANN breached the AGB and its own Articles of Incorporation and Bylaws, which require it to act in good faith, avoid discriminating against any one party, and ensure open, accurate and unbiased application of its policies. Furthermore, ICANN breached principles of international law by failing to exercise its authority over the application process in good faith and committing an abuse of right by ghost-writing an endorsement letter for ZACR and the AUC, and then decreeing that the letter was all that would be needed for ZACR to pass. Finally, the Board's failure to inquire into the actions of its staff, even when on notice of the myriad of discriminatory actions, violates its obligation to comply with its Bylaws with appropriate care and diligence.

81. DCA Trust submits that the NGPC breached ICANN's Articles of Incorporation and Bylaws by failing to apply ICANN's Procedures in a neutral and objective manner with procedural fairness, when it accepted the GAC Objection Advice against DCA Trust, the NGPC should have investigated questions about the GAC Objection Advice being obtained through consensus, and the NGPC should have consulted with an independent expert about the GAC advice given that the AUC used the GAC to circumvent the AGB's community objection procedures.

82. According to DCA Trust:

44. The decision of the NGPC, acting pursuant to the delegated authority of the ICANN Board, to accept the purported "consensus" GAC Objection Advice, violated ICANN's Articles of Incorporation and Article III § 1 of its Bylaws, requiring transparency, consistency and fairness. ICANN ignored

the serious issues raised by DCA and others with respect to the rendering and consideration of the GAC Objection Advice, breaching its obligation to operate "to the maximum extent possible in an open and transparent manner and consistent with procedures designed to ensure fairness." It also breaches ICANN's obligation under Article 4 of its Articles of Incorporation to abide by principles of international law, including good faith application of rules and regulations and the prohibition on the abuse of rights.

45. The NGPC gave undue deference to the GAC and failed to investigate the serious procedural irregularities and conflicts of interest raised by DCA and others relating to the GAC's Objection Advice on .AFRICA. ICANN had a duty under principles of international law to exercise good faith and due diligence in evaluating the GAC advice rather than accepting it wholesale and without question, despite having notice of the irregular manner in which the advice was rendered. Importantly, ICANN was well aware that the AUC was using the GAC to effectively reserve .AFRICA for itself, pursuant to ICANN's own advice that it should use the GAC for that purpose and contrary to the New gTLD Program objective of enhancing competition for TLDs. The AUC's very presence on the GAC as a member rather than an observer demonstrates the extraordinary lengths ICANN took to ensure that the AUC was able to reserve .AFRICA for its own use notwithstanding the new gTLD application process then underway.

46. The ICANN Board and staff members had actual knowledge of information calling into question the notion that there was a consensus among the GAC members to issue the advice against DCA's application, prohibiting the application of the rule in the AGB concerning consensus advice (which creates a "strong presumption" for the Board that a particular application "should not proceed" in the gTLD evaluation process). The irregularities leading to the advice against DCA's application included proposals offered by Alice Munyua, who no longer represented Kenya as a GAC advisor at the time, and the fact that the genuine Kenya GAC advisor expressly refused to endorse the advice. Redacted - GAC Designated Confidential Information

Finally, the ICANN Board knew very well that the AUC might attempt to use the GAC in an anticompetitive manner, since it was ICANN itself that informed the AUC it could use the GAC to achieve that very goal.

47. At a bare minimum, this information put ICANN Board and staff members on notice that further investigation into the rationale and support for the GAC's decision was necessary. During the very meeting wherein the NGPC accepted the Objection Advice, the NGPC acknowledged that due diligence required a conversation with the GAC, even where the advice was consensus advice. The evidence shows that ICANN simply decided to push through the AUC's appointed applicant in order to allow the AUC to control .AFRICA, as it had previously requested.

48. Even if the GAC's Objection Advice could be characterized as "consensus" advice, the NGPC's failure to consult with an independent expert about the GAC's Objection Advice was a breach of ICANN's duty to act to the "maximum extent feasible in an open and transparent manner

02/08/2016

and consistent with procedures designed to ensure fairness.” The AGB specifically provides that when the Board is considering any form of GAC advice, it “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.”

49. Given the unique circumstances surrounding the applications for .AFRICA—namely that one applicant was the designee of the AUC, which wanted to control .AFRICA without competition— ICANN should not have simply accepted GAC Objection Advice, proposed and pushed through by the AUC. If it was in doubt as to how to handle GAC advice sponsored by DCA’s only competitor for .AFRICA, it could have and should have consulted a third-party expert in order to obtain appropriate guidance. Its failure to do so was, at a minimum, a breach of ICANN’s duty of good faith and the prohibition on abuse of rights under international law. In addition, in light of the multiple warning signs identified by DCA in its Response to the GAC Objection Advice and its multiple complaints to the Board, failure to consult an independent expert was certainly a breach of the Board’s duty to ensure its fair and transparent application of its policies and its duty to promote and protect competition.

83. DCA Trust also submits that the NGPC breached ICANN’s Articles of Incorporation and Bylaws by 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.

84. According to DCA Trust:

50. Not only did the NGPC breach ICANN’s Articles of Incorporation and its Bylaws by accepting the GAC’s Objection Advice, but the NGPC also breached ICANN’s Articles of Incorporation and its Bylaws by approving the BGC’s recommendation not to reconsider the NGPC’s earlier decision to accept the GAC Objection Advice. Not surprisingly, the NGPC concluded that its earlier decision should not be reconsidered.

51. First, the NGPC’s decision not to review its own acceptance of the GAC Objection Advice lacks procedural fairness, because the NGPC literally reviewed its own decision to accept the Objection Advice. It is a well-established general principle of international law that a party cannot be the judge of its own cause. No independent viewpoint entered into the process. In addition, although Mr. Silber recused himself from the vote on .AFRICA, he remained present for the entire discussion of .AFRICA, and Mr. Disspain apparently concluded that he did not feel conflicted, so both participated in the discussion and Mr. Disspain voted on DCA’s RFR.

52. Second, the participation of the BGC did not provide an independent intervention into the NGPC’s decision-making process, because the BGC is primarily a subset of members of the NGPC. At the time the BGC made its recommendation, the majority of BGC members were also members of the NGPC.

04/20/2016

53. Finally, the Board did not exercise due diligence and care in accepting the BGC's recommendation, because the BGC recommendation essentially proffered the NGPC's inadequate diligence in accepting the GAC Objection Advice in the first place, in order to absolve the NGPC of the responsibility to look into any of DCA's grievances in the context of the Request for Review. The basis for the BGC's recommendation to deny was that DCA did not state proper grounds for reconsideration, because failure to follow correct procedure is not a ground for reconsideration, and DCA did not identify the actual information an independent expert would have provided, had the NGPC consulted one. Thus, the BGC essentially found that the NGPC did not fail to take account of material information, because the NGPC did not have before it the material information that would have been provided by an independent expert's viewpoint. The BGC even claimed that if DCA had wanted the NGPC to exercise due diligence and consult an independent expert, DCA should have made such a suggestion in its Response to the GAC Objection Advice. Applicants should not have to remind the Board to comply with its Bylaws in order for the Board to exercise due diligence and care.

54. ICANN's acts and omissions with respect to the BGC's recommendation constitute further breaches of ICANN's Bylaws and Articles of Incorporation, including its duty to carry out its activities in good faith and to refrain from abusing its position as the regulator of the DNS to favor certain applicants over others.

85. Finally, DCA Trust pleads that:

[As] a result of the Board's breaches of ICANN's Articles of Incorporation, Bylaws and general principles of international law, ICANN must halt the process of delegating .AFRICA to ZACR and ZACR should not be permitted to retain the rights to .AFRICA it has procured as a result of the Board's violations. Because ICANN's handling of the new gTLD application process for .AFRICA was so flawed and so deeply influenced by ICANN's relationships with various individuals and organizations purporting to represent "the African community," DCA believes that any chance it may have had to compete for .AFRICA has been irremediably lost and that DCA's application could not receive a fair evaluation even if the process were to be re-set from the beginning. Under the circumstances, DCA submits that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

ICANN's Position

86. In its Response to DCA's Memorial on the Merits filed on 3 December 2014 ("ICANN Final Memorial"), ICANN submits that:

2. [...] Pursuant to ICANN's New gTLD Applicant Guidebook ("Guidebook"), applications for strings that represent geographic regions—such as "Africa"—require the support of at least 60% of the respective national governments in the relevant region. As DCA has acknowledged on

multiple occasions, including in its Memorial, DCA does not have the requisite governmental support; indeed, DCA now asks that ICANN be required to provide it with eighteen more months to try to gather the support that it was supposed to have on the day it submitted its application in 2012.

3. DCA is using this IRP as a means to challenge the right of African countries to support a specific (and competing) application for .AFRICA, and to rewrite the Guidebook. The Guidebook provides that countries may endorse multiple applications for the same geographic string. However, in this instance, the countries of Africa chose to endorse only the application submitted by ZA Central Registry ("ZACR") because ZACR prevailed in the Request for Proposal ("RFP") process coordinated by the African Union Commission ("AUC"), a process that DCA chose to boycott. There was nothing untoward about the AUC's decision to conduct an RFP process and select ZACR, nor was there anything inappropriate about the African countries' decision to endorse only ZACR's application.

4. Subsequently, as they had every right to do, GAC representatives from Africa urged the GAC to issue advice to the ICANN Board that DCA's application for .AFRICA not proceed (the "GAC Advice"). One or more countries from Africa—or, for that matter, from any continent—present at the relevant GAC meeting could have opposed the issuance of this GAC Advice, yet not a single country stated that it did not want the GAC to issue advice to the ICANN Board that DCA's application should not proceed. As a result, under the GAC's rules, the GAC Advice was "consensus" advice.

5. GAC consensus advice against an application for a new gTLD creates a "strong presumption" for ICANN's Board that the application should not proceed. In accordance with the Guidebook's procedures, the Board's New gTLD Program Committee (the "NGPC") considered the GAC Advice, considered DCA's response to the GAC Advice, and properly decided to accept the GAC Advice that DCA's application should not proceed. As ZACR's application for .AFRICA subsequently passed all evaluation steps, ICANN and ZACR entered into a registry agreement for the operation of .AFRICA. Following this Panel's emergency declaration, ICANN has thus far elected not to proceed with the delegation of the .AFRICA TLD into the Internet root zone.

6. DCA's papers contain much mudslinging and many accusations, which frankly do not belong in these proceedings. According to DCA, the entire ICANN community conspired to prevent DCA from being the successful applicant for .AFRICA. However, the actions that DCA views as nefarious were, in fact, fully consistent with the Guidebook. They also were not actions taken by the Board or the NGPC that in any way violated ICANN's Bylaws or Articles, the only issue that this IRP Panel is tasked with assessing.

87. ICANN submits that the Board properly advised the African Union's member states of the Guidebook Rules regarding geographic strings, the NGPC did not violate the Bylaws or Articles of Incorporation by accepting the GAC Advice, the AUC and the African GAC members properly supported the .AFRICA applicant chosen through the RFP

01/29/2016

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

01/20/2016

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]

01/20/2016

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.⁴⁰ 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.”⁴¹ 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. Redacted - GAC Designated Confidential Information

And, tellingly, DCA did not to submit a declaration from Mr. Buruchara, which might have provided context or support for DCA's argument.

27. Redacted - GAC Designated Confidential Information

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,

01/20/2016

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; Redacted - GAC Designated Confidential Information 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

01/20/2016

unfairly “victimized” and “muzzled into insignificance” by the “collective power of the governments represented at ICANN,” and that “the issue of government support [should] be made irrelevant in the process so that both contending applications for .Africa would be allowed to move forward” In other words, DCA was arguing that the AUC’s input was inappropriate, and DCA was requesting that ICANN change the Guidebook requirement regarding governmental support for geographic names in order to accommodate DCA. ICANN’s NGPC reviewed and appropriately rejected DCA’s arguments.

