

1 Ethan J. Brown (SBN 218814)  
ethan@bnslawgroup.com  
2 Sara C. Colón (SBN 281514)  
sara@bnslawgroup.com  
3 **BROWN NERI & SMITH LLP**  
11766 Wilshire Boulevard, Suite 1670  
4 Los Angeles, California 90025  
Telephone: (310) 593-9890  
5 Facsimile: (310) 593-9980

6 *Attorneys for Plaintiff*  
7 DOTCONNECTAFRICA TRUST  
8  
9

10 **UNITED STATES DISTRICT COURT**

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

12 DOTCONNECTAFRICA TRUST, a  
13 Mauritius Charitable Trust,

14 Plaintiff,

15 v.

16 INTERNET CORPORATION FOR  
17 ASSIGNED NAMES AND  
18 NUMBERS, a California corporation;  
19 ZA Central Registry, a South African  
non-profit company, nd DOES 1  
through 50, inclusive,

20 Defendants.  
21  
22  
23  
24

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

**UNREDACTED EXHIBITS 19 &  
23-25 TO SOPHIA BEKELE  
ESHETE DECLARATION IN  
SUPPORT OF MOTION FOR  
PRELIMINARY INJUCTION**

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

[Previously filed redacted pursuant to  
Application for Leave to File Under  
Seal]

# EXHIBIT 19

---

**From:** Mark McFadden Contact Information Redacted  
**Sent:** Friday, March 15, 2013 5:56 PM  
**To:** Larisa B. Gurnick  
**Cc:** Emily Taylor  
**Subject:** .AFRICA  
**Attachments:** Expression of Interest for the Dot Africa -ENG-3.pdf; Notes on the African Union.docx; 2013 03 14 - GEONAM - Evaluation Worksheet - AFRICA.2.xls

**Importance:** High

Larissa:

Our panel has reconsidered the additional letters of support for .africa as ICANN has requested. The files attached to this message should help ICANN's management team make progress on the Geographic Names issues related to both applications for the .africa gTLD.

Our panel attaches a spreadsheet which contains the additional analysis according to the Guidebook which was requested by ICANN. It sets out the documents provided by the applicants in date order. From this, our panel observes that there are letters from the African Union supporting both .AFRICA applications. Two dating back to 2008-9 appear to support the DotAfrica Project application; the two more recent letters refer to the African Union's own application.

We have prepared a short note on the African Union itself, and this contains an analysis of the two declarations of ICT Ministers that were provided. These instruct the executive (Commission) to pursue the DotAfrica project, and in our independent opinion, provide suitable evidence of support from relevant governments or public authorities.

In brief, the African Union is closely modeled on the European Union. It has the power to bind member states, and has an executive arm, the Commission. It has 53 member states. In the independent opinion of the Geographic Names panel, we believe that it is a relevant public authority in the guidebook's terms.

The attached "expression of Internet" document refers to additional statements (explored in the note on the African Union) which would be helpful - but not necessary - to see.

In summary, we make the following recommendations to ICANN: the Geographic Names panel should be directed to take into account declarations made by ICT Ministers of the African Union, contrary to explicit previous guidance by ICANN; also, ICANN should work with the Geographic Names panel to re-fashion separate CQs for each of the applicants with the intent to discover whether the African Union Declarations support both .africa applications, or clarify which of the two applications the African Union now intends to support.

We stand ready to take immediate action in regards to further work on .africa.

mark

---

This e-mail has been scanned for all viruses by Star Internet. However, InterConnect makes no warranty that this email is virus-free.

---

AFRICAN UNION  
الاتحاد الأفريقي



UNION AFRICAINE  
UNIÃO AFRICANA

**EXPRESSION OF INTEREST FOR THE OPERATION OF THE DOTAFRICA**

In their Olivier Tambo Declaration adopted at their extraordinary Conference held in Johannesburg, South Africa, 2-5 November 2009, the African Union Ministers in charge of Communication and Information Technologies (CITMC) acknowledge the necessity to *"Establish DotAfrica as a continental Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet agencies"*.

And in their Abuja 2010 Declaration adopted at their Third Ordinary Conference (CITMC-3) held in Abuja, Nigeria, from 6 – 7 August 2010, the Ministers requested the African Union Commission (AUC) to *"Set up the structure and modalities for the implementation of the DotAfrica project."*

This decision followed the acknowledgement of the benefit of the DotAfrica domain name to Africa, by the African Union Heads of State and Governments (HoSG) Summit held in February 2010 in Addis Ababa.

DotAfrica (.Africa) is that specific Internet namespace for Africa and which is likely to be endorsed for operation during the next round of new gTlds which ICANN will be launching soon.

