

1 Ethan J. Brown (SBN 218814)
2 ethan@bnsklaw.com
3 Sara C. Colón (SBN 281514)
4 sara@bnsklaw.com
5 **BROWN NERI SMITH & KHAN 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 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES - CENTRAL**

14 DOTCONNECTAFRICA TRUST,

15 Plaintiff,

16 v.

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

19 Defendants.

Case No. BC607494

[Assigned for all purposes to Hon. Howard L.
Halm, Dept. 53]

**DECLARATION OF SOPHIA BEKELE
ESHETE IN SUPPORT OF DCA'S
OPPOSITION TO DEFENDANT
ICANN'S MOTION FOR SUMMARY
JUDGMENT**

Date: August 9, 2017

Hearing: 8:30 a.m.

Dept.: 53

[Filed concurrently: Opposition to Motion for
Summary Judgment; Separate Statement of
Material Disputed Facts and Additional
Undisputed Material Facts; Declaration of
Sara C. Colón; and Evidentiary Objections to
Declaration of Jeffrey LeVee]

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

7 2. I believe that DCA submitted a well-qualified and compelling application for
8 .Africa, which was undermined at each stage of the application process by Defendant the Internet
9 Corporation for Assigned Names and Numbers’ (“ICANN”) through breaches of its Bylaws,
10 Articles of Incorporation, and the New gTLD Guidebook due to its improper cooperation with the
11 African Union Commission (“AUC”). Pursuant to an agreement with DCA’s only competitor,
12 UniForum S.A., now known as Defendant/Intervenor ZA Central Registry (“ZACR”), the AUC
13 has obtained “all rights relating to the dotAfrica TLD.”

14 3. DCA planned to execute its mission of providing a continental Internet domain
15 name to provide access to internet services for the people of Africa by acting as the registry for the
16 .Africa gTLD.

17 4. DCA paid \$185,000, the fee required to all applicants, to ICANN for processing of
18 its application.

19 5. Attached hereto as **Exhibit 1** is a true and correct copy of the Internet Corporation
20 for Assigned Names and Numbers (“ICANN”) Independent Review Process (“IRP”) Final
21 Declaration dated July 9, 2015.

22 6. Attached hereto as **Exhibit 2** is a true and correct copy, as I obtained it from
23 ICANN, of relevant excerpts of the ICANN Applicant Guidebook (the “Guidebook”) DCA
24 referred to when preparing and filing its application for .Africa. A complete version of the
25 Guidebook was attached to my Declaration in Support of DCA’s Motion for Preliminary
26 Injunction, dated November 10, 2016.
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28

1 7. ICANN required DCA to agree to the terms and conditions in the Guidebook upon
2 submitting its application for the .Africa gTLD.

3 8. ICANN did not afford DCA the opportunity to negotiate any terms in the
4 Guidebook, including the covenant not to sue. Neither I nor DCA contributed to any of the
5 language in Module 6 of the new gTLD guidebook including the terms and conditions of
6 participating in the program.

7 9. In fact, Module 6 of the Guidebook states that the applicant must agree to the terms
8 and conditions “without modification.”

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

11 11. The Guidebook represented that the IRP provided actual redress to applicants.
12 ICANN’s Bylaws contained representations that ICANN would (1) “make decisions by applying
13 documented policies neutrally and objectively, with integrity and fairness;” (2) that ICANN would
14 “operate the maximum extent feasible in an open and transparent manner and consistent with
15 procedures designed to ensure fairness;” and (3) that ICANN would “be accountable to the Internet
16 community for operating in a manner that is consistent with these Bylaws, and with due regard to
17 the core values set forth in Article 1 of [its] Bylaws.” The Articles of Incorporation represented
18 that ICANN would carry out its activities in conformity with relevant principles of international
19 law and application of international conventions and local law.

20 12. ICANN also represented to me that the application process would be fair and
21 transparent through various representatives in presentations about the application process before
22 DCA applied and at meetings of the Generic Names Supporting Organization, an ICANN
23 committee of which I was a member, dedicated to keeping gTLD operation fair.

24 13. DCA believed these representations and accordingly believed that it would be
25 subject to the fair and unbiased application processing that ICANN promised.
26

1 14. DCA would not have applied for the .Africa gTLD, paid the non-refundable fee,
2 and would not have spent years campaigning for the endorsements and preparing an application,
3 if it had known that ICANN would favor ZACR throughout the process.

4 15. Attached hereto as **Exhibit 3** are a true and correct copies of excerpts of ICANN's
5 Bylaws, as posted at <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>. A complete
6 version of the Bylaws was attached to my Declaration in Support of DCA's Motion for Preliminary
7 Injunction, dated November 10, 2016.

8 16. Attached hereto as **Exhibit 4** is a true and correct copy of the description of
9 ICANN's Independent Review Process, as posted at ICANN's website at
10 [https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review)
11 [article-iv-accountability-and-review](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review).