35. One of DCA’s three “supplementary arguments,” beginning on page 10 of its response to the GAC Advice, was that there had been no consensus GAC advice, in part allegedly evidenced by Mr. Buruchara’s (incomplete) email addressed above. DCA, however, chose not to address the fact that: (i) DCA lacked the requisite support of the African governments; (ii) Mr. Buruchara was not the Kenyan GAC representative; (iii) Mr. Buruchara was not at the Beijing meeting; (iv) the government of Kenya had withdrawn any support it may have previously had for DCA’s application; and (v) the actual Kenyan GAC representative (Mr. Katundu) was at the ICANN meeting in Beijing and did not oppose the issuance of the GAC Advice against DCA’s application for .AFRICA. All of these facts were well known to DCA at the time of its response to the GAC Advice.

36. The NGPC’s resolution accepting the GAC Advice states that the NGPC considered DCA’s response prior to accepting the GAC Advice, and DCA presents no evidence to the contrary. DCA’s disagreement with the NGPC’s decision does not, of course, demonstrate that the NGPC failed to exercise due diligence in determining to accept the consensus GAC Advice.

37. As to DCA’s suggestion that the NGPC should have consulted an independent expert, the Guidebook provides that it is within the Board’s discretion to decide whether to consult with an independent expert:

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 NGPC clearly did not violate its Bylaws, Articles or Guidebook in deciding that it did not need to consult any independent expert regarding the GAC Advice. Because DCA’s challenge to the GAC Advice was whether one or more countries actually had opposed the advice, there was no reason for the NGPC to retain an “expert” on that subject, and DCA has never stated what useful information an independent expert possibly could have provided.

89. ICANN also submits that the NGPC properly denied DCA’s request for reconsideration, ICANN’s actions following the acceptance of the GAC Advice are not relevant to the IRP, and in any event they were not improper, the ICANN staff directed the ICC to treat the two

01/28/2016

African applications consistently, and ICANN staff did not violate any policy in drafting a template letter at the AUC request.

90. According to ICANN:

38. DCA argues that the NGPC improperly denied DCA's Reconsideration Request, which sought reconsideration of the NGPC's acceptance of the GAC Advice. Reconsideration is an accountability mechanism available under ICANN's Bylaws and administered by ICANN's Board Governance Committee ("BGC"). DCA's Reconsideration Request asked that the NGPC's acceptance of the GAC Advice be rescinded and that DCA's application be reinstated. Pursuant to the Bylaws, reconsideration of a Board (or in this case NGPC) action is appropriate only where the NGPC took an action "without consideration of material information" or in "reliance on false or inaccurate material information."

39. In its Reconsideration Request, DCA argued (as it does here) that the NGPC failed to consider material information by failing to consult with an independent expert prior to accepting the GAC Advice. The BGC noted that DCA had not identified any material information that the NGPC had not considered, and that DCA had not identified what advice an independent expert could have provided to the NGPC or how such advice might have altered the NGPC's decision to accept the GAC Advice. The BGC further noted that, as discussed above, the Guidebook is clear that the decision to consult an independent expert is at the discretion of the NGPC.

40. DCA does not identify any Bylaws or Articles provision that the NGPC violated in denying the Reconsideration Request. Instead, DCA simply disagrees with the NGPC's determination that DCA had not identified any material information on which the NGPC failed to rely. That disagreement is not a proper basis for a Reconsideration Request or an IRP. DCA also argues (again without citing to the Bylaws or Articles) that, because the NGPC accepted the GAC Advice, the NGPC could not properly consider DCA's Reconsideration Request. In fact, the DCA's Reconsideration Request was handled exactly in the manner prescribed by ICANN's Bylaws: the BGC—a separate Board committee charged with considering Reconsideration Requests—reviewed the material and provided a recommendation to the NGPC. The NGPC then reviewed the BGC's recommendation and voted to accept it. In short, the various Board committees conducted themselves exactly as ICANN's Bylaws require.

41. The NGPC accepted the GAC Advice on 4 June 2013. As a result, DCA's application for .AFRICA did not proceed. In its Memorial, DCA attempts to cast aspersions on ICANN's evaluation of ZACR's application, but that evaluation has no bearing on whether the NGPC acted consistently with its Bylaws and Articles in handling the GAC advice related to DCA's application. Indeed, the evaluation of ZACR's application did not involve any action by ICANN's Board (or NGPC), and is therefore not a proper basis for Independent Review. Although the actions of ICANN's staff are not relevant to this proceeding, ICANN addresses DCA's allegations for the sake of thoroughness and because the record demonstrates that ZACR's application was evaluated fully in conformance with the Guidebook requirements.

01/20/2016

42. DCA alleges that "ICANN staff worked with [the ICC] to ensure that ZACR, but not DCA, would be able to pass the GNP evaluation." DCA's argument is based on false and unsupported characterizations of the ICC's evaluation of the two .AFRICA applications.

43. First, DCA claims (without relevant citation) that ICANN determined that the AUC's endorsement would count as an endorsement from each of the AU's member states only after ICANN had stopped processing DCA's application. In fact, the record indicates that ICANN accepted the ICC's recommendation that the AUC's endorsement would qualify as an endorsement from each of the AU's member states while DCA's application was still in contention, at a time when the recommendation had the potential to benefit both applicants for .AFRICA (had DCA also in fact received the AUC's support).

44. The Guidebook provides that the Geographic Names Panel is responsible for "verifying the relevance and authenticity of supporting documentation." Accordingly, it was the ICC's responsibility to evaluate how the AUC's endorsement should be treated. The ICC recommended that the AUC's endorsement should count as an endorsement from each of the AU's member states. The ICC's analysis was based on the Abuja Declaration, which the ICC interpreted as "instruct[ing] the [AUC] to pursue the DotAfrica project, and in [the ICC's] independent opinion, provide[d] suitable evidence of support from relevant governments or public authorities." The evidence shows that ICANN accepted the ICC's recommendation before the NGPC accepted the GAC Advice regarding DCA's application— in a 26 April 2013 email discussing the preparation of clarifying questions regarding the AUC's letters of support, ICANN explained to the ICC that "if the applicant(s) is/are unable to obtain a revised letter of support from the AU [], they may be able to fulfill the requirements by approaching the individual governments."

45. DCA also claims that ICANN determined that endorsements from the UNECA would not be taken into account for geographic evaluations. This simply is not true. Pursuant to the ICC's advice, the UNECA's endorsement was taken into account. Like the AUC, the UNECA had signed letters of support for both DCA and ZACR. The ICC advised that because the UNECA was specifically named in the Abuja Declaration, it too should be treated as a relevant public authority. ICANN accepted the ICC's advice.

46. DCA argues that, after ICANN had stopped processing DCA's application, ICANN staff improperly assisted the AUC in drafting a support letter for ZACR. As is reflected in the clarifying questions the ICC drafted regarding the endorsement letters submitted on behalf of each of the two .AFRICA applications, the Guidebook contains specific requirements for letters of support from governments and public authorities. In addition to "clearly express[ing] the government's or public authority's support for or non-objection to the applicant's application," letters must "demonstrate the government's or public authority's understanding of the string being requested and its intended use" and that "the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN . . .". In light of these specific requirements, the Guidebook even includes a sample letter of support.

01/20/2016

47. The first letter of support that the AUC submitted for ZACR's application did not follow the correct format and resulted in a clarifying question from the ICC. As a result, the AUC requested ICANN staff's assistance in drafting a letter that conformed to the Guidebook's requirements. ICANN staff drafted a template based on the sample letter of support in the Guidebook, and the AUC then made significant edits to that template. DCA paints this cooperation as nefarious, but there was absolutely nothing wrong with ICANN staff assisting the AUC, assistance that DCA would certainly have welcomed, and which ICANN would have provided, had the AUC been supporting DCA instead of ZACR.

91. Finally, ICANN submits:

50. ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Bylaws, its Articles of Incorporation and the Applicant Guidebook. ICANN acted through open and transparent processes, evaluated DCA's application for .AFRICA in accordance with the procedures set forth in the Guidebook, and followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration. ICANN provided assistance to those who requested, cooperated with governmental authorities, and respected the consensus advice issued by the GAC, which speaks on behalf of the governments of the world.

51. DCA knew, as did all applicants for new gTLDs, that some of the applications would be rejected. There can only be one registry operator for each gTLD string, and in the case of strings that relate to geographic regions, no application can succeed without the significant support of the countries in that region. There is no justification whatsoever for DCA's repeated urging that the support (or lack thereof) of the countries on the African continent be made irrelevant to the process.

52. Ultimately, the majority of the countries in Africa chose to support another application for the .AFRICA gTLD, and decided to oppose DCA's application. At a critical time, no country stood up to defend DCA's application. These countries—and the AUC— had every right to take a stand and to support the applicant of their choice. In this instance, that choice resulted in the GAC issuing consensus advice, which the GAC had every right to do. Nothing in ICANN's Bylaws or Articles, or in the Guidebook, required ICANN to challenge that decision, to ignore that decision, or to change the rules so that the input of the AUC, much less the GAC, would become irrelevant. To the contrary, the AUC's role with respect to the African community is critical, and it was DCA's decision to pursue a path at odds with the AUC that placed its application in jeopardy, not anything that ICANN (or ICANN's Board or the NGPC) did. The NGPC did exactly what it was supposed to do in this circumstance, and ICANN urges this IRP Panel to find as such. Such a finding would allow the countries of Africa to soon provide their citizens with what all parties involved believe to be a very important step for Africa – access to .AFRICA on the internet.

02/08/2016

The Panel's Decision

92. The Panel in this IRP, has been asked to determine whether, in the case of the application of DCA Trust 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”), the Board acted or failed to act in a manner inconsistent with ICANN’s Articles of Incorporation, Bylaws or the Applicant Guidebook?
93. After reviewing the documentation filed in this IRP, reading the Parties’ respective written submissions, reading the written statements and listening to the testimony of the three witnesses brought forward, listening to the oral presentations of the Parties’ legal representatives at the hearing in Washington, D.C., reading the transcript of the hearing, and deliberating, the Panel is of the unanimous view that certain actions and inactions of the ICANN Board (as described below) with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.
94. ICANN is bound by its own Articles of Incorporation to act fairly, neutrally, non-discriminatorily and to enable competition. Article 4 of ICANN’s Articles of Incorporation sets this out explicitly:
4. The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.
95. ICANN is also bound by its own Bylaws to act and make decisions “neutrally and objectively, with integrity and fairness.”
96. These obligations and others are explicitly set out in a number of provisions in ICANN’s Bylaws:

ARTICLE I: MISSION AND CORE (Council of Registrars) VALUES

Section 2. CORE (Council of Registrars) VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN (Internet Corporation for Assigned Names and Numbers):

01/20/2016

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.

[...]

7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.

8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s effectiveness.

11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN (Internet Corporation for Assigned Names and Numbers) body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN (Internet Corporation for Assigned Names and Numbers) shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board.

Section 3. NON-DISCRIMINATORY TREATMENT

ICANN (Internet Corporation for Assigned Names and Numbers) shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by

substantial and reasonable cause, such as the promotion of effective competition.

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. [Underlining and bold is that of the Panel]

97. As set out in Article IV (Accountability and Review) of ICANN's Bylaws, in carrying out its mission as set out in its Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws and with due regard for the core values set forth in Article I of the Bylaws.
98. As set out in Section 3 (Independent Review of Board Actions) of Article IV, "any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and casually connected to the Board's alleged violation of the Bylaws or Articles of Incorporation, and not as a result of third parties acting in line with the Board's action."
99. In this IRP, among the allegations advanced by DCA Trust against ICANN, is that the ICANN Board, and its constituent body, the GAC, breached their obligation to act transparently and in conformity with procedures that ensured fairness. In particular, DCA Trust criticizes the ICANN Board here, for allowing itself to be guided by the GAC, a body "with apparently no distinct rules, limited public records, fluid definitions of membership and quorums" and unfair procedures in dealing with the issues before it.
100. According to DCA Trust, ICANN itself asserts that the GAC is a "constituent body." The exchange between the Panel and counsel for ICANN at the in-person hearing in Washington, D.C. is a living proof of that point.

