

1 Jeffrey A. LeVee (State Bar No. 125863)
Erin L. Burke (State Bar No. 186660)
2 Rachel T. Gezerseh (State Bar No. 251299)
Amanda Pushinsky (State Bar No. 267950)
3 JONES DAY
555 South Flower Street
4 Fiftieth Floor
Los Angeles, CA 90071.2300
5 Telephone: +1.213.489.3939
Facsimile: +1.213.243.2539
6

7 Attorneys for Defendant
INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS
8

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

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

CASE NO. BC607494

Assigned for all purposes to
Hon. Howard L. Halm

**ICANN'S RESPONSES TO DCA'S
EVIDENTIARY OBJECTIONS TO
THE DECLARATION OF
CHRISTINE WILLETT**

DATE: February 2, 2017
TIME: 8:30 a.m.
DEPT: 53

1 Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby
 2 responds to Plaintiff DotConnectAfrica Trust's ("DCA") evidentiary objections to the Declaration
 3 of Christine Willett ("Willett Decl."), filed in support of ICANN's Opposition to Plaintiff's
 4 Motion for Preliminary Injunction.
 5

Willett Declaration	DCA Objection	Response	Court's Ruling
<p>7 ¶ 2: In my role as Vice 8 President for Operations, I 9 have been responsible for 10 overseeing the evaluation of 11 the 1,930 gTLD applications 12 ICANN received in 2012 as 13 part of ICANN's New gTLD 14 Program. Those applications 15 are evaluated in accordance 16 with the procedures set forth in the New gTLD Applicant Guidebook ("Guidebook"). A copy of the Guidebook is attached as Exhibit 3 to the declaration of Sophia Bekele Eshete ("Bekele Declaration").</p>	<p>1. Lacks personal knowledge (Evid. Code § 702) 2. Lacks foundation (Evid. Code § 403.)</p>	<p><u>Foundation/Personal Knowledge.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the procedures governing the evaluation of New gTLD applications.</p>	
Willett Declaration	DCA Objection	Response	Court's Ruling
<p>18 ¶ 3: In the spring of 2012, 19 Plaintiff DCA and defendant 20 ZA Central Registry ("ZACR") each submitted 21 applications to operate 22 the .AFRICA gTLD. In doing 23 so, they, like all new gTLD 24 applicants, expressly accepted 25 and acknowledged the Guidebook, including the release and covenant not to sue ("Covenant") in paragraph 6 of Module 6.</p>	<p>1. Lacks personal knowledge (Evid. Code § 702) 2. Lacks foundation (Evid. Code § 403)</p>	<p><u>Foundation/Personal Knowledge.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the procedures governing the evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa.</p>	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Willett Declaration	DCA Objection	Response	Court's Ruling
<p>¶ 6: In addition, because DCA and ZACR had each applied for a gTLD that represents the name of a geographic region, the Guidebook requires that DCA and ZACR each provide documentation of support or non-objection from at least 60% of the governments in the region. Bekele Decl. Ex. 3 § 2.2.1.4.2. The Guidebook also provides that a Geographic Names Panel operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of an applicant's documentation of support. <i>Id.</i> §§ 2.4.2, 2.2.1.4.4. The Geographic Names Panel evaluated the support letters submitted by the applicants pursuant to the criteria set forth in the Guidebook. In particular, section 2.2.1.4.3 of the Guidebook required that letters of support for a geographic name "clearly express the government's or public authority's support for or nonobjection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use." It further requires that a letter of support "should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the</p>	<ol style="list-style-type: none"> 1. Lacks personal knowledge (Evid. Code § 702) 2. Lacks foundation (Evid. Code § 403) 3. Best evidence rule (Evid. Code § 1520) 	<p><u>Foundation/Personal Knowledge.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of contents of the Guidebook and the actions taken by the Geographic Names Panel.</p> <p><u>Best Evidence.</u> This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge of ICANN's procedures to evaluate New gTLD applications, including ICANN's implementation of the Guidebook's requirements in reviewing New gTLD applications, including DCA and ZACR's applications. A true and correct copy of the Guidebook is attached as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").</p>	

