



Dr. Stephen Crocker  
The Chairman of the Board  
**Internet Corporation for Assigned Names and Numbers (ICANN)**  
Los Angeles, California  
United States of America

Dear Chairman Stephen Crocker,

**Subject: *A Note to ICANN following the DCA vs. ICANN IRP Panel Ruling***

DotConnectAfrica Trust (DCA Trust) has observed the events and announcements by ICANN during of the past few days since the DCA vs. ICANN IRP ruling on July 9, 2015; and in light of letters that have been written by ZACR and the African Union Commission to ICANN, DCA Trust, as a directly affected party, is now compelled to write to ICANN, and hereby wish to communicate as follows:

1. DotConnectAfrica Trust has prevailed in the IRP against ICANN. The IRP Panel has ruled that ICANN violated its Bylaws and Articles of Incorporation; and has therefore declared ***“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”<sup>1</sup>***.
2. The fact that ICANN has been adjudged thus by a duly authorized juridical process that is empowered by ICANN’s accountability mechanism is a clear evidence of wrongdoing on the part of ICANN. In other words, ICANN could not have violated its Bylaws and Articles of Incorporation if the organization (or the ICANN Board, ICANN GAC and/or ICANN Staff) had been acting correctly and legitimately in the matter of .Africa new gTLD.
3. DCA Trust believes that wrongdoing on the part of ICANN has directly caused DCA Trust to suffer harm and injuries.
4. We think that these harms and injuries must be fully redressed by ICANN for accountability to have any meaning.
5. Prior to the IRP ruling, ICANN’s lawyer had argued in arguments presented to the IRP Panel that the ICANN Board should have the responsibility of ‘fashioning’ a remedy. The IRP Panel however agreed with the arguments presented by DCA Trust that the IRP Panel has the authority to recommend how the ICANN Board might fashion a remedy to redress injury or harm that is directly

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<sup>1</sup> Cf. No. 148 on page 61 of IRP Final Declaration

related and causally connected to the Board's violation of the Bylaws or the Articles of Incorporation.<sup>2</sup>

6. Even though we clarified the duties and scope of responsibilities of the IRP Panel, we think that any such corrective action that may be embarked upon by the ICANN Board should as a matter of course and remediation, also take into consideration the imperative to protect DCA Trust's rights and privileges as the prevailing party in the IRP, against the backdrop that ICANN's evident wrongdoing has materially harmed and injured DotConnectAfrica Trust.

7. We have read the letter written by ZACR to ICANN ([ZACR Response on the Independent Review Process \(IRP\) Final Declaration](#)), and feel that they lack the *bona fides* to even make such a presentation to ICANN at this stage – Post-IRP. ZACR has simply presented a tendentious opinion to the ICANN Board that is meant to serve only ZACR's interest in this matter.

8. We wish to recall that ZACR and the AUC had written a letter to the IRP Panel through the law firm of Bowman Gilfillan asking to be permitted to attend and participate in the IRP Hearing. That request was rejected by the IRP Panel for obvious reasons. We therefore find it very strange and, again, most irregular, that ICANN has now invited ZACR to send their 'opinion' to ICANN regarding an IRP decision that was taken by the same IRP Panel that had earlier refused ZACR's request to attend the IRP hearing. We are quite convinced that ZACR is now being allowed by ICANN to 'dictate' to the ICANN Board on how things should proceed following the IRP ruling.

9. Our understanding is that ZACR should be removed immediately from the ICANN new gTLD Program. The fact that ICANN was delegating the .Africa new gTLD to ZACR at a time that ICANN was also violating its Bylaws and Articles of Incorporation indicates that ICANN did not delegate the .Africa new gTLD to ZACR legitimately, since ICANN could not have been acting correctly and lawfully at the same time that it was engaging in actions that led it to break its Bylaws and Articles of Incorporation.

10. Therefore, ICANN's delegation of .Africa to ZACR is a nullity, and any juridical proceeding or examination will reach the same understanding.