HONORABLE JUDGE CAHILL:

Are you saying we should only look at what the Board does? The reason I'm asking is that your – the Bylaws say that ICANN and its constituent bodies shall operate, to the maximum extent feasible, in an open and transparent manner. Does the constituent bodies include, I don't know,

GAC or anything? What is "constituent bodies"?

MR. LEVEE:

Yeah. What I'll talk to you about tomorrow in closing when I lay out what an IRP Panel is supposed to address, the Bylaws are very clear. Independent Review Proceedings are for the purpose of testing conduct or inaction of the ICANN Board. They don't apply to the GAC. They don't apply to supporting organizations. They don't apply to Staff.

HONORABLE JUDGE CAHILL:

So you think that the situation is a -- we shouldn't be looking at what the constituent -- whatever the constituent bodies are, even though that's part of your Bylaws?

MR. LEVEE:

Well, when I say not -- when you say not looking, part of DCA's claims that the GAC did something wrong and that ICANN knew that.

HONORABLE JUDGE CAHILL:

So is GAC a constituent body?

MR. LEVEE:

It is a constituent body, to be clear --

HONORABLE JUDGE CAHILL:

Yeah.

MR. LEVEE:

-- whether -- I don't think an IRP Panel -- if the only thing that happened here was that the GAC did something wrong --

HONORABLE JUDGE CAHILL:

Right.

MR. LEVEE:

-- an IRP Panel would not be -- an Independent Review Proceeding is not supposed to address that, whether the GAC did something wrong.

Now, if ICANN knew -- the Board knew that the GAC did something wrong, and that's how they link it, they say, Look, the GAC did something wrong, and ICANN knew it, the Board -- if the Board actually knew it, then we're dealing with Board conduct.

The Board knew that the GAC did not, in fact, issue consensus advice. That's the allegation. So it's fair to look at the GAC's conduct.

01/20/2016

101. The Panel is unanimously of the view that the GAC is a constituent body of ICANN. This is not only clear from the above exchange between the Panel and counsel for ICANN, but also from Article XI (Advisory Committees) of ICANN's Bylaws and the Operating Principles of the GAC. Section 1 (General) of Article XI of ICANN's Bylaws states:

The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN (Internet Corporation for Assigned Names and Numbers), but shall report their findings and recommendations to the Board.

Section 2, under the heading, Specific Advisory Committees states:

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee

a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN (Internet Corporation for Assigned Names and Numbers) as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN (Internet Corporation for Assigned Names and Numbers)'s policies and various laws and international agreements or where they may affect public policy issues. [Underlining is that of the Panel]

Section 6 of the preamble of GAC's Operating Principles is also relevant. That Section reads as follows:

The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests.

102. According to DCA Trust, based on the above, and in particular, Article III (Transparency), Section 1 of ICANN's Bylaws, therefore, the GAC was bound to the transparency and fairness obligations of that provision to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness", but as ICANN's own witness, Ms. Heather Dryden acknowledged during the hearing, the GAC did not act with transparency or in a manner designed to insure fairness.

Mr. ALI:

Q. But what was the purpose of the discussion at the Prague meeting with respect to AUC? If there really is no difference or distinction between voting/nonvoting, observer or whatever might be the opposite of observer,

01/20/2016

or the proper terminology, what was -- what was the point?

THE WITNESS:

A. I didn't say there was no difference. The issue is that there isn't GAC agreement about what are the -- the rights, if you will, of -- of entities like the AUC. And there might be in some limited circumstances, but it's also an extremely sensitive issue. And so not all countries have a shared view about what those -- those entities, like the AUC, should be able to do.

Q. So not all countries share the same view as to what entities, such as the AUC, should be able to do. Is that what you said? I'm sorry. I didn't --

A. Right, because that would only get clarified if there is a circumstance where that link is forced. In our business, we talk about creative ambiguity. We leave things unclear so we don't have conflict.

103. As explained by ICANN in its Closing Presentation at the hearing, ICANN's witness, Ms. Heather Dryden also asserted that the GAC Advice was meaningless until the Board acted upon it. This last point is also clear from examining Article 1, Principle 2 and 5 of ICANN GAC's Operating Principles. Principle 2 states that "the GAC is not a decision making body" and Principle 5 states that "the GAC shall have no legal authority to act for ICANN".

MR. ALI:

Q. I would like to know what it is that you, as the GAC Chair, understand to be the consequences of the actions that the GAC will take --

HONORABLE JUDGE CAHILL:

The GAC will take?

MR. ALI:

Q. -- the GAC will take -- the consequences of the actions taken by the GAC, such as consensus advice?

HONORABLE JUDGE CAHILL:

There you go.

THE WITNESS:

That isn't my concern as the Chair. It's really for the Board to interpret the outputs coming from the GAC.

104. Ms. Dryden also stated that the GAC made its decision without providing any rationale and primarily based on politics and not on potential violations of national laws and sensitivities.

02/08/16 10:44

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's a deference to that.

That's certainly the case here as well.

105. ICANN was bound by its Bylaws to conduct adequate diligence to ensure that it was applying its procedures fairly. Section 1 of Article III of ICANN's Bylaws, require it and its constituent bodies to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Board must also as per Article IV, Section 3, Paragraph 4 exercise due diligence and care in having a reasonable amount of facts in front of it.
106. In this case, on 4 June 2013, the NGPC accepted the GAC Objection Advice to stop processing DCA Trust's application. On 1 August 2013, the BGC recommended to the NGPC that it deny DCA Trust's Request for Reconsideration of the NGPC's 4 June 2013 decision, and on 13 August 2013, the NGPC accepted the BGC's recommendation (i.e., the NGPC declined to reconsider its own decision) without any further consideration.
107. In this case, ICANN through the BGC was bound to conduct a meaningful review of the NGPC's decision. According to ICANN's Bylaws, Article IV, Section 2, the Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The [BGC] shall have the authority to, among other things, conduct whatever factual investigation is deemed appropriate, and request additional written submissions from the affected party, or from others.

02/08/2016

108. Finally, the NGPC was not bound by – nor was it required to give deference to – the decision of the BGC.

109. The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address this issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to insure the fairness required by Article III, Sec. 1 above, and are therefore inconsistent with the Articles of Incorporation and Bylaws of ICANN.

110. The following excerpt of exchanges between the Panel and one of ICANN's witnesses, Ms. Heather Dryden, the then Chair of the GAC, provides a useful background for the decisions reached in this IRP:

PRESIDENT BARIN:

But be specific in this case. Is that what happened in the .AFRICA case?

THE WITNESS:

The decision was very quick, and --

PRESIDENT BARIN:

But what about the consultations prior? In other words, were -- were you privy to --

THE WITNESS:

No. If -- if colleagues are talking among themselves, then that's not something that the GAC, as a whole, is -- is tracking or -- or involved in. It's really those interested countries that are.

PRESIDENT BARIN:

Understood. But I assume -- I also heard you say, as the Chair, you never want to be surprised with something that comes up. So you are aware of -- or you were aware of exactly what was happening?

THE WITNESS:

No. No. You do want to have a good sense of where the problems are, what's going to come unresolved back to the full GAC meeting, but that's -- that's the extent of it.

01/20/2016

And that's the nature of -- of the political process.

Redacted - GAC Designated Confidential Information

HONORABLE JUDGE CAHILL:

Okay.

THE WITNESS:

-- that question was addressed via having that meeting.

PRESIDENT BARIN:

And what's your understanding of what -- what the consequence of that decision is or was when you took it? So what happens from that moment on?

THE WITNESS:

It's conveyed to the Board, so all the results, the agreed language coming out of GAC is conveyed to the Board, as was the case with the communiqué from the Beijing meeting.

PRESIDENT BARIN:

And how is that conveyed to the Board?

THE WITNESS:

Well, it's a written document, and usually Support Staff are forwarding it to Board Staff.

ARBITRATOR KESSEDJIAN:

Could you speak a little bit louder? I don't know whether I am tired, but I --

THE WITNESS:

01/20/2016

Okay. So as I was saying, the document is conveyed to the Board once it's concluded.

PRESIDENT BARIN:

When you say "the document", are you referring to the communiqué?

THE WITNESS:

Yes.

PRESIDENT BARIN:

Okay. And there are no other documents?

THE WITNESS:

The communiqué --

PRESIDENT BARIN:

In relation to .AFRICA. I'm not interested in any other.

THE WITNESS:

Yes, it's the communiqué.

PRESIDENT BARIN:

And it's prepared by your staff? You look at it?

THE WITNESS:

Right --

PRESIDENT BARIN:

And then it's sent over to --

THE WITNESS:

-- right, it's agreed by the GAC in full, the contents.

PRESIDENT BARIN:

And then sent over to the Board?

THE WITNESS:

And then sent, yes.

PRESIDENT BARIN:

01/20/2016

And what happens to that communiqué? Does the Board receive that and say, Ms. Dryden, we have some questions for you on this, or --

THE WITNESS:

Not really. If they have questions for clarification, they can certainly ask that in a meeting. But it is for them to receive that and then interpret it and -- and prepare the Board for discussion or decision.

PRESIDENT BARIN:

Okay. And in this case, you weren't asked any questions or anything?

THE WITNESS:

I don't believe so. I don't recall.

PRESIDENT BARIN:

Any follow-ups, right?

THE WITNESS:

Right.

PRESIDENT BARIN:

And in the subsequent meeting, I guess the issue was tabled. The Board meeting that it was tabled, were you there?

THE WITNESS:

Yes. I don't particularly recall the meeting, but yes.

[...]

ARBITRATOR KESSEDJIAN:

Can I turn your attention to Paragraph 5 of your declaration?

Here, you basically repeat what is in the ICANN Guidebook literature, whatever. These are the exact words, actually, that you use in your declaration in terms of why there could be an objection to an applicant -- to a specific applicant. And you use three criteria: problematic, potentially violating national law, and raise sensitivities.

Now, I'd like you to, for us -- for our benefit, to explain precisely, as concrete as you can be, what those three concepts -- how those three concepts translate in the DCA case. Because this must have been discussed in order to get this very quick decision that you are mentioning. So I'd like to understand, you know, because these are the criteria -- these are the three criteria; is that correct?

01/28/2016

THE WITNESS:

That is what the witness statement says, but the link to the GAC and the role that I played in terms of the GAC discussion did not involve me interpreting those three things. In fact, the GAC did not provide rationale for the consensus objection.

ARBITRATOR KESSEDJIAN:

No.

But, I mean, look, the GAC is taking a decision which -- very quickly -- I'm using your words, "very quickly" -- erases years and years and years of work, a lot of effort that have been put by a single applicant. And the way I understand the rules is that the -- the GAC advice -- consensus advice against that applicant are -- is based on those three criteria. Am I wrong in that analysis?

THE WITNESS:

I'm saying that the GAC did not identify a rationale for those governments that put forward a string or an application for consensus objection. They might have identified their reasons, but there was not GAC agreement about those reasons or -- or -- or -- or rationale for that. We had some discussion earlier about Early Warnings. So Early Warnings were issued by individual countries, and they indicated their rationale. But, again, that's not a GAC view.

ARBITRATOR KESSEDJIAN:

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

THE WITNESS:

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

HONORABLE JUDGE CAHILL:

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

THE WITNESS:

The practice among governments is that governments can express their view, whatever it may be. And so there's [...] deference to that. That's certainly the case here as well. The -- if a country tells -- tells the GAC or says it has a concern, that's not really something that -- that's evaluated, in the sense you mean, by the other governments. That's not the way governments work with each other.

01/20/2016

HONORABLE JUDGE CAHILL:

So you don't go into the reasons at all with them?

THE WITNESS:

To issue a consensus objection, no.

HONORABLE JUDGE CAHILL:

Okay. --

[...]

PRESIDENT BARIN:

I have one question for you. We spent, now, a bit of time or a considerable amount of time talking to you about the process, or the procedure leading to the consensus decision.