1	conditions under which the			
2	string will be available, i.e.,			
3	entry into a registry agreement			
4	with ICANN requiring			
5	compliance with consensus			
6	policies and payment of fees.”			
7	The Geographic Names Panel			
8	treated both of these			
9	requirements as mandatory for			
10	all applicants (including DCA			
11	and ZACR).			
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
	Willett Declaration	DCA Objection	Response	Court's Ruling
	¶ 7: ZACR submitted 41 letters of support with its application, including over thirty letters from individual African governments, and a 2012 letter from the African Union Commission ("AUC"). The AUC is the secretariat for the African Union, in which every African nation except Morocco is a member. DCA submitted six letters of support with its application for .AFRICA ("Application") - one from the AUC, one from the United Nations Economic Commission for Africa ("UNECA"), three from individual African countries, and one from the South African Embassy in Washington, D.C.	1. Lacks foundation (Evid. Code § 403) 2. Best evidence rule (Evid. Code § 1520)	<u>Foundation/Personal Knowledge.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa, the contents of those applications, and their supporting documentation. <u>Best Evidence.</u> This testimony is not offered to prove the contents of a writing. Ms. Willett's testimony is based on her personal knowledge of the evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa, the contents of those applications, and their supporting documentation.	
	Willett Declaration	DCA Objection	Response	Court's Ruling

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¶ 8: The AUC letter of support that DCA submitted was dated April 27, 2009. A copy of that letter is attached as Exhibit 6 to the Bekele Declaration. I now understand that, in 2010, DCA received a letter from the AUC that formally withdrew the AUC's support for DCA's Application. A copy of that letter is attached as Exhibit 7 to the Bekele Declaration. DCA did not submit to ICANN with its Application a copy of the AUC's 2010 letter withdrawing its support for DCA. Although the 2010 AUC letter indicates that ICANN was copied, the "cc" did not identify any specific person at ICANN, and ICANN has no record of receiving the letter. Inasmuch as the letter was sent two years before ICANN began receiving gTLD applications, ICANN had no "files" set up for any particular application.

1. Lacks personal knowledge (Evid. Code § 702).
2. Lacks foundation and irrelevant (Evid. Code § 403).
3. Best evidence rule (Evid. Code § 1520).
4. Prejudicial because the statement is materially misleading because it fails to state that DCA specifically identified the purported withdrawal in its application ICANN and has done so on numerous occasions (Evid. Code § 352).
5. Bekele Decl. ¶ ____, Ex. ____ (“Unlike the initial letter of support from the AUC the subsequent letter omitted any official stamp, was not signed by the AUC Chairman, and instead was signed by the Deputy Chairperson).

Personal Knowledge/Foundation. Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa, the contents of those applications, and their supporting documentation.

Best evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge of ICANN's review of DCA's application for .Africa, including information withheld by DCA at the time of its application and subsequent knowledge of the 2010 AUC letter withdrawing the 2009 endorsement. A true and correct copy of the 2010 AUC letter is attached as Exhibit 7 to the Bekele Declaration.

Prejudicial. This testimony is not materially misleading nor prejudicial. Ms. Willett's declaration simply states that DCA did not attach a copy of the 2010 letter with its application, a fact DCA conceded in its deposition.