DotAfrica will be adding value to the namespace as a recognizable phrase which focuses on the African identity. DotAfrica will serve a community which spans over a large portion of region, therefore providing registrants with accrued possibilities for establishing their Internet presence. It is expected that the Africa small and medium size enterprises will greatly benefit from DotAfrica, as they thrive beyond their local markets to invade the regional and continental marketplace. The Internet will therefore become a platform for growth of the Africa business.

The introduction of the DotAfrica will create an attractive regional home for the Pan-African Internet community; this will be the first sponsored registry to be operating from Africa and therefore serving the specific needs of its communities.

Within this background, the African Union Commission is seeking the services of interested entities to operate the DotAfrica gTld.

Interested firms or consortium should submit the following documents along with signed and sealed Letter of Expression of Interest:

- i. Detailed company profile indicating verifiable previous experiences within the last three years,
- ii. Copies of registration certificates and business licenses,
- iii. Audited Financial Statement for the past three years

**Communication and Enquiry**

Additional information could be obtained from  
**M. Moctar YEDALY,**  
Head of Information Society Division  
African Union Commission, Addis Ababa, Ethiopia  
Contact Information Redacted

Or

**Hussain Usman, Procurement Unit.**  
Email: Contact Information Redacted

**Submission of Expression of Interest**

One original and three copies of EOIs (in either English or French Language) must be received in one sealed envelope not later than **Friday, 3<sup>rd</sup> of June 2011 at 1530hours local time**. Late bid would be rejected and return unopened.

The address for submission is: **The Chairperson of Tender Board; African Union Commission; Roosevelt Street, Building C, 2<sup>nd</sup> Floor, Room 327, P. O. Box 3243, Addis Ababa, Ethiopia Tel: +251 11-551-7700; Fax: +251 11-551-0430**

Information on the outer envelope should include: on the top left side, boldly written; **Expression of Interest for the Operation of the Dotafrika.**

In the middle of the envelope should be the address.

At the bottom right corner; write **"Do not open, except in the presence of Evaluation Committee"**

All EOIs received would be evaluated based on the company's experience in similar assignment; valid registration certificates and annual turnover

Bidding Document would be sent to short listed companies that met our technical requirements for the final stage of the selection process.

#### Notes on the African Union

It has 53 members. The only country in the continent of Africa which is not a member is Morocco. It left because of disagreement over Western Sahara issues.

The Constitution of the African Union (dated 11 July 2000) can be found at [http://www.africa-union.org/root/au/aboutau/constitutive\\_act\\_en.htm#Article7](http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm#Article7)

Its objectives include greater unity and solidarity between African countries, promotion of peace, security and stability, providing sustainable development at the economic, social and cultural levels as well as *integration of African economies*, coordination and harmonisation of policies between Regional Economic Communities.

African countries have the right to request intervention from the Union to restore peace and security.

The organs of the Union include:

The **Assembly** of the Union – takes decisions by consensus or two-thirds majority on a vote.

Its powers include “determine the common policies of the Union”; “receive, consider and *take decisions* on reports and recommendations from the other organs of the Union”; “monitor implementation of policies and decisions of the Union as well as *ensure compliance by all Member States.*”

The Assembly may impose sanctions on Member States.

The African Union’s constitution also provides for the establishment of a Pan-African Parliament, Court of Justice, and central banks.

The **Commission** is the executive wing of the African Union, whose structure, functions and regulations are determined by the Assembly.

---

#### Observations –

The AU is closely modelled on the EU. Its constitution provides for binding determinations and decisions to be made by the Assembly. The withdrawal of Morocco is significant, because it indicates that Member States do not feel that continued participation in the AU is compatible with ignoring or opposing its decisions.

There are two Declarations relevant to the .AFRICA gTLD application(s).

2009 – Oliver Tambo

2010 – Abuja Declaration

Both are declarations of African Union Ministers in Charge of Communication and Information Technologies – the relevant portfolio for domain name policy.

The 2009 Declaration commits to working together to promote the use of ccTLDs as critical national resources, and ensure that the technical and administrative operations are at international standards to foster trust and use of African Domain Names. It also recommends to the AU Assembly to direct Ministers of Finance to work in close cooperation with ICT Ministers to *identify innovative*

*funding mechanisms to enable Member States to contribute to the African Union Communication and Information Technologies Fund.*

NB the Expression of Interest for the Operation of Dot Africa states that the Oliver Tambo Declaration refers to DotAfrica. I have been unable to find the quoted phrase in the copy I have, and (while this is not necessary given the 2010 declaration) it would be helpful if the applicants could provide further documentation containing the quoted phrase if possible.

The 2010 Declaration requests the AU Commission to "set up the structure and modalities for the implementation of the DotAfrica project." This is a clear instruction by ICT Ministers from the African Region to its executive wing.

NB The Expression of Interest also mentions that the African Union Heads of State and Governments in their Summit (Addis Ababa 2010) acknowledged the benefit of DotAfrica. I was unable to locate this in the Addis Ababa decisions document. Again, while this is not not necessary given the 2010 Declaration, it would be helpful to see the documentation supporting this statement.