Can you tell me what your understanding is of why the GAC consensus objection was made finally?

[...]

But in terms of the AFRICA, the decision -- the issue came up, the agenda -- the issue came up, and you made a decision, correct?

THE WITNESS:

The GAC made a decision.

PRESIDENT BARIN:

Right. When I say "you", I mean the GAC.

Do you know -- are you able to express to us what your understanding of the substance behind that decision was? I mean, in other words, we've spent a bit of time dealing with the process.

Can you tell us why the decision happened?

THE WITNESS:

The sum of the GAC's advice is reflected in its written advice in the communiqué. That is the view to GAC. That's -- that's --

[...]

ARBITRATOR KESSEDJIAN:

I just want to come back to the point that I was making earlier. To your Paragraph 5, you said -- you answered to me saying that is my declaration, but it was not exactly what's going on. Now, we are here to --

01/20/2016

at least the way I understand the Panel's mandate, to make sure that the rules have been obeyed by, basically. I'm synthesizing. So I don't understand how, as the Chair of the GAC, you can tell us that, basically, the rules do not matter -- again, I'm rephrasing what you said, but I'd like to give you another opportunity to explain to us why you are mentioning those criteria in your written declaration, but, now, you're telling us this doesn't matter.

If you want to read again what you wrote, or supposedly wrote, it's Paragraph 5.

THE WITNESS:

I don't need to read again my declaration. Thank you. The header for the GAC's discussions throughout was to refer to strings or applications that were controversial or sensitive. That's very broad. And --

ARBITRATOR KESSEDJIAN:

I'm sorry. You say the rules say problematic, potentially violate national law, raise sensitivities. These are precise concepts.

THE WITNESS:

Problematic, violate national law -- there are a lot of laws -- and sensitivities does strike me as being quite broad.

[...]

ARBITRATOR KESSEDJIAN:

Okay. So we are left with what? No rules?

THE WITNESS:

No rationale with the consensus objections.

That's the -- the effect.

ARBITRATOR KESSEDJIAN:

I'm done.

HONORABLE JUDGE CAHILL:

I'm done.

PRESIDENT BARIN:

So am I.

01/20/2016

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:

01 / 20 / 2016

The NGPC accepts this advice. The AGB provides that "if GAC advised 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. The NGPC directs staff that pursuant to the GAC advice and Section 3.1 of the Applicant Guidebook, Application number 1-1165-42560 for .africa will not be approved. In accordance with the AGB the applicant may with draw [...] or seek relief according to ICANN's accountability mechanisms (see ICANN's Bylaws, Articles IV and V) subject to the appropriate standing and procedural requirements.

115. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

116. As indicated above, there are perhaps a number of other instances, including certain decisions made by ICANN, that did not proceed in the manner and spirit in which they should have under the Articles of Incorporation and Bylaws of ICANN.

117. DCA Trust has criticized ICANN for its various actions and decisions throughout this IRP and ICANN has responded to each of these criticisms in detail. However, the Panel, having carefully considered these criticisms and decided that the above is dispositive of this IRP, it does not find it necessary to determine who was right, to what extent and for what reasons in respect to the other criticisms and other alleged shortcomings of the ICANN Board identified by DCA Trust.

2) Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

118. In the conclusion of its Memorial on the Merits filed with the Panel on 3 November 2014, DCA Trust submitted that ICANN should remove ZACR's application from the process altogether and allow DCA's application to proceed under the rules of the New gTLD Program, allowing DCA up to 18 months to negotiate with African governments

01 / 20 / 2016

to obtain the necessary endorsements so as to enable the delegation and management of the .AFRICA string.

119. In its Final Request for Relief filed with the Panel on 23 May 2015, DCA Trust requested that this Panel recommend to the ICANN Board that it cease all preparations to delegate the .AFRICA gTLD to ZACR and recommend that 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.

120. DCA Trust also requested that this Panel recommend to ICANN that it compensate DCA Trust for the costs it has incurred as a result of ICANN's violations of its Articles of Incorporation, Bylaws and AGB.

121. In its response to DCA Trust's request for the recommendations set out in DCA Trust's Memorial on the Merits, ICANN submitted that this Panel does not have the authority to grant the affirmative relief that DCA Trust had requested.

122. According to ICANN:

48. DCA's request should be denied in its entirety, including its request for relief. DCA requests that this IRP Panel issue a declaration requiring ICANN to "rescind its contract with ZACR" and to "permit DCA's application to proceed through the remainder of the application process." Acknowledging that it currently lacks the requisite governmental support for its application, DCA also requests that it receive "18 months to negotiate with African governments to obtain the necessary endorsements." In sum, DCA requests not only that this Panel remove DCA's rival for .AFRICA from contention (requiring ICANN to repudiate its contract with ZACR), but also that it rewrite the Guidebook's rules in DCA's favor.

49. IRP Panels do not have authority to award affirmative relief. Rather, an IRP Panel is limited to stating its opinion as to "whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws" and recommending (as this IRP Panel has done previously) that the Board stay any action or decision, or take any interim action until such time as the Board reviews and acts upon the opinion of the IRP Panel. The Board will, of course, give extremely serious consideration to the Panel's recommendations.

123. In its response to DCA Trust's amended request for recommendations filed on 23 May 2015, ICANN argued that 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

04/28/2016

recommending how the Board should then proceed in light of the Panel's declaration.

124. In response, DCA Trust 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.

125. According to ICANN, "indeed, the ICANN New gTLD Program Committee, operating under the delegated authority of the ICANN Board, itself [suggests] that DCA could seek relief through ICANN's accountability mechanisms or, in other words, the Reconsideration process and the Independent Review Process." Furthermore:

If the IRP mechanism – the mechanism of last resort for gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.

126. After considering the Parties' respective submissions in this regard, the Panel is of the view that it does have the power to recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook.

127. Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws states:

ARTICLE IV: ACCOUNTABILITY AND REVIEW
Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

11. The IRP Panel shall have the authority to:

d. recommend that the Board stay any action or decision or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.

128. The Panel finds that both the language and spirit of the above section gives it authority to recommend how the ICANN Board might fashion a remedy to redress injury or harm that is directly related and causally connected to the Board's violation of the Bylaws or the Articles of Incorporation.

129. As DCA Trust correctly points out, with which statement the Panel agrees, "if the IRP mechanism – the mechanism of last resort for

01/20/2016

gTLD applicants – is intended to provide a remedy for a claimant materially injured or harmed by Board action or inaction, and it serves as the only alternative to litigation, then naturally the IRP Panel may recommend how the ICANN Board might fashion a remedy to redress such injury or harm.”

130. Use of the imperative language in Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, is clearly supportive of this point. That provision clearly states that the IRP Panel has the authority to recommend a course of action until such time as the Board considers the opinion of the IRP and acts upon it.
131. Furthermore, use of the word “opinion”, which means the formal statement by a judicial authority, court, arbitrator or “Panel” of the reasoning and the principles of law used in reaching a decision of a case, is demonstrative of the point that the Panel has the authority to recommend affirmative relief. Otherwise, like in section 7 of the Supplementary Procedures, the last sentence in paragraph 11 would have simply referred to the “declaration of the IRP”. Section 7 under the heading “Interim Measures of Protection” says in part, that an “IRP PANEL may recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the IRP declaration.”
132. The scope of Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws is clearly broader than Section 7 of the Supplementary Procedures.
133. Pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN’s Bylaws, therefore, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust’s application to proceed through the remainder of the new gTLD application process.

3) Who is the prevailing party in this IRP?

134. In its letter of 1 July 2015, ICANN submits that, “ICANN believes that the Panel should and will determine that ICANN is the prevailing party. Even so, ICANN does not seek in this instance the putative effect that would result if DCA were required to reimburse ICANN for all of the costs that ICANN incurred. This IRP was much longer [than] anticipated (in part due to the passing of one of the panelists last summer), and the Panelists’ fees were far greater than an ordinary IRP, particularly because the Panel elected to conduct a live hearing.”

01/20/2016

135.DCA Trust on the other hand, submits that, “should it prevail in this IRP, ICANN should be responsible for all of the costs of this IRP, including the interim measures proceeding.” In particular, DCA Trust writes:

On March 23, 2014, DCA learned via email from a supporter of ZA Central Registry (“ZACR”), DCA’s competitor for .AFRICA, that ZACR would sign a registry agreement with ICANN in three days’ time (March 26) to be the registry operator for .AFRICA. The very same day, we sent a letter on behalf of DCA to ICANN’s counsel asking ICANN to refrain from executing the registry agreement with ZACR in light of the pending IRP proceedings. See DCA’s Request for Emergency Arbitrator and Interim Measures of Protection, Annex I (28 Mar. 2014). Instead, ICANN entered into the registry agreement with ZACR the very next day—two days ahead of schedule. [...] Later that same day, ICANN responded to DCA’s request by treating the execution of the contract as a *fait accompli* and, for the first time, informed DCA that it would accept the application of Rule 37 of the 2010 [ICDR Rules], which provides for emergency measures of protection, even though ICANN’s Supplementary Procedures for ICANN Independent Review Process expressly provide that Rule 37 does not apply to IRPs. A few days later, on March 28, 2014, DCA filed a Request for Emergency Arbitrator and Interim Measures of Protection with the ICDR. ICANN responded to DCA’s request on April 4, 2014. An emergency arbitrator was appointed by the ICDR; however, the following week, the original panel was fully constituted and the parties’ respective submissions were submitted to the Panel for its review on April 13, 2014. After a teleconference with the parties on April 22 and a telephonic hearing on May 5, the Panel ruled that “ICANN must immediately refrain from any further processing of any application for .AFRICA” during the pendency of the IRP. Decision on Interim Measures of Protection, ¶ 51 (12 May 2014).

136.A review of the various procedural orders, decisions, and declarations in this IRP clearly indicates that DCA Trust prevailed in many of the questions and issues raised.

137.In its letter of 1 July 2015, DCA Trust refers to several instances in which ICANN was not successful in its position before this Panel. According to DCA Trust, the following are some examples, “ICANN’s Request for Partial Reconsideration, ICANN’s request for the Panel to rehear the proceedings, and the evidentiary treatment of ICANN’s written witness testimony in the event it refused to make its witnesses available for questioning during the merits hearing.”

138.The Panel has no doubt, as ICANN writes in its letter of 1 July 2015, that the Parties’ respective positions in this IRP “were asserted in good faith.” According to ICANN, “although those positions were in many instances diametrically opposed, ICANN does not doubt that DCA believed in the credibility of the positions that it took, and

01/20/2016

[ICANN believes] that DCA feels the same about the positions ICANN took.”

139. The above said, after reading the Parties’ written submissions concerning the issue of costs and deliberation, the Panel is unanimously of the view that DCA Trust is the prevailing party in this IRP.

4) Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

140. DCA Trust submits that ICANN should be responsible for *all* costs of this IRP, including the interim measures proceeding. Among other arguments, DCA Trust submits:

This is consistent with ICANN’s Bylaws and Supplementary Procedures, which together provide that in ordinary circumstances, the party not prevailing shall be responsible for all costs of the proceeding. Although ICANN’s Supplementary Procedures do not explain what is meant by “all costs of the proceeding,” the ICDR Rules that apply to this IRP provide that “costs” include the following:

- (a) the fees and expenses of the arbitrators;
- (b) the costs of assistance required by the tribunal, including its experts;
- (c) the fees and expenses of the administrator;
- (d) the reasonable costs for legal representation of a successful party; and
- (e) any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 21.

Specifically, these costs include all of the fees and expenses paid and owed to the [ICDR], including the filing fees DCA paid to the ICDR (totaling \$4,750), all panelist fees and expenses, including for the emergency arbitrator, incurred between the inception of this IRP and its final resolution, legal costs incurred in the course of the IRP, and all expenses related to conducting the merits hearing (e.g., renting the audiovisual equipment for the hearing, printing hearing materials, shipping hard copies of the exhibits to the members of the Panel).

