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7 DOTCONNECTAFRICA TRUST
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10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

12 DOTCONNECTAFRICA TRUST

13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR
16 ASSIGNED NAMES AND NUMBERS
17 and DOES 1 through 50, inclusive,

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

**DECLARATION OF SOPHIA
BEKELE ESHETE**

Date: April 4, 2016
Hearing: 9:00 a.m.
Courtroom: 850

[Filed concurrently: Declarations of
Ethan J. Brown & Sara C. Colón;
Notice of Motion and Motion for
Preliminary Injunction; Memorandum
of Points and Authorities; [Proposed]
Order]; Application for Leave to File
Under Seal; and [Proposed] Order re
Application for Leave to File Under
Seal]

1 **DECLARATION OF SOPHIA BEKELE ESHETE**

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

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

8 2. I believe that DCA submitted a well-qualified and compelling
9 application for .Africa, which was undermined at each stage of the application
10 process by Defendant the Internet Corporation for Assigned Names and Numbers’
11 (“ICANN”) through breaches of its Bylaws, Articles of Incorporation, and the New
12 gTLD Guidebook due to its improper cooperation with the African Union
13 Commission (“AUC”). The AUC is the backer of the competing application for
14 the .Africa gTLD submitted by UniForum S.A., now known as Defendant ZA
15 Central Registry (“ZACR”).
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17 3. The .Africa gTLD and the operating rights to the .Africa gTLD are
18 unique assets. The .Africa gTLD is the regional identifier for the African continent,
19 similar to the .LAT and .Asia domains. It is a valuable attribute for entities,
20 professionals, and corporations seeking a regional online identity. Only one entity
21 can serve as the operator of .Africa and the rights to operate .Africa can only be
22 delegated by ICANN. Once the gTLD is awarded and the party controlling it
23 begins selling or offering its use to users of the Internet including businesses,
24 organizations, persons and governments, it would be difficult if not impossible to
25 unwind that control and provide it to another party.

26 4. DCA paid \$185,000, the fee required to all applicants, to ICANN for
27 processing of its application.
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1 5. Attached hereto as **Exhibit 1** is a true and correct copy of the Internet
2 Corporation for Assigned Names and Numbers (“ICANN”) Internal Review
3 Process (“IRP”) Final Declaration dated July 9, 2015.

4 6. Attached hereto as **Exhibit 2** is a true and correct copy, as posted at
5 [https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-](https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-en.pdf)
6 [en.pdf](https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-en.pdf), of the ICANN IRP Declaration on the IRP Procedure dated August 14,
7 2014.

8 7. Attached hereto as **Exhibit 3** is a true and correct copy, as I obtained
9 it from ICANN, of the ICANN Applicant Guidebook (the “Guidebook”) DCA
10 referred to when preparing and filing its application for .Africa.

11 8. ICANN required DCA to agree to the terms and conditions in the
12 Guidebook upon submitting its application for the .Africa gTLD.

13 9. ICANN did not afford DCA the opportunity to negotiate any terms in
14 the Guidebook, including the covenant not to sue. Nor did DCA contribute to any
15 of the language of the terms in the Guidebook.

16 10. In fact, Module 6 of the Guidebook states that the applicant must
17 agree to the terms and conditions “without modification.”

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

20 12. Attached hereto as **Exhibit 4** is a true and correct copy, as posted at
21 <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>, of ICANN’s
22 bylaws.
23

24 13. Attached hereto as **Exhibit 5** is a true and correct copy of the
25 description of ICANN’s Internal Review Process, as posted at ICANN’s website at
26 [https://www.icann.org/resources/pages/reconsideration-and-independent-review-](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review)
27 [icann-bylaws-article-iv-accountability-and-review](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review).
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1 14. Attached hereto as **Exhibit 6** is a true and correct copy of the August
2 27, 2009 DCA endorsement letter from the AUC to me.

3 15. Attached hereto as **Exhibit 7** is a true and correct copy of the April
4 16, 2010 letter from the AUC to me.

5 16. Attached hereto as **Exhibit 8** is a true and correct copy of the August
6 8, 2008 DCA endorsement letter from the United Nations Economic Commission
7 on Africa (“UNECA”) to me.

8 17. Attached hereto as **Exhibit 9** is a true and correct copy of the March
9 23, 2014 email I received as part of a group list email, from Alice Munyua. This
10 email was also forwarded to me.

11 18. Attached hereto as **Exhibit 10** is a true and correct copy of the
12 September 21, 2015 letter from UNECA to Dr. Ibrahim, a representative of the
13 AUC, on which I was copied.

14 19. Attached hereto as **Exhibit 11** is a true and correct copy of the
15 December 5, 2010 DCA endorsement letter from the Internationalized Domain
16 Resolution Union (“IDRU”) to me.