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

		LeVee Decl., Exh. H. <u>Fifth Objection.</u> It is unclear what evidentiary objection DCA intended to make with its fifth objection. To the extent DCA is questioning the authenticity of the April 16, 2010 letter, <i>see</i> Declaration of Moctar Yedaly, ¶ 10, which authenticates the letter.	
Willett Declaration	DCA Objection	Response	Court's Ruling
¶ 9: The letter of support from UNECA that DCA submitted with its application was dated August 8, 2008. A copy of that letter is attached as Exhibit 8 to the Bekele Declaration. In September 2015, UNECA wrote in a letter to the AUC that it was a "United Nations entity [that] is neither a government nor public authority and therefore is not qualified to issue a letter of support for a prospective applicant," and that its August 2008 letter was "merely an expression of a view in relation to [DCA's] initiatives and efforts regarding internet governance [and] cannot be properly considered as a 'letter of support' within the context of ICANN's requirements and cannot be used as such." A true and correct copy of UNECA's September 2015 letter is attached as Exhibit 9 to the Bekele Declaration.	1. Best evidence rule (Evid. Code § 1520). 2. Lacks foundation (Evid. Code § 403.) 3. Irrelevant (Evid. Code § 403). 4. The GNP had already determined that UNECA was a valid endorser. McFadden Decl. ¶ 6.	<u>Best Evidence.</u> This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa and the processing of those applications. <u>Foundation.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa, the contents of those applications, and their	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		<p>supporting documentation.</p> <p><u>Relevance.</u> Testimony regarding the 2015 letter from UNECA is relevant to show that DCA would not have been able to obtain an updated letter from UNECA that conformed with the Guidebook’s requirements following the IRP Declaration. This evidence supports ICANN’s argument that DCA has no likelihood of success on the merits as to its second and fifth causes of action.</p> <p><u>Fourth Objection.</u> Again, it is unclear what evidentiary objection DCA intends to make with its fourth objection. Because the 2008 UNECA letter failed to conform to the Guidebook’s requirements, DCA was required to obtain an updated letter from UNECA if it were to rely on a letter from UNECA to fulfill the 60% requirement of support or non-objection from government authorities. Regardless of any determination by the GNP as to whether UNECA qualifies as a valid endorser, the September 2015 UNECA letter shows that DCA would have been unable to do so.</p>	
Willett Declaration	DCA Objection	Response	Court’s Ruling
¶ 10: On June 5, 2013, at the time when ICANN’s Board accepted the Governmental Advisory Committee’s (“GAC’s”) advice objecting to	1. Lacks foundation (Evid. Code § 403)	<u>Foundation.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that	

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

DCA's Application, DCA had not yet passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been in the midst of its review of DCA's Application; it had determined that the support documentation submitted by DCA, including the letters from the AUC and UNECA, did not meet the criteria set forth in the Guidebook, and was therefore planning to send "clarifying questions" to DCA. Clarifying questions are sent where support documentation does not meet the criteria set forth in the Guidebook, and they are an accommodation to provide applicants an opportunity to explain/supplement their documentation. However, as a result of the ICANN Board's acceptance of the GAC's advice, DCA's Application was removed from processing, and the clarifying questions were not sent at that time.

role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including DCA and ZACR's applications, and including ICANN's and the Geographic Names Panel's handling of the .Africa applications following the GAC advice in 2013.

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

Willett Declaration	DCA Objection	Response	Court's Ruling
<p>¶ 11: By July 31, 2015, following the ICANN Board's adoption of the recommendations of the Independent Review Panel in <i>DCA v. ICANN</i> ("IRP Panel"), DCA's Application was returned to processing as the Board directed. DCA's Application was returned to precisely the portion of the review that was pending on the date the Application was removed from processing—the Geographic Names Panel review. As the Geographic Names Panel had been preparing to do when DCA's Application was removed from processing, the Geographic Names Panel issued clarifying questions to DCA on September 2, 2015, regarding the documentation DCA had submitted with its Application. Those clarifying questions are attached as Exhibit 13 to the Bekele Declaration. DCA was given an opportunity to respond to those clarifying questions. Instead of supplementing its documentation, DCA wrote to ICANN on September 28, 2015, taking the position that the documentation that it had submitted with its Application in 2012 was sufficient.</p>	<p>1. Lacks foundation (Evid. Code § 403) 2. Lacks personal knowledge (Evid. Code § 702).</p>	<p><u>Foundation/Personal Knowledge.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including ICANN's and the Geographic Names Panel's processing of DCA's application following the IRP Declaration.</p>	
Willett Declaration	DCA Objection	Response	Court's Ruling
<p>¶ 12: On October 13, 2015, ICANN issued the Initial Evaluation Report regarding DCA's Application. The Initial Evaluation Report</p>	<p>1. Best evidence rule (Evid. Code § 1520).</p>	<p><u>Best Evidence.</u> This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based</p>	

1 noted that the Application had
 2 passed all reviews except for
 3 the Geographic Names Panel
 4 review. As provided by the
 5 Guidebook, the report stated
 6 that DCA would have the
 7 opportunity to participate in
 8 “Extended Evaluation,” which
 9 offered DCA additional time
 10 to provide the requisite
 11 documentation of support or
 12 non-objection from African
 13 governments. A true and
 14 correct copy of the Initial
 15 Evaluation Report is attached
 16 hereto as **Exhibit A**.

on her personal knowledge
 as the Vice President for
 Operations of the Global
 Domains Division of ICANN
 regarding the evaluation of
 New gTLD applications,
 including ICANN's and the
 Geographic Names Panel's
 handling of the .Africa
 applications.