Although in “extraordinary” circumstances, the Panel may allocate up to half of the costs to the prevailing party, DCA submits that the circumstances of this IRP do not warrant allocating costs to DCA should it prevail. The reasonableness of DCA’s positions, as well as the meaningful contribution this IRP has made to the public dialogue about both ICANN’s accountability mechanisms and the appropriate deference owed by ICANN to its Governmental Advisory Committee, support a full award of costs to

01/20/2016

DCA.

[...]

To the best of DCA's knowledge, this IRP was the first to be commenced against ICANN under the new rules, and as a result there was little guidance as to how these proceedings should be conducted. Indeed, at the very outset there was controversy about the applicable version of the Supplemental Rules as well as the form to be filed to initiate a proceeding. From the very outset, ICANN adopted positions on a variety of procedural issues that have increased the costs of these proceedings. In DCA's respectful submission, ICANN's positions throughout these proceedings are inconsistent with ICANN's obligations of transparency and the overall objectives of the IRP process, which is the only independent accountability mechanism available to parties such as DCA.

141. DCA Trust also submits that ICANN's conduct in this IRP increased the duration and expense of this IRP. For example, ICANN failed to appoint a standing panel, it entered into a registry agreement with DCA's competitor for .AFRICA during the pendency of this IRP, thereby forcing DCA Trust to request for interim measures of protection in order to preserve its right to a meaningful remedy, ICANN attempted to appeal declarations of the Panel on procedural matters where no appeal mechanism was provided for under the applicable procedures and rules, and finally, ICANN refused only a couple of months prior to the merits hearing, to make its witnesses available for viva voce questioning at the hearing.
142. ICANN in response submits that, "both the Bylaws and the Supplementary Procedures provide that, in the ordinary course, costs shall be allocated to the prevailing party. These costs include the Panel's fees and the ICDR's fees, [they] would also include the costs of the transcript."
143. ICANN explains on the other hand that this case was extraordinary and this Panel should exercise its discretion to have each side bear its own costs as this IRP "was in many senses a first of its kind." According to ICANN, among other things:

This IRP was the first associated with the Board's acceptance of GAC advice that resulted in the blocking of an application for a new gTLD under the new gTLD Program;

This was the first IRP associated with a claim that one or more ICANN Board members had a conflict of interest with a Board vote; and

This was the first (and still only) IRP related to the New gTLD Program that involved a live hearing, with a considerable amount of debate associated with whether to have a hearing.

144. After reading the Parties' written submissions concerning the issue of costs and their allocation, and deliberation, the Panel is unanimous in deciding that DCA Trust is the prevailing party in this IRP and ICANN shall bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider.
145. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, however, DCA Trust and ICANN shall each bear their own expenses, and they shall also each bear their own legal representation fees.
146. For the avoidance of any doubt therefore, the Panel concludes that ICANN shall be responsible for paying the following costs and expenses:
- a) the fees and expenses of the panelists;
 - b) the fees and expenses of the administrator, the ICDR;
 - c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
 - d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
147. The above amounts are easily quantifiable and the Parties are invited to cooperate with one another and the ICDR to deal with this part of this Final Declaration.

V. DECLARATION OF THE PANEL

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness, listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington, D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.
149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to

01/20/2016

refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

150. The Panel declares DCA Trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:

- a) the fees and expenses of the panelists;
- b) the fees and expenses of the administrator, the ICDR;
- c) the fees and expenses of the emergency panelist incurred in connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and
- d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington, D.C.
- e) As a result of the above, the administrative fees of the ICDR totaling US\$4,600 and the Panelists' compensation and expenses totaling US\$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US\$198,046.04

151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

01 / 20 / 2016

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.

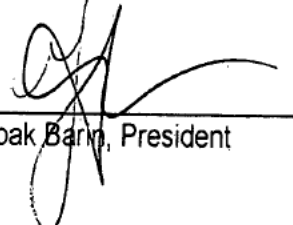
Place of the IRP, Los Angeles, California.



Professor Catherine Kessedjian



Hon. William J. Cahill (Ret.)



Babak Barin, President

01/20/2015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address): Brandon Schantz (SBN 278116) Schantz Law Firm 30882 Rivera Place, Laguna Niguel, CA 92677 bschantz@schantzlegal.com TELEPHONE NO.: 949-378-3651 FAX NO.: ATTORNEY FOR (Name): DotConnectAfrica Trust	FOR COURT USE ONLY FILED Superior Court Of California County Of Los Angeles JAN 20 2016 Sherrill [Signature] Executive Officer/Clerk By <u>Kristina Vargas</u> Deputy Kristina Vargas
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 2007 Temple Street 111 North Hill St. MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles 90012 BRANCH NAME: Civil	CASE NUMBER: BC 6 0 7 4 9 4 JUDGE: DEPT:
CASE NAME: DotConnectAfrica Trust v. ICANN	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	---	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Six
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 01/20/2016
 Brandon Schantz
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)	Breach of Rental/Lease Contract (<i>not unlawful detainer or wrongful eviction</i>)	Construction Defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)
Product Liability (<i>not asbestos or toxic/environmental</i>) (24)	Collection Case—Seller Plaintiff	Enforcement of Judgment
Medical Malpractice (45)	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Medical Malpractice—Physicians & Surgeons	Insurance Coverage (<i>not provisionally complex</i>) (18)	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Auto Subrogation	Confession of Judgment (<i>non-domestic relations</i>)
Other PI/PD/WD (23)	Other Coverage	Sister State Judgment
Premises Liability (e.g., slip and fall)	Other Contract (37)	Administrative Agency Award (<i>not unpaid taxes</i>)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Other Contract Dispute	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	Real Property	Miscellaneous Civil Complaint
Other PI/PD/WD	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Non-PI/PD/WD (Other) Tort	Wrongful Eviction (33)	Other Complaint (<i>not specified above</i>) (42)
Business Tort/Unfair Business Practice (07)	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)	Writ of Possession of Real Property	Injunctive Relief Only (<i>non-harassment</i>)
Defamation (e.g., slander, libel) (13)	Mortgage Foreclosure	Mechanics Lien
Fraud (16)	Quiet Title	Other Commercial Complaint Case (<i>non-tort/non-complex</i>)
Intellectual Property (19)	Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)	Other Civil Complaint (<i>non-tort/non-complex</i>)
Professional Negligence (25)	Unlawful Detainer	Miscellaneous Civil Petition
Legal Malpractice	Commercial (31)	Partnership and Corporate Governance (21)
Other Professional Malpractice (<i>not medical or legal</i>)	Residential (32)	Other Petition (<i>not specified above</i>) (43)
Other Non-PI/PD/WD Tort (35)	Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)	Civil Harassment
Employment	Judicial Review	Workplace Violence
Wrongful Termination (36)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Employment (15)	Petition Re: Arbitration Award (11)	Election Contest
	Writ of Mandate (02)	Petition for Name Change
	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

SHORT TITLE: DotConnect Africa Trust. ICANN	CASE NUMBER BC 6 0 7 4 9 4
--	---

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 20 HOURS/ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.3.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|---|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district.
2. May be filed in central (other county, or no bodily injury/property damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides. | 6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office
11. Mandatory Filing Location (Hub Case) |
|---|---|

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful/Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4. 1., 4. 1., 3. 1., 4.

SHORT TITLE:	CASE NUMBER
--------------	-------------

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2.,3.
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	2., 5., 6, 11 2., 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2.
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE: <i>DotConnectAfrica Trust v. ICANN</i>	CASE NUMBER
--	-------------

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
		<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input checked="" type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		<input checked="" type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.		
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
		<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		<input type="checkbox"/> A6190 Election Contest	2.
		<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law		2., 3., 4., 8.	
<input type="checkbox"/> A6100 Other Civil Petition	2., 9.		

SHORT TITLE:	CASE NUMBER:
--------------	--------------

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

<p>REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.</p> <p><input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.</p>	<p>ADDRESS:</p> <p>Schantz Law Firm 3088a Rivera Pl Laguna Niguel, CA 92677</p>	
CITY:	STATE:	ZIP CODE:

01/20/16

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the _____ courthouse in the _____ District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.3, subd.(a).

Dated: 1/20/16


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/15).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

ACCO,(JCx),APPEAL,DISCOVERY

**UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA (Western
Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:16-cv-00862-RGK-JC**

DotConnectAfrica Trust v. Internet Corporation For Assigned Names
and Numbers et al

Assigned to: Judge R. Gary Klausner

Referred to: Magistrate Judge Jacqueline Chooljian

Demand: \$9,000,000

Case in other court: 9th Circuit, 16-55693

9th Circuit, 16-55894

Superior Court of CA for the County of Los

Angeles, BC607494

Cause: 28:1441 Notice of Removal - Fraud

Date Filed: 02/08/2016

Jury Demand: Plaintiff

Nature of Suit: 370 Other Fraud

Jurisdiction: Diversity

Plaintiff

DotConnectAfrica Trust

represented by **Brandon ME Schantz**

Schantz Law Firm

30882 Rivera Place

Laguna Niguel, CA 92677

949-378-3651

Email: bschantz@schantzlegal.com

TERMINATED: 03/02/2016

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Sara Colon

Brown Neri Smith & Khan LLP

11766 Wilshire Boulevard

Suite 1670

Los Angeles, CA 90025

310-593-9890

Fax: 310-593-9980

Email: sara@bnsklaw.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Rowennakete Paul Barnes

Brown Neri Smith and Khan LLP

11766 Wilshire Boulevard Suite 1670

Los Angeles, CA 90025

310-593-9890

Fax: 310-593-9980

Email: kete@bnsklaw.com

ATTORNEY TO BE NOTICED

Ethan J Brown

Brown Neri Smith & Khan LLP

11766 Wilshire Blvd Suite 1670

Los Angeles, CA 90025

310-593-9890

Fax: 310-593-9980

Email: ethan@bnskllaw.com
ATTORNEY TO BE NOTICED

V.

Defendant

**Internet Corporation for Assigned Names
and Numbers**

represented by **Charlotte Wasserstein**

Jones Day
555 South Flower Street 50th Floor
Los Angeles, CA 90071
213-243-2489
Fax: 213-243-2539
Email: cswasserstein@jonesday.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kathleen P Wallace

Jones Day
555 West Fifth Street 50th Floor
Los Angeles, CA 90071-2300
213-489-3939
Fax: 213-243-2539
Email: kwallace@jonesday.com
ATTORNEY TO BE NOTICED

Rachel Tessa Gezerseh

Jones Day
555 South Flower Street 50th Floor
Los Angeles, CA 90071
213-489-3939
Fax: 213-243-2539
Email: rgezerseh@jonesday.com
ATTORNEY TO BE NOTICED

Rachel Hadass Zernik

Jones Day
555 South Flower Street 50th Floor
Los Angeles, CA 90071
213-489-3939
Email: rzernik@jonesday.com
TERMINATED: 04/06/2016
ATTORNEY TO BE NOTICED

Jeffrey A LeVee

Jones Day
555 South Flower Street 50th Floor
Los Angeles, CA 90071-2300
213-489-3939
Fax: 213-243-2539
Email: jlevee@jonesday.com
ATTORNEY TO BE NOTICED