11. Since the IRP Panel has already ruled that ICANN should continue to refrain from delegating .Africa to ZACR, we believe that such an injunction/restriction (or restraining order) on ICANN should remain permanent, since ZACR should not be the beneficiary of ICANN's evident wrongdoing. Moreover, if ICANN was complicit in a wrongful award of the .Africa string to ZACR, the only corrective measure is permanent rescinding of such a wrongful award that ICANN made to ZACR after a Notice of IRP had (already) been filed by DCA Trust.

12. Regarding the measures that you have announced to resolve the issue of .Africa post DCA vs. ICANN IRP, we believe that ICANN has already mismanaged the process, and these actions are no longer acceptable to DCA Trust.

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<sup>2</sup> Cf. No. 128 and No. 129 on page 56 – 57 of IRP Final Declaration

13. We think that the action by the ICANN Global Domains Division to ask the opinion<sup>3</sup> of ZACR on the IRP Declaration is wrongful and most irregular. The [ICANN Bylaws](#) specify that ***“where feasible, the Board shall consider the IRP Panel declaration at the Board’s next meeting”***<sup>4</sup>. We find it quite extraordinary that the opinion of ZACR was sought prior to the ICANN Board meeting – which would invariably cause the Board consideration of the IRP Panel declaration to be influenced by ZACR’s opinion.

14. We now believe that the matter is being rushed. From a close reading of the announcement, DCA Trust understood from certain statements attributed to the ICANN Counsel and Board Secretary Attorney John Jeffrey<sup>5</sup> that the ICANN Board will meet on July 28 ([See ICANN announcement of July 10, 2015](#)). We now gather that ICANN is fast-tracking the entire process, for no reason other than reacting to ‘external pressures’ which caused ICANN to convene a ‘special meeting’ on July 16, 2015. We think that such evident haste would cause the process to lack thoroughness and deliberation, the same type of methods that caused the ICANN Board NGPC to take a summary and wrongful decision on DCA Trusts’ application for .Africa.<sup>6</sup>

15. We disagree with the present attempts by the ICANN Board based on its [Resolution 2015.07.16.04](#) to send the issue back to the Governmental Advisory Committee to enable the ICANN GAC body ***“refine that GAC Advice and/or provide the Board with further information regarding that advice and/or otherwise address the concerns raised in the Declaration”*** ([See ICANN announcement of July 16, 2015](#)); which would wittingly give DCA’s competitors an opportunity to muster a new threat of Community Objection or GAC Objection Advice against DCA’s application.

16. We would like to remind ICANN that the strategic push by DCA’s competitors to administer or achieve a *coup de grâce*<sup>7</sup> against DCA Trust’s aspirations for .Africa new gTLD - can be readily traced to events that happened prior to the ICANN-42 international meeting in Dakar, Senegal in October 2011. At Dakar, there was an orchestrated attempt (as part of the ‘African Agenda’) to achieve a reservation of the .Africa name string - and its representation in other languages - in the

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<sup>3</sup> According to ZACR’s letter of July 15, 2015, ZACR had received a correspondence (dated July 13, 2015) from Mr. Akram Atallah (President of Global Domains Division, ICANN), inviting ZACR to submit its views on the IRP Declaration.

<sup>4</sup> See [Article IV: Accountability and Review – Section 3: Independent Review of Board Actions](#); No. 21

<sup>5</sup> The ICANN announcement specifically mentioned *inter alia*: ***“Consistent with ICANN’s Bylaws, ICANN will carefully review the panel’s declaration and the ICANN Board will be asked to consider the matter at its next meeting on 28 July 2015,” said John Jeffrey, ICANN’s General Counsel and Secretary’.***