Willett Declaration	DCA Objection	Response	Court's Ruling
<p>12 ¶ 13: As part of Extended 13 Evaluation, the Geographic 14 Names Panel again issued 15 clarifying questions to DCA 16 on October 30, 2015, 17 identifying the issues with the 18 documented support 19 submitted by DCA. Those 20 clarifying questions are 21 attached as Exhibit 15 to the 22 Bekele Declaration. DCA was 23 given until January 28, 2016, 24 to supplement its 25 documentation. However, 26 rather than supplementing its 27 documentation, DCA 28 submitted a letter from its counsel and again took the position that the documentation that it had submitted with its Application in 2012 was sufficient.</p>	<p>1. Lacks foundation (Evid. Code § 403). 2. Lacks personal knowledge (Evid. Code § 702).</p>	<p><u>Foundation/Personal Knowledge.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including DCA and ZACR's applications, and including ICANN's and the Geographic Names Panel's handling of the .Africa applications.</p>	
<p>26 ¶ 14: Notably, nearly identical 27 clarifying questions were sent 28 to ZACR in 2013 when ZACR's application for .AFRICA was undergoing</p>	<p>1. Lacks foundation (Evid. Code § 403). 2. Lacks personal knowledge and</p>	<p><u>Foundation/Personal Knowledge.</u> Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division</p>	

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	<p>Geographic Name Review. True and correct copies of the clarifying questions issued to ZACR related to the AUC and UNECA letters are attached hereto as Exhibits B and C. Unlike DCA, ZACR submitted an updated letter from the AUC endorsing ZACR on July 3, 2013, which provided ZACR with the requisite support of 60% of the governments of Africa and allowed ZACR to pass Geographic Names Review. A true and correct copy of that letter is attached hereto as Exhibit D. Had DCA been able to obtain an updated, fully satisfactory letter from the AUC, it too would have passed Geographic Names Review. In that instance, contention resolution would have proceeded in accordance with Guidebook procedures; and, had the AUC not expressed a preference for one applicant over another, the contention may have been resolved by way of an auction between the two parties.</p>	<p>speculative (Evid. Code § 702). 3. Best evidence rule (Evid. Code § 1520).</p>	<p>of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of ICANN's processing of DCA and ZACR's applications for .Africa during the Geographic Names Review and the contents of the Guidebook.</p> <p><u>Best Evidence.</u> Ms. Willett's statement is not offered to prove the contents of a writing, but is based on her personal knowledge of ICANN's processing of DCA and ZACR's applications for .Africa during the Geographic Names Review. True and correct copies of the Clarifying Questions issued to ZACR related to the AUC and UNECA letters are attached to the Willett Declaration as Exhibits B and C.</p>	
---	--	---	---	--

	Willett Declaration	DCA Objection	Response	Court's Ruling
20 21 22 23 24 25 26 27 28	<p>¶ 15: On February 17, 2016, ICANN issued an Extended Evaluation Report stating that the Geographic Names Panel had determined that DCA had failed to provide the requisite documentation of support or nonobjection from relevant governments, despite the extended opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the Bekele</p>	<p>1. Best evidence rule (Evid. Code § 1520).</p>	<p><u>Best Evidence.</u> Ms. Willett's statement is not offered to prove the contents of a writing, but is based on her personal knowledge of ICANN's processing of DCA and ZACR's applications for .Africa and including ICANN's and the Geographic Names Panel's handling of the .Africa applications.</p>	