Defendant

Does

1 through 50, inclusive

Defendant

ZA Central Registry
a South African non-profit company

represented by **Amy Thomas Brantly**
Kesselman Brantly Stockinger LLP
1230 Rosecrans Ave., Suite 690
Manhattan Beach, CA 90266
310-307-4555
Fax: 310-307-4570
Email: Abrantly@kbslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David W Kesselman
Kesselman Brantly Stockinger LLP
1230 Rosecrans Ave. Ste. 690
Manhattan Beach, CA 90266
310-307-4555
Fax: 310-307-4570
Email: dkesselman@kbslaw.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/08/2016	1	NOTICE OF REMOVAL from Los Angeles Superior Court, case number BC607494 Receipt No: 0973-17245418 - Fee: \$400, filed by Defendant Internet Corporation For Assigned Names & Numbers. (Attorney Jeffrey A LeVee added to party Internet Corporation For Assigned Names & Numbers(pty:dft))(LeVee, Jeffrey). (Entered: 02/08/2016)
02/08/2016	2	CIVIL COVER SHEET filed by Defendant Internet Corporation For Assigned Names & Numbers. (LeVee, Jeffrey) (Entered: 02/08/2016)
02/08/2016	3	CERTIFICATE of Interested Parties filed by Defendant Internet Corporation For Assigned Names & Numbers, (LeVee, Jeffrey) (Entered: 02/08/2016)
02/08/2016	4	PROOF OF SERVICE filed by Defendant Internet Corporation For Assigned Names & Numbers, re Civil Cover Sheet (CV-71) 2 , Certificate/Notice of Interested Parties 3 , Notice of Removal (Attorney Civil Case Opening), 1 served on 2/8/2016. (LeVee, Jeffrey) (Entered: 02/08/2016)
02/08/2016		CONFORMED FILED COPY OF COMPLAINT against Defendants Internet Corporation for Assigned Names and Numbers, Does 1 through 50, inclusive. Jury Demanded., filed by Plaintiff DotConnectAfrica Trust. [FILED IN STATE COURT ON 1/20/2016 SUBMITTED ATTACHED TO EXHIBIT A TO NOTICE OF REMOVAL] (et) (Entered: 02/08/2016)
02/08/2016	5	NOTICE OF ASSIGNMENT to District Judge R. Gary Klausner and Magistrate Judge Jacqueline Chooljian. (et) (Entered: 02/08/2016)
02/11/2016	6	STANDING ORDER REGARDING NEWLY ASSIGNED CASES by Judge R. Gary Klausner. See Order For Specifics. (bp) (Entered: 02/11/2016)
02/16/2016	7	SUPPLEMENT to Notice of Removal (Attorney Civil Case Opening), 1 filed by Defendant Internet Corporation for Assigned Names and Numbers. (LeVee, Jeffrey) (Entered: 02/16/2016)
02/16/2016	8	NOTICE OF MOTION AND MOTION to Dismiss Case filed by Defendant Internet Corporation for Assigned Names and Numbers. Motion set for hearing on 3/28/2016 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum ISO Motion to Dismiss, # 2 Request for Judicial Notice ISO Motion to Dismiss, # 3 Proposed Order Granting Motion to Dismiss and Request for Judicial Notice) (LeVee, Jeffrey) (Entered: 02/16/2016)
02/25/2016	9	First REQUEST TO SUBSTITUTE ATTORNEY Ethan J. Brown in place of attorney Brandon Schantz <i>Request for Substitution of Counsel</i> filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Proposed Order Proposed Order, # 2 Declaration Declaration of Service) (Schantz, Brandon) (Entered: 02/25/2016)

02/26/2016	10	First AMENDED COMPLAINT against Defendants All Defendants amending Complaint - (Discovery),, filed by Plaintiff DotConnectAfrica Trust(Attorney Ethan J Brown added to party DotConnectAfrica Trust(pty:pla))(Brown, Ethan) (Entered: 02/26/2016)
02/26/2016	11	NOTICE of Interested Parties filed by Plaintiff DotConnectAfrica Trust, identifying none. (Brown, Ethan) (Entered: 02/26/2016)
02/26/2016	12	Request for Clerk to Issue Summons on Amended Complaint/Petition 10 filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 02/26/2016)
02/29/2016	13	ORDER DENYING Request for Approval of Substitution of Attorney 9 by Judge R. Gary Klausner. (ah) (Entered: 02/29/2016)
03/01/2016	14	Amended REQUEST TO SUBSTITUTE ATTORNEY Ethan J. Brown in place of attorney Brandon Schantz <i>Request for Approval to Substitute Attorney</i> filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Proposed Order Granting Substitution of Attorney, # 2 Declaration of Service) (Schantz, Brandon) (Entered: 03/01/2016)
03/01/2016	15	21 DAY Summons Issued re Amended Complaint/Petition 10 as to Defendants Internet Corporation for Assigned Names and Numbers, ZA Central Registry. (bp) (Entered: 03/01/2016)
03/01/2016	16	NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion filed by Plaintiff DotConnectAfrica Trust. Motion set for hearing on 4/4/2016 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Declaration of Ethan J. Brown, # 2 Proposed Order) (Brown, Ethan) (Entered: 03/01/2016)
03/01/2016	17	DECLARATION of Sophia Bekele Echete In support of NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29)(Brown, Ethan) (Entered: 03/01/2016)
03/01/2016	18	APPLICATION to file document <i>Exhibits 19 & 23-25 to Declaration of Sophia Bekele Eschete</i> under seal filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Declaration of Sara C. Coln, # 2 Redacted Document Exhibits 19 & 23-25, # 3 Unredacted Document Exhibits 19 & 23-25, # 4 Proposed Order)(Brown, Ethan) (Entered: 03/01/2016)
03/02/2016	19	REQUEST to file document <i>Mistakenly Publicly Filed</i> under seal filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit A - Plaintiff's Application for Leave to File Under Seal, # 2 Exhibit B - Redacted Exhibits 19 & 23-25, # 3 Exhibit C - [Proposed] Order RE Application to File Under Seal)(Brown, Ethan) (Entered: 03/02/2016)
03/02/2016	20	EX PARTE APPLICATION for Temporary Restraining Order as to Issuance of.Africa gTLD filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Proposed Order Temporary Restraining Order, # 2 Proposed Order Order to Show Cause) (Brown, Ethan) (Entered: 03/02/2016)
03/02/2016	21	DECLARATION of Sara C. Colon In Support of EX PARTE APPLICATION for Temporary Restraining Order as to Issuance of.Africa gTLD 20 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Brown, Ethan) (Entered: 03/02/2016)
03/02/2016	22	APPLICATION to file document <i>Exhibits 19 & 23-25</i> under seal filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Proposed Order, # 2 Redacted Document)(Brown, Ethan) (Entered: 03/02/2016)
03/02/2016	23	SEALED DECLARATION IN SUPPORT OF APPLICATION to file document <i>Exhibits 19 & 23-25</i> under seal 22 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Unredacted Document Exhibits 19, 23-25)(Brown, Ethan) (Entered: 03/02/2016)

03/02/2016	24	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Judge R. Gary Klausner: The Court hereby orders that the request of: DOTCONNECTAFRICA TRUST, Plaintiff to substitute Ethan J. Brown, retained counsel as attorney of record instead of Brandon Schantz Law Firm, granting 14 Request to Substitute Attorney. Attorney Brandon ME Schantz terminated (bp) (Entered: 03/03/2016)
03/03/2016	25	NOTICE OF ERRATA filed by Plaintiff DotConnectAfrica Trust. correcting EX PARTE APPLICATION for Temporary Restraining Order as to Issuance of.Africa gTLD 20 <i>Correcting [Proposed] Temporary Restraining Order</i> (Attachments: # 1 Exhibit A ([Proposed] Temporary Restraining Order))(Brown, Ethan) (Entered: 03/03/2016)
03/03/2016	26	OPPOSITION to EX PARTE APPLICATION for Temporary Restraining Order as to Issuance of.Africa gTLD 20 filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 LeVee Decl. ISO Opposition to TRO Application, # 2 Wallace Decl. ISO Opposition to TRO Application)(LeVee, Jeffrey) (Entered: 03/03/2016)
03/04/2016	27	(IN CHAMBERS) Plaintiff's Ex Parte Application for TRO (DE 20) by Judge R. Gary Klausner: The Court grants Plaintiff's Ex Parte Application for TRO. Defendant is enjoined from issuing the.Africa tGLD until the Court decides Plaintiff's Motion for Preliminary Injunction, scheduled for hearing on April 4, 2016. (ah) (Entered: 03/04/2016)
03/07/2016	28	STIPULATION for Extension of Time to File Answer to First Amended Complaint filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Proposed Order Granting Stipulation to Extend Time to Answer)(Zernik, Rachel) (Entered: 03/07/2016)
03/09/2016	29	DENYING ORDER RE APPLICATION FOR LEAVE TO FILE UNDER SEAL 18 19 by Judge R. Gary Klausner. (ah) (Entered: 03/09/2016)
03/09/2016	30	EX PARTE APPLICATION for Order for Appointing Private Process Server filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Proposed Order) (Brown, Ethan) (Entered: 03/09/2016)
03/09/2016	31	DECLARATION of Sara C. Colon In support of EX PARTE APPLICATION for Order for Appointing Private Process Server 30 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Brown, Ethan) (Entered: 03/09/2016)
03/09/2016	32	STIPULATION AND ORDER EXTENDING TIME FOR ICANN TO FILE ITS RESPONSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT 28 by Judge R. Gary Klausner: Defendant Internet Corporation for Assigned Names and Numbers' response to First Amended Complaint due March 25, 2016. (ah) (Entered: 03/09/2016)
03/09/2016	33	Notice of Appearance or Withdrawal of Counsel: for attorney Ethan J Brown counsel for Plaintiff DotConnectAfrica Trust. Adding Sara C. Colon as counsel of record for DOTCONNECTAFRICA TRUST for the reason indicated in the G-123 Notice. Filed by Plaintiff DOTCONNECTAFRICA TRUST. (Brown, Ethan) (Entered: 03/09/2016)
03/10/2016	34	ORDER APPOINTING JOHN PIERCEALL AS PRIVATE PROCESS SERVER by Judge R. Gary Klausner 30 . Refer to the Court's order for details. (pso) (Entered: 03/10/2016)
03/14/2016	35	OPPOSITION to NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Defendant Internet Corporation for Assigned Names and Numbers. (LeVee, Jeffrey) (Entered: 03/14/2016)
03/14/2016	36	DECLARATION of Akram Atallah In Support of ICANN's Opposition to NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Exhibit A to Atallah Declaration, # 2 Exhibit B to Atallah Declaration)(LeVee, Jeffrey) (Entered: 03/14/2016)
03/14/2016	37	DECLARATION of Kevin Espinola In Support of ICANN's Opposition to NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Exhibit A to Espinola Declaration, # 2 Exhibit B to Espinola Declaration, # 3 Exhibit C to

		Espinola Declaration, # 4 Exhibit D to Espinola Declaration, # 5 Exhibit E to Espinola Declaration, # 6 Exhibit F to Espinola Declaration)(LeVee, Jeffrey) (Entered: 03/14/2016)
03/14/2016	38	DECLARATION of Jeffrey A. LeVee In Support of ICANN's Opposition to NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Exhibit A to LeVee Declaration)(LeVee, Jeffrey) (Entered: 03/14/2016)
03/14/2016	39	DECLARATION of Christine Willett In Support of ICANN's Opposition to NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Exhibit A to Willett Declaration, # 2 Exhibit B to Willett Declaration, # 3 Exhibit C to Willett Declaration)(LeVee, Jeffrey) (Entered: 03/14/2016)
03/14/2016	40	DECLARATION of Moctar Yedaly In Support of ICANN's Opposition to NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Exhibit A to Yedaly Declaration, # 2 Exhibit B to Yedaly Declaration, # 3 Exhibit C Yedaly Declaration, # 4 Exhibit D to Yedaly Declaration)(LeVee, Jeffrey) (Entered: 03/14/2016)
03/16/2016	41	Notice of Appearance or Withdrawal of Counsel: for attorney Ethan J Brown counsel for Plaintiff DotConnectAfrica Trust. Adding Rowennakete Barnes as counsel of record for DOTCONNECTAFRICA TRUST for the reason indicated in the G-123 Notice. Filed by Plaintiff DOTCONNECTAFRICA TRUST. (Brown, Ethan) (Entered: 03/16/2016)
03/17/2016	42	EXHIBIT Filed filed by Plaintiff DotConnectAfrica Trust. <i>Unredacted Versions</i> as to Declaration (Motion related),, 17 . (Attachments: # 1 Exhibit 19, # 2 Exhibit 23, # 3 Exhibit 24, # 4 Exhibit 25)(Colon, Sara) (Entered: 03/17/2016)
03/18/2016	43	ORDER SETTING SCHEDULING CONFERENCE by Judge R. Gary Klausner. A Scheduling Conference has been placed on calendar for June 6, 2016 at 9:00 a m. The Conference will be held pursuant to F.R.Civ. P. 16(b). Trial counsel must be present and there are no telephonic appearances. Counsel are ordered to file a joint statement providing a brief factual summary of the case, including the claims being asserted. The parties are reminded of their obligations to disclose information and confer on a discovery plan not later than 21 days prior to the scheduling conference, and to file a joint statement with the Court not later than 14 days after they confer, as required by F.R. Civ.P. 26 and the Local Rules of this Court. Failure to comply may lead to the imposition of sanctions. Plaintiff's counsel is directed to give notice of the scheduling conference to each party that makes an initial appearance in the action after this date. Not later than 5 court days prior to the Scheduling Conference, counsel are ordered to confer and electronically file (joint) Form ADR-1 (and proposed order, Form ADR 12), selecting one of the three settlement options available. (sw) (Entered: 03/18/2016)
03/21/2016	44	REPLY In Support of NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 03/21/2016)
03/21/2016	45	DECLARATION of Sophia Bekele Eshete In Support of NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Brown, Ethan) (Entered: 03/21/2016)
03/21/2016	46	DECLARATION of Sara C. Colon In Support of NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Brown, Ethan) (Entered: 03/21/2016)
03/21/2016	47	Evidentiary Objection In Support of re: NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 Declaration of Akram Atallah filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 03/21/2016)
03/21/2016	48	