<sup>6</sup> Please see letter by DCA Trust for Reconsideration of ICANN NGPC Decision on GAC Advice 14th June 2013 which is available at: <https://www.icann.org/en/system/files/files/bekele-to-icann-ceo-14jun13-en.pdf>.) We specifically wish to refer to Item #vi. On page 2 of our letter where we had noted *inter alia*: ***“We think that the decision was taken with undue haste, and this has led to the obvious lack of conscientiousness. For example, according to the published updates (Re: ‘NGPC Progress on GAC Advice’), the ICANN Public Announcement on May 10 2013 conveyed the notion that ‘Part 2 of the Plan’ – that is, the “actions for responding to each advice given by the GAC - is not yet finalized and, with respect to some of the advice, cannot be finalized until after the review of the Public Comments due to be completed on 20 June”. We note that the Board action on the GAC Advice relating to our application was taken on June 4, 2013; more than 2 weeks ahead of the anticipated completion date.”***

<sup>7</sup> Please see direct reference to *coup de grâce* as presented in ZACR’s most recent letter to you. ZACR’s opinion is that “consensus GAC Advice would ordinarily have constituted the *“coup de grâce”* for DCA’s application. See No. 40 on page 8 of ZACR’s letter.

List of Top Level Reserved Names List. This attempt was successfully defeated largely on account of DCA's strong opposition to the idea of including the .Africa name in the Reserved Names List; which would have enabled the African Union Commission to benefit from a special legislative protection, so that the domain name can be managed and operated by the structure that is selected and identified by the African Union. ICANN could not therefore approve the AUC's request in violation of stipulated new gTLD Program guidelines.

17. We also recall that [ICANN had written a letter to the AUC on March 8, 2012](#) (under your signature) with certain prescriptions ('Response to African Union Communiqué') which clearly advised the AUC to utilize the Community Objection procedure and the GAC Policy Advice route to enable the AUC "to play a prominent role" in determining the delegation outcome of the .Africa domain name under the ICANN new gTLD Program.

18. DCA recalls that it successfully defended itself against the threat of Community Objection that was brought upon by the Independent Objector of the ICANN new gTLD Program.

19. DCA Trust also recalls that a GAC Objection Advice was procured against DCA Trust's application – and how that GAC Objection Advice was handled (or mishandled) and processed by the ICANN Board NGPC, eventually led to the IRP Proceeding which ICANN lost according to the recent IRP ruling.

20. DCA Trust understands that various strategic efforts and tactical machinations that had been contrived to derail its .Africa application have so far failed. It is our considered view that any fresh plans for Community Objection and GAC Objection Advice can no longer be realized post-DCA vs. ICANN IRP under the new gTLD Program for the reason that the time allowed for such efforts have already passed, and in any case, the Community Objection and GAC Objection Advice hurdles have already been scaled, and have therefore been largely overtaken by events.

21. DCA Trust believes that ICANN would not be acting justly if the ICANN GAC is given a fresh opportunity to either refine a GAC Objection Advice that has already been criticized (because of its doubtful validity<sup>8</sup>) by an IRP Panel; or allow renewed efforts to be mobilized by DCA's competitors to orchestrate another Community Objection against DCA's application. For emphasis, we strongly believe that such Community Objection and GAC Objection Advice avenues have already been foreclosed. Therefore, we fault the insinuation contained in [ICANN Board Resolution of July 16, 2015](#), namely: "***Parties affected by these resolutions have had, and may continue to have, the ability to challenge or otherwise question DCA's application through the evaluation and other processes.***"<sup>9</sup>

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<sup>8</sup> Cf. No. 113 on page 53 of Final IRP Declaration. The IRP Panel averred that the ICANN Board did not investigate the matter further before rejecting DCA Trust's application for .Africa new gTLD. Based on the facts that DCA Trust had presented, we think that a proper investigation would have possibly led the ICANN Board to remain dubious about the GAC Objection Advice that was issued against DCA Trust's application for .Africa new gTLD.

<sup>9</sup> See <https://www.icann.org/resources/board-material/resolutions-2015-07-16-en>

22. DCA has already overcome these obstacles, and we would not accept new, after-the-fact measures that would deliberately re-introduce the same obstacles that we have already overcome in the past.

23. Therefore, we believe that ICANN has grossly erred by seeking the opinion of ZACR. We understand that ICANN's process post-IRP is no longer independent, to the extent that ICANN's proposed methods also include the opinions that have been presented by ZACR evidently "to assist the ICANN Board in their deliberations".