1	Declaration. As a result, and as provided by the			
2	Guidebook, ICANN stopped			
3	processing DCA's			
4	Application. (Guidebook at 174 (§ 2.2.1.4.4).)			
5	Willett Declaration	DCA Objection	Response	Court's Ruling
6	¶ 16: On March 3, 2016, ICANN's Board adopted a	1. Lacks foundation (Evid. Code § 403).	<u>Foundation/personal knowledge.</u> Ms. Willett testified that she is the Vice	
7	resolution lifting the stay on the delegation of .AFRICA. A	2. Lacks personal knowledge (Evid. Code § 702).	President for Operations of the Global Domains Division of ICANN, and that in that	
8	true and correct copy of the Board's March 3, 2016	3. Best evidence rule (Evid. Code § 1520).	role she has been responsible for overseeing the evaluation of applications received as	
9	resolution is attached to this declaration as Exhibit E .		part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has	
10			personal knowledge of the evaluation of New gTLD applications, including DCA	
11			and ZACR's applications for .Africa, and certain actions taken by ICANN	
12			pertaining to those applications.	
13			<u>Best evidence.</u> This testimony is not offered to prove the contents of a	
14			writing. Rather, Ms. Willett's testimony is based on her personal knowledge	
15			as the Vice President for Operations of the Global Domains Division of ICANN	
16			regarding the evaluation of New gTLD applications, including DCA and ZACR's	
17			applications for .Africa.	
18				
19				
20				
21				
22				
23				
24				
25				
26	Willett Declaration	DCA Objection	Response	Court's Ruling
27	¶ 17: As described in the concurrently-filed declaration of Akram Atallah, ICANN's	1. Irrelevant (Evid. Code § 403).	<u>Relevance.</u> Testimony regarding the accountability mechanisms provided by	
28				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Bylaws provide for several accountability mechanisms to ensure that ICANN operates in accordance with its Articles of Incorporation, Bylaws, policies and procedures. For example, an aggrieved applicant can file a “request for reconsideration,” which is a mechanism that asks the ICANN Board to re-evaluate certain Board or staff actions or inactions that the applicant believes have harmed it. In addition, an aggrieved applicant can file a “request for independent review,” a unique process set forth in ICANN’s Bylaws that asks independent panelists to evaluate whether an action of ICANN’s Board was consistent with ICANN’s Articles of Incorporation and Bylaws. Bekele Decl., Ex. 4 (Bylaws, Art. IV, §§ 2-3). DCA could have filed, but did not file, a reconsideration request or a request for an independent review process (“IRP”) related to the clarifying questions issued to it, or to the determination that DCA had failed the Geographic Names Review.</p>	<p>2. Best evidence rule (Evid. Code § 1520).</p>	<p>way of ICANN's Bylaws is directly relevant to DCA's claim that ICANN misrepresented the availability of accountability mechanisms.</p> <p><u>Best Evidence.</u> This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge as the Vice President for Operations of the Global Domains Division of ICANN regarding the mechanisms that ensure ICANN operates in accordance with its Articles of Incorporation, Bylaws, policies and procedures. A true and correct copy of the ICANN Bylaws can be found at Bekele Decl., Ex. 4 (Bylaws, Art. IV, §§ 2-3).</p>	
<p>Willett Declaration</p>	<p>DCA Objection</p>	<p>Response</p>	<p>Court's Ruling</p>
<p>¶ 18: There is nothing in the Guidebook that prevents an applicant for a new gTLD from assigning intellectual property rights to a third party. Accordingly, that ZACR intends to assign certain rights to the AUC upon delegation of .AFRICA does not violate any terms of</p>	<p>1. Irrelevant (Evid. Code § 403). 2. Misleading as the Masilela declaration clearly shows that the AUC was ZACR’s <i>partner</i> in applying.</p>	<p><u>Relevance.</u> This testimony is directly relevant to counter DCA's claim that ZACR's application was improper because it assigned certain intellectual property rights to the AUC.</p> <p><u>Second Objection.</u> Again, it is unclear what <u>evidentiary</u></p>	