		Evidentiary Objection In Support of re: NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 Declaration of Kevin Espinola filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 03/21/2016)
03/21/2016	49	Evidentiary Objection In Support of re: NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 Declaration of Jeffrey LeVee filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 03/21/2016)
03/21/2016	50	Evidentiary Objection In Support of re: NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 Declaration of Christine Willet filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 03/21/2016)
03/21/2016	51	Evidentiary Objection In Support of re: NOTICE OF MOTION AND MOTION for Preliminary Injunction re Issuance of.Africa gTLD . Motion 16 Declaration of Moctar Yedaly filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 03/21/2016)
03/23/2016	52	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Defendant Internet Corporation for Assigned Names and Numbers' Motion to Dismiss Case 8 , calendared for hearing on March 28, 2016, has been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration of properly submitted pleadings. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 03/23/2016)
03/23/2016	53	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. According to court records, on February 26, 2016, Plaintiff(s) filed an amended complaint 10 . Accordingly, Defendant(s)' Motion to Dismiss 8 is hereby denied as moot. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 03/23/2016)
03/24/2016	54	DEMAND for Jury Trial filed by Plaintiff DotConnectAfrica Trust.. (Brown, Ethan) (Entered: 03/24/2016)
03/25/2016	55	PROOF OF SERVICE Executed by Plaintiff DotConnectAfrica Trust, upon Defendant ZA Central Registry served on 3/22/2016, answer due 4/12/2016. Service of the Summons and Complaint were executed upon Defendant ZA Central Registry in compliance with Federal Rules of Civil Procedure by method of service not specified.Original Summons NOT returned. (Brown, Ethan) (Entered: 03/25/2016)
03/25/2016	56	[WITHDRAWN PURSUANT TO DOCKET ENTRY #79] NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Complaint</i> filed by Defendant Internet Corporation for Assigned Names and Numbers. Motion set for hearing on 4/25/2016 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum ISO Motion to Dismiss, # 2 Request for Judicial Notice ISO Motion to Dismiss, # 3 Proposed Order Granting Motion to Dismiss and Request for Judicial Notice) (LeVee, Jeffrey) Modified on 4/20/2016 (bp). (Entered: 03/25/2016)
03/28/2016	57	RESPONSE filed by Defendant Internet Corporation for Assigned Names and Numbersto Objection/Opposition (Motion related) 47 to Declaration of Akram Atallah (LeVee, Jeffrey) (Entered: 03/28/2016)
03/28/2016	58	RESPONSE filed by Defendant Internet Corporation for Assigned Names and Numbersto Objection/Opposition (Motion related) 48 to Declaration of Kevin Espinola (LeVee, Jeffrey) (Entered: 03/28/2016)
03/28/2016	59	RESPONSE filed by Defendant Internet Corporation for Assigned Names and Numbersto Objection/Opposition (Motion related) 49 to Declaration of Jeffrey A. LeVee (LeVee, Jeffrey) (Entered: 03/28/2016)
03/28/2016	60	RESPONSE filed by Defendant Internet Corporation for Assigned Names and Numbersto Objection/Opposition (Motion related) 50 to Declaration of Christine Willett (LeVee, Jeffrey) (Entered: 03/28/2016)

03/28/2016	61	RESPONSE filed by Defendant Internet Corporation for Assigned Names and Numbers to Objection/Opposition (Motion related) 51 to Declaration of Moctar Yedaly (LeVee, Jeffrey) (Entered: 03/28/2016)
03/29/2016	62	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Plaintiff DotConnectAfrica Trust's Motion for Preliminary Injunction 16 , calendared for hearing on April 4, 2016, has been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration of properly submitted pleadings. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 03/29/2016)
04/01/2016	63	STIPULATION Extending Time to Answer the complaint as to ZA Central Registry answer now due 4/26/2016, re Amended Complaint/Petition 10 filed by Defendant ZA Central Registry. (Attachments: # 1 Proposed Order)(Attorney David W Kesselman added to party ZA Central Registry(pty:dft))(Kesselman, David) (Entered: 04/01/2016)
04/04/2016	64	NOTICE of Corrected Filing filed by Plaintiff DotConnectAfrica Trust. (<i>Exhibit A to FAC</i>) (Brown, Ethan) (Entered: 04/04/2016)
04/04/2016	65	[STRICKEN] EXHIBIT Filed filed by Plaintiff DotConnectAfrica Trust. <i>Exhibit A</i> as to Amended Complaint/Petition 10 . (Brown, Ethan) Modified on 4/6/2016 (ah). (Entered: 04/04/2016)
04/04/2016	66	Opposition in opposition to re: NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Complaint</i> 56 filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 04/04/2016)
04/04/2016	67	REQUEST FOR JUDICIAL NOTICE re NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Complaint</i> 56 (<i>In Opposition to</i>) filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Brown, Ethan) (Entered: 04/04/2016)
04/05/2016	68	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: Exhibit (non-trial) 65 . The following error(s) was found: Title page is missing. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (bp) (Entered: 04/05/2016)
04/05/2016	69	Notice of Appearance or Withdrawal of Counsel: for attorney Rachel Hadass Zernik counsel for Defendant Internet Corporation for Assigned Names and Numbers. Rachel Hadass Zernik is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by defendant Internet Corporation for Assigned Names and Numbers. (Zernik, Rachel) (Entered: 04/05/2016)
04/06/2016	70	RESPONSE BY THE COURT TO NOTICE TO FILER OF DEFICIENCIES IN ELECTRONICALLY FILED DOCUMENTS RE: Notice of Deficiency in Electronically Filed Documents (G-112A), 68 by Judge R. Gary Klausner. The document is stricken 65 . LR 11-3.8. (ah) (Entered: 04/06/2016)
04/06/2016	71	EXHIBIT Filed filed by Plaintiff DotConnectAfrica Trust. <i>Exhibit A</i> as to Amended Complaint/Petition 10 . (Brown, Ethan) (Entered: 04/06/2016)
04/06/2016	72	NOTICE of Appearance filed by attorney Rachel Tessa Gezerseh on behalf of Defendant Internet Corporation for Assigned Names and Numbers (Attorney Rachel Tessa Gezerseh added to party Internet Corporation for Assigned Names and Numbers(pty:dft))(Gezerseh, Rachel) (Entered: 04/06/2016)
04/08/2016	73	ORDER RE STIPULATION REGARDING TIME FOR DEFENDANT ZA CENTRAL REGISTRY TO FILE ITS RESPONSE TO PLAINTIFF'S FIRST AMENDED COMPLAINT, granting Stipulation Extending Time to Answer (30 days or less), 63 , by Judge R. Gary Klausner (bp) (Entered: 04/08/2016)
04/11/2016	74	

		REPLY In Support of NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Complaint 56</i> filed by Defendant Internet Corporation for Assigned Names and Numbers. (Gezerseh, Rachel) (Entered: 04/11/2016)
04/12/2016	75	MINUTES (IN CHAMBERS): Order re: Plaintiff's Motion for Preliminary Injunction 16 by Judge R. Gary Klausner. For the foregoing reasons, the Court GRANTS Plaintiff's Motion for Preliminary Injunction. IT IS SO ORDERED. (lom) (Entered: 04/12/2016)
04/13/2016	76	ORDER by Judge R. Gary Klausner: the following document(s) be STRICKEN for failure to comply with the Local Rules, General Order and/or the Courts Case Management Order: Reply (Motion related) 74 , for the following reasons: Reply Memorandum of Points and Authorities exceeds this Court's 10-page limit. See Standing Order. (ps0) (Entered: 04/13/2016)
04/14/2016	77	REPLY In Support of NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Complaint 56</i> filed by Defendant Internet Corporation for Assigned Names and Numbers. (Gezerseh, Rachel) (Entered: 04/14/2016)
04/19/2016	78	STIPULATION to Withdraw Motion NOTICE OF MOTION AND MOTION to Dismiss Case <i>First Amended Complaint 56</i> filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Proposed Order)(Gezerseh, Rachel) (Entered: 04/19/2016)
04/20/2016	79	ORDER APPROVING STIPULATION TO WITHDRAW ICANN'S MOTION TO DISMISS FIRST AMENDED COMPLAINT AND TO SET DEADLINE FOR ICANN'S RESPONSE TO THE FIRST AMENDED COMPLAINT by Judge R. Gary Klausner, re Stipulation to Withdraw Motion/Application/Request/Ex Parte Application, 78 . The Court, having read and considered the Stipulation To Withdraw ICANN's Motion To Dismiss First Amended Complaint An To Set Deadline For ICANN's Response To The First Amended Complaint (the "Stipulation") and with good cause appearing, orders as follows: The Stipulation is APPROVED. ICANN's Motion to Dismiss First Amended Complaint is withdrawn 56 . ICANN's Answer to the First Amended Complaint shall be due on May 9, 2016. (bp) (Entered: 04/20/2016)
04/26/2016	80	NOTICE OF MOTION AND MOTION to Dismiss Case (<i>First Amended Complaint</i>) for <i>Failure to State a Claim</i> filed by Defendant ZA Central Registry. Motion set for hearing on 5/31/2016 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum ISO Motion to Dismiss for Failure to State a Claim, # 2 Declaration David W. Kesselman Decl. ISO Motion to Dismiss for Failure to State a Claim, # 3 Request for Judicial Notice ISO Motion to Dismiss for Failure to State a Claim, # 4 Proposed Order Granting Motion to Dismiss and Request for Judicial Notice) (Kesselman, David) (Entered: 04/26/2016)
04/29/2016	81	CERTIFICATE of Interested Parties filed by Defendant ZA Central Registry, (Kesselman, David) (Entered: 04/29/2016)
05/06/2016	82	ANSWER to Amended Complaint/Petition 10 filed by Defendant Internet Corporation for Assigned Names and Numbers.(Gezerseh, Rachel) (Entered: 05/06/2016)
05/06/2016	83	NOTICE of Interested Parties filed by Defendant Internet Corporation for Assigned Names and Numbers, identifying ZA Central Registry, NPC. (Gezerseh, Rachel) (Entered: 05/06/2016)
05/06/2016	84	Notice of Appearance or Withdrawal of Counsel: for attorney Jeffrey A LeVee counsel for Defendant Internet Corporation for Assigned Names and Numbers. Adding Charlotte S. Wasserstein as counsel of record for Internet Corporation for Assigned Names and Numbers for the reason indicated in the G-123 Notice. Filed by defendant Internet Corporation for Assigned Names and Numbers. (LeVee, Jeffrey) (Entered: 05/06/2016)
05/06/2016	85	NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction 75 , NOTICE OF MOTION AND MOTION to Vacate Order on Motion for Preliminary Injunction 75 filed by Defendant ZA Central Registry. Motion set for hearing on 6/6/2016 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum ISO Motion to Reconsider & Vacate Preliminary Injunction Ruling, # 2 Declaration of David W. Kesselman ISO Motion to Reconsider & Vacate Preliminary Injunction Ruling, # 3 Declaration of Mokgabudi Lucky Masilela ISO Motion to Reconsider & Vacate Preliminary Injunction Ruling, # 4 Exhibit Exhs. A-E to Decl. of Mokgabudi Lucky Masilela ISO Motion to

