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13 **ZA Central Registry, NPC**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES – CENTRAL**

16 DOTCONNECTAFRICA TRUST, a
17 Mauritius Charitable Trust,

18 Plaintiff,

19 v.

20 INTERNET CORPORATION FOR
21 ASSIGNED NAMES AND NUMBERS, a
22 California corporation; ZA Central Registry,
23 a South African non-profit company; and
24 DOES 1 through 50, inclusive,

25 Defendants.

CASE NO. BC607494

*Assigned for all purposes to the Honorable
Howard Halm*

**DECLARATION OF MOKGABUDI
LUCKY MASILELA IN SUPPORT OF
OPPOSITION TO PLAINTIFF’S MOTION
FOR PRELIMINARY INJUNCTION**

[Filed concurrently: Opposition to Plaintiff’s
Motion for Preliminary Injunction; Declarations
of Moctar Yedaly; and Amy T. Brantly in
Support of Opposition to Plaintiff’s Motion for
Preliminary Injunction]

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DECLARATION OF MOKGABUDI LUCKY MASILELA

I, Mokgabudi Lucky Masilela, hereby declare as follows:

1. I am the Chief Executive Officer of Intervenor ZA Central Registry, NPC (“ZACR”). I have personal knowledge of the matters contained herein, except as to those matters asserted on information and belief, and as to those, I believe them to be true. If called upon as a witness, I could and would testify competently thereto.

2. ZACR is a South African non-profit company with its principal place of business in Midrand, South Africa.

3. ZACR was originally formed in 1988 under the name UniForum S.A. The purpose of the company was to promote open standards and systems in computer hardware and software. In 1995, the company was assigned the administration rights for the South African domain name, “co.za.” Today ZACR has registered over 1 million co.za domain name registrations – or about 95% of the total registrations for “.za.” Due to its well-known reputation for independence and neutrality, as well as technical competence and operational excellence, ZACR is the single largest domain name registry on the African continent.

4. After Internet Corporation For Assigned Names and Numbers (“ICANN”) formally launched the “New gTLD Program,” ZACR submitted an application for the .Africa gTLD. I am aware that both ZACR and DCA submitted their respective applications for the .Africa gTLD in the Spring/ Summer of 2012. At the same time, ZACR also applied for, and obtained, the .CapeTown, .Joburg and .Durban gTLDs, and these gTLDs have been launched to the Internet public.

5. I am familiar with the ICANN selection criteria for the gTLD. ICANN set forth selection criteria in an Applicant Guidebook. Among other things, ICANN made clear that because the .Africa gTLD represented the name of a geographic region, an applicant would need to provide documentation showing support from at least 60% of the governments in the region. Further, ICANN criteria provided that no more than one objection from a government or public entity associated with the geographic region would be permitted. These criteria are set

1 forth in ICANN Application Guidebook Module 2, and available online at:

2 <http://newgtlds.icann.org/en/applicants/agb> par 2.2.1.4.2.4.

3 6. ZACR submitted its application to ICANN with the full support of African
4 Union member states via the African Union Commission (“AUC”) endorsement. Specifically,
5 the AUC, which serves as the Secretariat of the African Union, provided a letter supporting
6 ZACR’s application. ZACR submitted a letter of support from the African Union dated July 4,
7 2012. In response, ICANN’s Geographic Names Panel provided ZACR with Clarifying
8 Questions relating to deficiencies in the AUC letter of support. Attached hereto as **Exhibit A** is
9 a true and correct copy of the Geographic Names Panel Clarifying Questions. ZACR addressed
10 the deficiencies and submitted an updated letter of support on or about July 2, 2013. A true and
11 correct copy of the July 2, 2013 AUC letter is attached as **Exhibit B**. In addition, the only
12 nonmember, Morocco, separately provided a letter supporting ZACR’s application. A true and
13 correct copy of the March 28, 2012 Moroccan letter of support is attached as **Exhibit C**.

14 7. ZACR received the support of the African Union only after the AUC publicized
15 a request for proposal (“RFP”). This was an open bid process. The AUC made clear that it
16 was only going to support one applicant. By way of background, the AUC RFP process began
17 because it was well known that ICANN was considering a new gTLD program, including
18 .Africa. It was in anticipation of this new gTLD program that the AUC decided to hold an RFP
19 to support a single, qualified applicant for the African Union. This is because the AUC was
20 specifically mandated by member states to set up the structures and modalities for the
21 implementation of the dotAfrica (.Africa) gTLD. Details of the process are set forth in the
22 September 29, 2015 AUC letter, a true and correct copy of which is attached hereto as **Exhibit**
23 **D**. This letter is also available at: <http://africanonespace.org/downloads/GNP.PDF>

24 8. I was informed by AUC officials that Plaintiff DotConnectAfrica Trust
25 (“Plaintiff”) chose not to participate in the RFP. Ultimately, ZACR prevailed in the RFP
26 process and received the support of the AUC in its application for the .Africa gTLD.