---

DATE	Application	LETTER OF SUPPORT FROM	ADIT	ADDRESSEE	Q1: Letters signed?	Q2: Relevant authorities?	Q3: Support or non-objection?	Q4: Understanding of the string?	Q5: Understanding of intended use?	Q6: Understanding of ATD app. process?	Q7: Registry agreement with ICANN?	Q8: Compliance with ICANN's policies?	Q9: Government body exists?	Q10: Signatory holds role on App. date?	Q11: Government body relevant?	Q12: Documentation adequate?	Q13: Payment of fees?	Q14: UNESCO registry/Composition - list	Q15: 60% support?	Q16: No of objections	Q17: Sufficient documentation?	Q18: Documentation valid?	Status of Evaluation	Note
8-Aug-08	AFRICA	UNICA	Ms Sophia Bekhe Dac	Africa Project Initiative	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
27-Aug-08	AFRICA	African Union	Ms Sophia Bekhe, Dot	Africa Project Initiative	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Nov-07	AFRICA	Other Tamba Declaration	SEE SEPARATE NOTE																					
Aug-10	AFRICA	Abuja Declaration	SEE SEPARATE NOTE																					
16-Sep-11	AFRICA	UNICA	Commissioner, African Union	UNIFORM SAZON	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
4-Apr-12	AFRICA	African Union	UNIFORM SAZON		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	

Call the string details and Africa. The string has been amended to Africa therefore I have marked this as 'Y'. UNICAs made up of 24 member states and its mandate includes IC bodies for the region.

There are 23 member states of the African Union. The Commission is the secretariat of the African Union. One of the powers of the Assembly is stated as "monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States," suggesting a power to bind the member states on relevant decisions.

UNICA referred to in Abuja Declaration to assist Commission in implementation of other legislation harmonization refers to terms and conditions (not seen) setting out the agreement between the parties.



# EXHIBIT 23

**From:** Mark McFadden Contact Information Redacted  
**Sent:** Thursday, October 25, 2012 9:31 AM  
**To:** Larisa Gurnick  
**Cc:** Ann H. Yamashita; Russ Weinstein  
**Subject:** RE: .africa  
**Attachments:** IN CONFIDENCE - GEONAM - Preliminary Evaluation Worksheet .africa.xls  
**Importance:** High

Larisa,

Here is a preliminary matrix that documents the problem with .africa. Note that we were advised by Kurt to cease working on .dotafrica until the executive team had made a decision about how to proceed.

There are 44 letters of support for .africa. Of these, 4 are from either the UN or the AUC and ICANN has already advised us that these will not count toward the 60% regional rule in the AGB. As you can see in the matrix, under the previous reading of the criteria in the AGB many of these letters will result in CQ's. The problem is that the governments supporting .africa were given a template letter that fails many of the tests of the AGB – and they used that template in writing their letter of support.

There are only six letters of support for the former .dotAfrica. However, one of the letters is from the AU and there is clear intent that this "represents" the member states of the AU. In a note on the endorsement the applicant writes the following:

The applicant for DCA/INICAF is a geographical territory. However, the geographical territory identified in the geographical region is defined by UN/ECOSOC and Africa Initiative rather than the United Nations (UN) geographical region. The applicant has stated that the United Nations (UN) geographical region of the African continent is defined by UN/ECOSOC and Africa Initiative rather than the United Nations (UN) geographical region. The applicant has stated that the United Nations (UN) geographical region of the African continent is defined by UN/ECOSOC and Africa Initiative rather than the United Nations (UN) geographical region.

In recognition of the centrality of this requirement, we had undertaken early efforts to obtain an unequivocal endorsement for our DotAfrica proposal from the relevant United Nations body for Africa which is the regional economic grouping, namely the United Nations Economic Commission for Africa (UNECA). (Please see attached document signed by the Executive Secretary of UNECA and United Nations Under-Secretary-General, H.E. Abdoulaye Jannet)

DCA had worked closely with UNECA leaders and presented the DotAfrica initiative for their endorsement and support.

The UNECA has stated categorically that we do not intend to be considered the continental body of the Organization of African Unity (OAU) that was formed in 1963 and is a member of other UN regional economic groupings existing on the globe such as the UN Economic Commission for Europe (ECE), the UN Economic Commission for Asia and the Pacific (ECA), and the UN Economic Commission for Latin America (CEPAL).