12 17. Attached hereto as **Exhibit 5** is a true and correct copy of the August 27, 2009 DCA
13 endorsement letter from the AUC to me.

14 18. Attached hereto as **Exhibit 6** is a true and correct copy of the April 16, 2010 letter
15 from the AUC to me.

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

18 20. Attached hereto as **Exhibit 8** is a true and correct copy of the September 21, 2015
19 letter from UNECA to Dr. Ibrahim, a representative of the AUC, on which I was copied.

20 21. Attached hereto as **Exhibit 9** is a true and correct copy, as posted on ICANN's
21 website at [https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf)
22 [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.

23 22. Attached hereto as **Exhibit 10** is a true and correct copy of the first set of clarifying
24 questions ICANN issued to DCA on September 2, 2015.

25 23. Attached hereto as **Exhibit 11** is a true and correct copy of ICANN's response to
26 DCA regarding the clarifying questions in the Initial Evaluation Results Report issued on October
27 13, 2015.
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1 24. Attached hereto as **Exhibit 12** is a true and correct copy of the second set of
2 clarifying questions ICANN issued to DCA on October 30, 2015 during the Extended Evaluation.
3 The second set of clarifying questions from ICANN provided no further guidance or clarification
4 to DCA on its application.

5 25. Attached hereto as **Exhibit 13** is a true and correct copy of the Extended Evaluation
6 Report dated February 17, 2016 that DCA received from ICANN. DCA agreed to participate in
7 an Extended Evaluation, because it was hoping to gain insight into what more it needed for its
8 application, but ICANN gave no further guidance or clarification.

9 26. Attached hereto as **Exhibit 14** is a true and correct copy of a March 15, 2013 email
10 from Mark McFadden of the ICC to ICANN employees, as produced to DCA by ICANN during
11 the IRP discovery process.

12 27. The members of the AUC committee formed to choose who to endorse for the
13 .Africa gTLD were individuals who were also members of other organizations affiliated with
14 ZACR.
15

16 28. Attached hereto as **Exhibit 15** are true and correct copies of relevant excerpts of
17 ZACR's public application for the .Africa gTLD as posted on ICANN's website.

18 29. Attached hereto as **Exhibit 16** is a true and correct copy of the AUC Communique
19 on the AUC selecting ZACR, accessible at [http://dotconnectafrica.org/wp-](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf)
20 [content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf).

21 30. ICANN Senior Vice-President made representations that ICANN would follow the
22 criteria set forth in the Guidebook at a presentation during a TLD conference in September 2011
23 in Munich, Germany, where I was present. Attached hereto as **Exhibit 17** is a true and correct
24 copy of ICANN's Frequently Asked Questions for New gTLDs, accessible at
25 <https://newgtlds.icann.org/en/applicants/global-support/faqs/faqs-en>. The document states that
26 third party panels will "evaluate applications against criteria and requirements outlined in the
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1 Applicant Guidebook” and that “There’s no provision for Party X to enter into a registry agreement
2 with ICANN designating Party Y as the registry operator.”

3 31. After reviewing the ZACR endorsements produced to DCA, I noted that only five
4 specifically reference ZACR by name and that many of the letters were actually endorsing AUC’s
5 own initiative to make .Africa a “reserved” gTLD. Copies of ZACR endorsement letter were
6 attached as Exhibit 2 to the Declaration of Sara Colón in Support of DCA’s Ex Parte Application
7 for a Temporary Restraining Order, dated January 26, 2017.

8 32. Attached hereto as **Exhibit 18** is a true and correct copy of an October 15, 2012
9 email from ICC to ICANN with attachment, as produced to DCA by ICANN during the IRP
10 discovery process.

11 33. On June 25, 2013, ICANN employee Trang Nguyen prepared an endorsement letter
12 for the AUC in relation to the endorsement of ZACR. Attached hereto as **Exhibit 19** is a true and
13 correct copy of Trang Nguyen’s email and the letter ICANN wrote for the AUC to endorse ZACR,
14 as produced to DCA by ICANN during the IRP discovery process.

15 34. Attached hereto as **Exhibit 20**, is a true and correct copy of a July 5, 2013, email
16 chain between Trang Nguyen and Mark McFadden, as produced to DCA by ICANN during the
17 IRP discovery process.

18 35. Attached hereto as **Exhibit 21**, is a true and correct copy of the June 15, 2014, letter
19 from then President and CEO of ICANN, Fade Chedadé to the Commissioner of Infrastructure and
20 Energy at the African Union Commission, Dr. Elham Ibrahim.

21 36. Attached hereto as **Exhibit 22**, is a true and correct copy of the September 29, 2015
22 letter from Commissioner of Infrastructure and Energy at the African Union Commission, Dr.
23 Elham Ibrahim, to the ICANN Geographic Names Panel, accessible from ICANN’s website at
24 <https://www.icann.org/en/system/files/correspondence/ibrahim-to-gnp-29sep15-en.pdf>.
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