		Reconsider & Vacate Preliminary Injunction Ruling, # 5 Proposed Order Granting Motion to Reconsider & Vacate Preliminary Injunction Ruling) (Kesselman, David) (Entered: 05/06/2016)
05/10/2016	86	JOINDER in NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction 75 NOTICE OF MOTION AND MOTION to Vacate Order on Motion for Preliminary Injunction 75 85 filed by Defendant Internet Corporation for Assigned Names and Numbers. (LeVee, Jeffrey) (Entered: 05/10/2016)
05/10/2016	87	Opposition re: NOTICE OF MOTION AND MOTION to Dismiss Case (<i>First Amended Complaint</i>) for Failure to State a Claim 80 filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 05/10/2016)
05/10/2016	88	REQUEST FOR JUDICIAL NOTICE re NOTICE OF MOTION AND MOTION to Dismiss Case (<i>First Amended Complaint</i>) for Failure to State a Claim 80 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Brown, Ethan) (Entered: 05/10/2016)
05/11/2016	89	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by defendant Internet Corporation for Assigned Names and Numbers. Appeal of Order on Motion for Preliminary Injunction 75 . (Appeal Fee - \$505 Fee Paid, Receipt No. 0973-17801716.) (LeVee, Jeffrey) (Entered: 05/11/2016)
05/12/2016	90	NOTIFICATION by Circuit Court of Appellate Docket Number 16-55693, 9th Circuit regarding Notice of Appeal to 9th Circuit Court of Appeals, 89 as to defendant Internet Corporation for Assigned Names and Numbers. (mat) (Entered: 05/13/2016)
05/16/2016	91	Opposition to Motion for Reconsideration re: NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction 75 NOTICE OF MOTION AND MOTION to Vacate Order on Motion for Preliminary Injunction 75 85 filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 05/16/2016)
05/16/2016	92	DECLARATION of Sara C. Colon in Opposition to NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction 75 NOTICE OF MOTION AND MOTION to Vacate Order on Motion for Preliminary Injunction 75 85 filed by Plaintiff DotConnectAfrica Trust. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Brown, Ethan) (Entered: 05/16/2016)
05/16/2016	93	DECLARATION of Sophia Bekele Eshete In Opposition to NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction 75 NOTICE OF MOTION AND MOTION to Vacate Order on Motion for Preliminary Injunction 75 85 filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 05/16/2016)
05/16/2016	94	Evidentiary Objection to Declaration of Mkgabudi Lucky Masilela re: NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction 75 NOTICE OF MOTION AND MOTION to Vacate Order on Motion for Preliminary Injunction 75 85 filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 05/16/2016)
05/17/2016	95	REPLY In Support of NOTICE OF MOTION AND MOTION to Dismiss Case (<i>First Amended Complaint</i>) for Failure to State a Claim 80 filed by Defendant ZA Central Registry. (Attachments: # 1 Request for Judicial Notice ISO Reply to Motion to Dismiss for Failure to State a Claim, # 2 Exhibit A to RJN ISO MTD, # 3 Proposed Order Granting RJN)(Kesselman, David) (Entered: 05/17/2016)
05/18/2016	96	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Defendant ZA Central Registry's Motion to Dismiss First Amended Complaint for Failure to State a Claim 80 , calendared for hearing on May 31, 2016, has been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration of properly submitted pleadings. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 05/18/2016)
05/23/2016	97	REPLY In Support of NOTICE OF MOTION AND MOTION for Reconsideration re Order on Motion for Preliminary Injunction 75 NOTICE OF MOTION AND MOTION to Vacate Order

		on Motion for Preliminary Injunction 75 85 filed by Defendant ZA Central Registry. (Attachments: # 1 Declaration Supp. Decl of Mokgabudi Lucky Masilela ISO Motion, # 2 Exhibit A to Supp. Decl of Mokgabudi Lucky Masilela ISO Motion, # 3 Exhibit B to Supp. Decl of Mokgabudi Lucky Masilela ISO Motion, # 4 Exhibit C to Supp. Decl of Mokgabudi Lucky Masilela ISO Motion, # 5 Exhibit D to Supp. Decl of Mokgabudi Lucky Masilela ISO Motion, # 6 Evidentiary Obj. to Decl. of Sophia Bekele Eshete, # 7 Evidentiary Obj. to Decl. of Sarah Colon, # 8 Response to Plaintiff's Evidentiary Objs. to Decl. of Mokgabudi Lucky Masilela, # 9 Declaration of Akram Atallah ISO of Motion)(Kesselman, David) (Entered: 05/23/2016)
05/23/2016	98	APPLICATION to file document <i>Exhibit A to Supp. Decl. of Mokgabudi Lucky Masilela</i> under seal filed by Defendant ZA Central Registry. (Attachments: # 1 Proposed Order, # 2 Redacted Document)(Kesselman, David) (Entered: 05/23/2016)
05/23/2016	99	SEALED DECLARATION IN SUPPORT OF APPLICATION to file document <i>Exhibit A to Supp. Decl. of Mokgabudi Lucky Masilela</i> under seal 98 filed by Defendant ZA Central Registry. (Attachments: # 1 Exhibit A to Decl. of David W. Kesselman In Support, # 2 Unredacted Document Exhibit A to Supp. Decl. of Mokgabudi Lucky Masilela, # 3 Certificate of Service)(Kesselman, David) (Entered: 05/23/2016)
05/26/2016	100	JOINT REPORT Rule 26(f) Discovery Plan ; estimated length of trial 10-12 or 6-8, filed by Plaintiff DotConnectAfrica Trust.. (Brown, Ethan) (Entered: 05/26/2016)
05/26/2016	101	OBJECTIONS to Reply (Motion related),,, 97 <i>Evidentiary Objections to Supplemental Declaration of Mokgabudi Masilela</i> filed by Plaintiff DotConnectAfrica Trust. (Brown, Ethan) (Entered: 05/26/2016)
05/26/2016	102	RESPONSE filed by Plaintiff DotConnectAfrica Trustto Reply (Motion related),,, 97 <i>Response to Evidentiary Objections to Colon Declarations</i> (Brown, Ethan) (Entered: 05/26/2016)
05/26/2016	103	RESPONSE filed by Plaintiff DotConnectAfrica Trustto Reply (Motion related),,, 97 <i>to Evidentiary Objections to Declarations of Sophia Bekele Eshete</i> (Brown, Ethan) (Entered: 05/26/2016)
05/27/2016	104	REQUEST for ADR Procedure No. 3. Parties request for private mediation. Filed by Plaintiff DotConnectAfrica Trust (Attachments: # 1 Proposed Order Order (ADR-12))(Brown, Ethan) (Entered: 05/27/2016)
06/01/2016	105	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Defendant ZA Central Registry's Motion for Reconsideration on Motion for Preliminary Injunction 85 , calendared for hearing on June 6, 2016, has been taken under submission and off the motion calendar. The Court will issue a ruling after full consideration of properly submitted pleadings. The parties are still required to appear for the Scheduling Conference at 9:00 am on June 6, 2016. IT IS SO ORDERED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 06/01/2016)
06/01/2016	106	ORDER GRANTING APPLICATION OF ZA CENTRAL REGISTRY, NPC'S FOR LEAVE TO FILE UNDER SEAL 98 by Judge R. Gary Klausner. (ah) (Entered: 06/01/2016)
06/01/2016	107	RESPONSE filed by Defendant ZA Central Registryto Objection 101 <i>re Plaintiff's Evidentiary Objections to Supplemental Declaration of Mokgabudi Lucky Masilela</i> (Kesselman, David) (Entered: 06/01/2016)
06/02/2016	108	ORDER/REFERRAL to ADR Procedure No. 3 by Judge R. Gary Klausner. Case ordered to a private mediator based upon a stipulation of the parties. (sw) (Entered: 06/02/2016)
06/02/2016	109	SEALED DOCUMENT <i>Exhibit A to Supp. Decl. of Mokgabudi Lucky Masilela</i> re Reply (Motion related),,, 97 , Order on Motion for Leave to File Document Under Seal 106 filed by Defendant ZA Central Registry.(Kesselman, David) (Entered: 06/02/2016)
06/07/2016	110	MINUTES OF Scheduling Conference held before Judge R. Gary Klausner. Amended Pleadings due by 8/1/2016. Discovery cut-off 11/30/2016. Motions due by 12/13/2016. Pretrial

		Conference set for 2/13/2017 at 9:00 am. Jury Trial set for 2/28/2017 at 9:00 am. Court Reporter: Sandra MacNeil. (sw) (Entered: 06/07/2016)
06/07/2016	111	ORDER RE JURY TRIAL by Judge R. Gary Klausner. Pretrial Conference set for 2/13/2017 at 9:00 am; Jury Trial set for 2/28/2017 at 9:00 am. See Order for details. (sw) (Entered: 06/07/2016)
06/14/2016	112	MINUTES (IN CHAMBERS) Order re: Defendant ZACR's Motion to Dismiss (DE 80) by Judge R. Gary Klausner: The Court GRANTS ZACR's Motion to Dismiss. (bp) (Entered: 06/14/2016)
06/20/2016	113	MINUTES (IN CHAMBERS) Order re: Defendants Motion for Reconsideration re Order on Motion for Preliminary Injunction by Judge R. Gary Klausner 85 86 . Therefore, the Court denies as moot ZACR's motion for reconsideration, and addresses the motion only as it pertains to ICANN. Upon review ICANN's arguments, the Court denies ICANN's motion. Refer to the Court's order for details. (ps0) (Entered: 06/20/2016)
06/22/2016	114	STIPULATION for Protective Order filed by Defendant Internet Corporation for Assigned Names and Numbers. (Attachments: # 1 Proposed Order)(Gezerseh, Rachel) (Entered: 06/22/2016)
06/24/2016	115	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Appellant ZA Central Registry. Appeal of Order on Motion for Reconsideration,, Order on Motion to Vacate, 113 , Order on Motion for Preliminary Injunction 75 . (Appeal Fee - \$505 Fee Paid, Receipt No. 0973-18078592.) (Kesselman, David) (Entered: 06/24/2016)
06/24/2016	116	REPRESENTATION STATEMENT re Notice of Appeal to 9th Circuit Court of Appeals, 115 . (Kesselman, David) (Entered: 06/24/2016)
06/24/2016	117	NOTIFICATION by Circuit Court of Appellate Docket Number 16-55894, 9th Circuit regarding Notice of Appeal to 9th Circuit Court of Appeals, 115 as to Plaintiff DotConnectAfrica Trust. (mat) (Entered: 06/27/2016)
06/27/2016	118	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 115 filed by ZA Central Registry. CCA # 16-55894. The appeal filed June 24, 2016 is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply. [See document for all details] (mat) (Entered: 06/27/2016)
06/27/2016	119	AMENDED NOTICE OF APPEAL to 9th CIRCUIT filed by Defendant Internet Corporation for Assigned Names and Numbers. Amending Notice of Appeal to 9th Circuit Court of Appeals, 89 Filed On: 4/12/16; Entered On: 4/12/16; (Attachments: # 1 Ex. 1 - Order on Preliminary Injunction; Ex. 2 - Order on Reconsideration Motion; Ex. 3 - Representation Statement)(LeVee, Jeffrey) (Entered: 06/27/2016)