Quite obviously, if the 60% rule is taken seriously, then the former .dotafrica applications has no chance as a geographic name application unless ICANN directs us to view the letter from the AU as a letter from a treaty organization which represents the wishes of all of its members.

mark

---

**From:** Larisa Gurnick [<mailto:larisa.gurnick@icann.org>]  
**Sent:** Thursday, October 25, 2012 5:07 PM  
**To:** Mark McFadden  
**Cc:** Ann H. Yamashita; Russ Weinstein  
**Subject:** .africa  
**Importance:** High

Mark,

I just learned from Ann that there is a meeting taking place today at the executive level to discuss .africa. We need your matrix for this meeting. Can you also please let us know how many letters of support there are for .africa and .dot africa – I believe that this was the original intention of the matrix that you were putting together. Please copy all when you send your response.

Thank you,

**Larisa B. Gurnick**

Consultant

Internet Corporation for Assigned Names and Numbers (ICANN)

[larisa.gurnick@icann.org](mailto:larisa.gurnick@icann.org)

**Redacted**

---

This e-mail has been scanned for all viruses by Star Internet.

---

---

This e-mail has been scanned for all viruses by Star Internet. However, InterConnect makes no warranty that this email is virus-free.

---

Country	1-124-89923	Uniform 24 (VNCI)	Application	Applicant	ICM?	TLD	Q1: Letters signed?	Q2: Payment authorities?	Q3: Support or non-objection?	Q4: Understanding of the string?	Q5: Understanding of intended use?	Q6: Understanding of gTLD app. process?	Q7: Registry agreement with ICANN?	Q8: Compliance with consensus policies	Q9: Government body exists?	Q10: Signatory held role on app. date?	Q11: Government body relevant?	Q12: Documentation authentic?	Q13: Payment of fees	Q14: UNESCO Region/Corporation ... Est	Q15: 60% support?	Q16: No of objections	Q17: Sufficient documentation?	Q18: Documentation valid?	Status of Evaluation	Notes		
Central African Republic																												
Kenya																												
Mauritius																												
Tanzania																												
Algeria																												
AUC/Abouja																												
AUC/Oliver Tambo																												
AUC/ZACI																												
Benin																												
Burkina Faso																												
Burundi																												
Cameroun																												
Cape Verde																												
Chad																												
Comoros																												
Congo																												
Djibouti																												
Egypt																												
Gabon																												
Ghana																												
Guinea																												
Guinea Coast																												
Kenya																												
Liberia																												
Malawi																												
Mali																												
Mauritania																												
Morocco																												
Mozambique																												
Niger																												
Nigeria																												
Senegal																												
Sierra Leone																												
South Africa																												
Sudan																												
Swaziland																												
Tanzania																												
Togo																												
Tunisia																												
Uganda																												
UNECA																												
Zambia																												

# EXHIBIT 24

**From:** Sammy Buruchara Contact Information Redacted on behalf of Sammy Buruchara  
**Sent:** April-09-13 10:32 AM  
**To:** GAC Secretariat  
**Cc:** Fadi Chehade; Katundu, Michael  
**Subject:** Re: Change of Kenya's GAC Advisor

Dear Heather,

As the newly appointed Kenyan Government advisor to the GAC, I wish to inform you that I was not able to attend the Beijing meeting due to an unforeseen personal circumstance.

It has come to my attention that Alice Munyua has introduced herself as the Kenya's gov representative to the GAC.

This is to inform you that Kenya does not stand by what Alice states in the GAC since she ceased to be the Kenyan Government advisor for GAC on the day of my appointment.

Further, should the situation arise, Kenya does not wish to have a GAC advise on DotConnect Africa Application for .africa delegation.

Regards  
Sammy Buruchara  
GAC Advisor

# EXHIBIT 25

---

**From:** Katundu , Michael .Contact Information Redacted  
**Sent:** April-10-13 2:16 AM  
**To:** Dryden, Heather: SPS  
**Cc:** gac@gac.icann.org  
**Subject:** FW: Change of Kenya's GAC Advisor

Dear Heather;  
My colleague Sammy Buruchara says that the email below bounced. He has requested me to forward it to you.

Regards,  
Michael

---

**From:** Sammy Buruchara .Contact Information Redacted **On Behalf Of** Sammy Buruchara  
**Sent:** Tuesday, April 09, 2013 10:32 PM  
**To:** GAC Secretariat  
**Cc:** fadi.chehade@icann.org; Katundu , Michael  
**Subject:** Re: Change of Kenya's GAC Advisor

Dear Heather,

As the newly appointed Kenyan Government advisor to the GAC, I wish to inform you that I was not able to attend the Beijing meeting due to an unforeseen personal circumstance.

It has come to my attention that Alice Munyua has introduced herself as the Kenya's gov representative to the GAC.

This is to inform you that Kenya does not stand by what Alice states in the GAC since she ceased to be the Kenyan Government advisor for GAC on the day of my appointment.

Further, should the situation arise, Kenya does not wish to have a GAC advise on DotConnect Africa Application for .africa delegation.

Regards  
Sammy Buruchara  
GAC Advisor