17 20. Attached hereto as **Exhibit 12** is a true and correct copy of the
18 November 17, 2010 DCA endorsement letter from the Corporate Council on Africa
19 to me.

20 21. Attached hereto as **Exhibit 13** is a true and correct copy of the August
21 7, 2012 endorsement letter from Kenya to me.

22 22. Attached hereto as **Exhibit 14** is a true and correct copy, as posted on
23 ICANN’s website at
24 [https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf)
25 [08mar12-en.pdf](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf), of the March 8, 2012 letter from ICANN to AUC.
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1 23. Instead of allowing DCA's application to proceed through the
2 remainder of the application process after the IRP, ICANN restarted DCA's
3 application and re-reviewed its endorsements.

4 24. Attached hereto as **Exhibit 15** is a true and correct copy of the first set
5 of clarifying questions ICANN issued to DCA on September 2, 2015.

6 25. Attached hereto as **Exhibit 16** is a true and correct copy of ICANN's
7 response to DCA regarding the clarifying questions in the Initial Evaluation
8 Results Report issued on October 13, 2015.

9 26. Attached hereto as **Exhibit 17** is a true and correct copy of the second
10 set of clarifying questions ICANN issued to DCA on October 30, 2015 during the
11 Extended Evaluation.

12 27. The second set of clarifying questions from ICANN provided no
13 further guidance or clarification to DCA on its application.

14 28. Attached hereto as **Exhibit 18** is a true and correct copy of the
15 Extended Evaluation Report dated February 17, 2016 that DCA received from
16 ICANN.

17 29. DCA agreed to participate in an Extended Evaluation because it was
18 hoping to gain insight into what more it needed for its application, but ICANN
19 gave no further guidance or clarification.

20 30. Attached hereto as **Exhibit 19** is a true and correct copy of a March
21 15, 2013 email from Mark McFadden of the ICC to ICANN employees, as
22 produced to DCA during the IRP discovery process.

23 31. The members of the AUC committee formed to choose who to
24 endorse for the .Africa gTLD were individuals who were also members of other
25 organizations affiliated with ZACR.

26 32. Attached hereto as **Exhibit 20** is a true and correct copy of ZACR's
27 public application for the .Africa gTLD as posted on ICANN's website.
28

1 33. Attached hereto as **Exhibit 21** is a true and correct copy, as posted on
2 the AUC’s website at <http://www.au.int/en/sites/default/files/AUC-dotAfrica->
3 [Communique-.pdf](http://www.au.int/en/sites/default/files/AUC-dotAfrica-Communique-.pdf), of the AUC Communique on the AUC selecting ZACR.

4 34. After reviewing the ZACR endorsements produced to DCA, I noted
5 that only five specifically reference ZACR by name and that many of the letters
6 were actually endorsing AUC’s own initiative to make .Africa a “reserved” gTLD.

7 35. Attached hereto as **Exhibit 22** is a true and correct copy of the
8 ICANN news article regarding InterConnect Communications (“ICC”) published
9 at <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>
10

11 36. Attached hereto as **Exhibit 23** is a true and correct copy, as produced
12 to DCA from ICANN, of the October 15, 2012 email from the ICC to ICANN with
13 attachment.

14 37. Attached hereto as **Exhibit 24** is a true and correct copy, as produced
15 to DCA by ICANN, of the April 9, 2013 email from Samuel Buruchara to Heather
16 Dryden.

17 38. Attached hereto as **Exhibit 25** is a true and correct copy, as produced
18 to DCA by ICANN, of the April 10, 2013 email from Michael Kutundu to Heather
19 Dryden.

20 39. Attached hereto as **Exhibit 26** is a true and correct copy, as posted at
21 [https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-](https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf)
22 [en.pdf](https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf), of the April 11, 2013 GAC Communique.

23 40. Attached hereto as **Exhibit 27** is a true and correct copy, as produced
24 to DCA by ICANN, of the New GTLD Program Initial Evaluation Report for
25 ZACR’s application.

26 41. Attached hereto as **Exhibit 28** is a true and correct copy, as posted on
27 ICANN’s website at
28 <https://gacweb.icann.org/display/gacweb/Upcoming+Meeting%3A+Marrakech,+5->

1 10+March+2016, of the meeting schedule for the ICANN meeting from March 5,
2 2016 through March 10, 2016. I believe that ICANN will assign the rights to
3 Africa at this meeting.

4 42. Attached hereto as Exhibit 29 is a true and correct copy, as posted at
5 ICANN's website at
6 <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>, of the GAC
7 Operating Principles.

8
9 I declare under penalty of perjury under the laws of the United States of America
10 that the foregoing is true and correct. Executed on March 1, 2016 at Walnut
11 Creek, California.

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14 Sophia Bekele Eshete

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17 4833-2797-1630, v. 2
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