24. To the extent that ICANN has not put in place proper safeguards to ensure that any re-evaluation would be free and fair; impartial and non-discriminatory towards DCA Trust, we do not accept that any proposed evaluation process would be credible. ICANN has not conducted any 'house-cleaning' to engender renewed confidence in the process.

25. We also think that the AUC's opinion and concluding statement in Dr. Ibrahim's letter to you (Re: [Independent Review Panel \(IRP\) Recommendation on the matter between DCA and ICANN related to Dot Africa gTLD](#)) – that the (supposed) ***“Initial Evaluation of DCA’s application will provide much needed clarity and closure”*** – is indeed prejudicial to the prospects of DCA Trust's application. Again, this thoroughly demonstrates that ICANN's views on the subject have already been seriously affected, and no doubt hugely influenced by the views of the African Union Commission. We believe that ICANN is no longer acting independently since it is now acting based on the opinions that have been outlined for it by both ZACR and the AUC.

26. Going forward, post- IRP final ruling, we now expect the African Union Commission to remain non-partisan, and adopt a statesman-like role in these matters, since the pre-eminent Pan-African Inter-governmental Organization cannot be associated with an application (ZACR's) that was incorrectly delegated to an applicant at a time that ICANN was also guilty of many wrongful and illegitimate actions – which then led the IRP Panel to rule that ICANN has broken its Bylaws and Articles of Incorporation. The AUC cannot be complicit in that. Therefore, we think that the AUC must now dissociate itself completely from the ZACR application.

27. The Panel has ruled that DCA application should be allowed to continue to the end of the process.

28. Thus, there should be no further connotation beyond what has been directly and unambiguously conveyed in the IRP Panel ruling that DCA Trust's application should be allowed to continue to the end<sup>10</sup>.

29. DCA Trust had met all the requirements of the application including for the Geographic Names Panel before its work was interfered with. In our answer to the relevant evaluation question, we had presented the evidence of DCA Trust's endorsement for the .Africa string by the United Nations Economic Commission for Africa (UNECA). That endorsement was valid as at the time DCA Trust

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<sup>10</sup> Cf. "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." See page of IRP Final Declaration

submitted its application, and to the extent that DCA Trust never received any clarifying question is that regard, we understand that our UNECA endorsement was accepted as valid by the Geographic Names Panel (GNP) evaluation.

30. Summing up, we wish to stress our position post DCA vs. ICANN IRP ruling:

- ICANN should immediately remove the ZACR application from the new gTLD Program, as per the reason already adduced.
- ICANN should compensate DCA Trust for injuries and harms suffered as a result of ICANN's violations of its Bylaws and Articles of Incorporation which materially affected DCA Trust.
- A Joint Cooperative Framework should be immediately established between DCA Trust and ICANN to enable us reach common ground on .Africa going forward, and resolve differences if any.
- DCA Trust's application should be permitted by ICANN to proceed through the remainder of the new gTLD application process with a view to delegating the .Africa string to DCA Trust based on its application that has already satisfied all evaluation criteria.
- DCA Trust should be allowed to reach mutual accommodation with the AUC regarding .Africa new gTLD.
- If ICANN is not willing to do what we have indicated, then we think that there is a difference of opinion, and the dispute should be resolved through another juridical process or direct negotiations between DCA Trust and ICANN.

Since we cannot work with ICANN under a cloud of distrust and antagonism, evident hostility by competitors, and unfair/discriminatory practices against DCA Trust by ICANN, we would prefer to explore cooperative mechanisms with guaranteed redress so as to achieve a successful resolution of this issue between DCA and ICANN within the shortest possible time.

Accordingly, we would like to receive your official response to this communication by July 28, 2015.

Thanking you in anticipation of your kind and positive cooperation in this and related matters.

Respectfully yours,  
For: DotConnectAfrica Trust

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Sophia Bekele  
Executive Director/CEO

cc: Mr. Fadi Chehade, President/CEO, Internet Corporation for Assigned Names and Numbers (ICANN)