1	the Guidebook. The AUC	Masilela Decl. ¶8,	objection DCA intended to	
2	itself could have applied	Ex. A.	make with its second	
3	for .Africa. There is no basis		objection. Even if this	
4	to assert that any assignment		accusation were accurate,	
	of rights to the AUC was		"misleading" is not an	
	improper.		evidentiary objection.	
5	Willett Declaration	DCA Objection	Response	Court's Ruling
6	¶ 19: Both DCA and ZACR	1. Best evidence	<u>Best evidence.</u> This	
7	submitted standard (meaning,	rule (Evid. Code	testimony is not offered to	
8	not community-based)	§ 1520).	prove the contents of a	
9	applications for the .AFRICA		writing. Rather, Ms.	
10	gTLD. Even if the applicants		Willett's testimony is based	
11	intend to operate		on her personal knowledge	
12	the .AFRICA gTLD on behalf		as the Vice President for	
13	of the African community,		Operations of the Global	
14	they are not obligated to		Domains Division of ICANN	
15	submit a "community"		regarding procedures	
16	application for the gTLD. A		governing the evaluation of	
17	"community" application is a		New gTLD applications,	
18	special application available		including DCA and ZACR's	
19	under the Guidebook that		applications for .Africa.	
20	requires an application to			
21	meet heightened criteria; and,			
22	if a community application			
23	prevails in Community			
24	Priority Evaluation, that			
25	application is given priority			
26	over all other applications in			
27	the contention set. Here,			
28	neither DCA nor ZACR			
	submitted, nor were required			
	to submit, a community			
	application.			
21	Willett Declaration	DCA Objection	Response	Court's Ruling
22	¶ 21: A "registrar" is an entity	1. Best evidence	<u>Best evidence.</u> This	
23	that sells domain name	rule (Evid. Code	testimony is not offered to	
24	subscriptions to consumers.	§ 1520).	prove the contents of a	
25	This is in contrast to a	2. Speculative.	writing. Rather, Ms.	
26	"registry" which is the entity	(Evid. Code §	Willett's testimony is based	
27	that operates the gTLD. In	702).	on her personal knowledge	
28	nearly all situations, it is		as the Vice President for	
	permissible for a gTLD		Operations of the Global	
	registry operator to also act as		Domains Division of ICANN	
	registrar. ICANN has allowed		regarding the mechanisms	
	such "cross-ownership" of		that ensure ICANN operates	

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

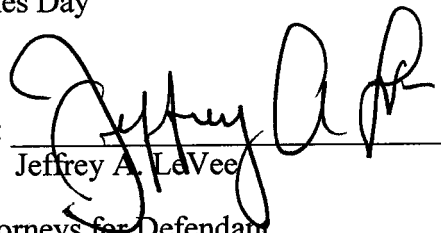
TLDs since 2010. The ICANN Registry Agreement compels registry operators to deal with all registrars in a fair and equitable manner, and ICANN has compliance mechanisms in place to monitor cross-ownership. Thus, ZACR cannot provide preferential treatment or access to its own registrar; instead, ZACR (like any gTLD registry) must treat all of its registrars equally and on the same terms.

in accordance with its Articles of Incorporation, Bylaws, policies and procedures.

Speculative. Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the mechanisms that ensure ICANN operates in accordance with its Articles of Incorporation, Bylaws, policies and procedures.

Dated: February 1, 2017

Jones Day

By: 
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

1 **PROOF OF SERVICE**

2 I, Diane Sanchez, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On February 1,
6 2017, I served a copy of the within document(s):

7 **ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS TO THE
8 DECLARATION OF CHRISTINE WILLETT**

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

16 Ethan J. Brown
17 ethan@bnsllawgroup.com
18 Sara C. Colón
19 sara@bnsllawgroup.com
20 Rowennakete "Kete" Barnes
21 kete@bnsllaw.com
22 BROWN NERI & SMITH LLP
23 11766 Wilshire Boulevard, Suite 1670
24 Los Angeles, California 90025
25 Telephone: (310) 593-9890

David W. Kesselman, Esq.
Kesselman Brantly Stockinger LLP
1230 Rosecrans Ave, Suite 690
Manhattan Beach, CA 90266
(310) 307-4556
(310) 307-4570 fax
dkesselman@kbsllaw.com

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

28 Executed on February 1, 2017, at Los Angeles, California.


Diane Sanchez