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1 9. Attached as **Exhibit E** are true and correct copies of the 17 “Early Warning
2 Notices” from individual African countries to Plaintiff’s application. These “Early Warning
3 Notices” are also available online at:

4 <http://africainonespace.org/content.php?tag=13&title=Resources>

5 10. The Registry Agreement between ICANN and ZACR was effective on March
6 24, 2014 and runs for ten years. Yet, over two years into the Agreement, the .Africa gTLD has
7 still not been delegated to ZACR. In effect, 20% of the period of the Agreement has already
8 lapsed without any benefit to ZACR. This delay has resulted in unforeseen and mounting costs,
9 as well as lost opportunities, for the .Africa project.

10 11. ZACR has incurred considerable expenses both prior to and after entering into
11 the Registry Agreement. The current and continuing cost due to the delay in the delegation is
12 running at approximately \$16,632 per month. In May of 2016, ZACR previously estimated its
13 average monthly costs at approximately \$18,386. Cost saving measures implemented by ZACR
14 have brought the average amount of ZACR’s costs down. A true and correct copy of a
15 summary of average costs from July 2015 to October 2016 is included as **Exhibit F**. This is
16 based upon a review of the monthly costs incurred from July 2015 to October 2016 for the
17 .Africa project, including the ongoing costs related to consultants, marketing, sponsorships and
18 related expenses. In determining these figures, we averaged the monthly expenses for the
19 .Africa project and where necessary converted expenditures from South African Rand to U.S.
20 dollars. These figures were configured by ZACR’s finance section based on ZACR’s financial
21 records. The summary of costs listed in Exhibit F does not include any fees due to ICANN
22 under the Registry Agreement or legal fees that ZACR had previously incurred. If we were to
23 include actual and expected legal fees for this litigation, the ZACR finance section projects the
24 cost figures would increase significantly beyond \$16,632 per month. The importance of
25 maintaining visibility for the .Africa project, coupled with the ongoing need to interface with
26 government officials throughout the African continent, makes clear that these ongoing expenses
27 will continue during the course of this litigation.

1 12. The Loss of Net Income after Tax (opportunity costs) suffered by ZACR from
2 the date of the planned delegation following the Registry Agreement through December 1,
3 2016, are now estimated to be approximately \$15.5 million (U.S. dollars). These estimates were
4 configured by ZACR's finance section. A true and correct copy of a summary of the
5 breakdown of ZACR's opportunity costs are included in the attached Exhibit F. The estimated
6 number of registration numbers are based on ZACR's responses to ICANN's 2012 application
7 questions 46 – 50. ZACR researched these numbers at the time of application and the
8 application passed ICANN evaluation. To be conservative, ZACR revised down some of these
9 numbers based on trends in the launch of other new gTLDs. Of the \$15.5 million in lost
10 opportunity costs, approximately \$5.8 million would have been donated to the dotAfrica
11 Foundation for African online development. Until such time as delegation takes place, the
12 .Africa gTLD in effect stagnates and generates no income and no value in the marketplace. The
13 ongoing delay is also prejudicial to the gTLD itself (no matter who the operator is) in that the
14 initial interest surrounding the launch of this domain name will have faded, and persons who
15 may have sought to register will have lost interest.

16 13. Once a gTLD is delegated it starts increasing in value. The gTLD is at its lowest
17 value prior to delegation and increases as the number of second level domain delegations (for
18 example: xyz.africa) increases. If Plaintiff is redelegated the .Africa gTLD, it will suffer no
19 irreparable harm as it will inherit a more valuable gTLD without incurring the cost to develop it.

20 14. Attached hereto as **Exhibit G** are true and correct copies of exemplar printouts
21 of redelegations including gTLDs, from the Internet Assigned Numbers Authority ("IANA")
22 website, <https://www.iana.org/reports>. Additional examples can be found on the website.

23 15. Attached hereto as **Exhibit H** are true and correct copies of printouts from the
24 following websites which discuss redelegation of gTLDs: [http://domaincite.com/18849-you-](http://domaincite.com/18849-you-might-be-surprised-how-many-new-gtlds-have-changed-hands-already)
25 [might-be-surprised-how-many-new-gtlds-have-changed-hands-already](http://domaincite.com/18849-you-might-be-surprised-how-many-new-gtlds-have-changed-hands-already);
26 <http://domaincite.com/20235-minds-machines-dumps-back-end-and-registrar-in-nominet->
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1 [uniregistry-deals; http://www.afilias.info/news/2003/01/02/public-interest-registry-assumes-](http://www.afilias.info/news/2003/01/02/public-interest-registry-assumes-control-org-domain-name-registry)
2 [control-org-domain-name-registry.](http://www.afilias.info/news/2003/01/02/public-interest-registry-assumes-control-org-domain-name-registry)

3 16. I am aware that ICANN builds in time limits in its gTLD registry
4 agreements. I am further informed, based upon my experience in the industry and discussions
5 with technical personnel within ZACR, that a re-delegation of a gTLD is entirely feasible. In
6 fact, ICANN has prepared for this precise eventuality and issued a manual in 2013 providing
7 step-by-step instructions for how to redelegate a gTLD. The manual, titled “User
8 Documentation on Delegating and Redelegating a Generic Top Level Domain (gTLD),” makes
9 clear that the process is available and feasible if necessary. A true and correct copy of the
10 manual is attached hereto as **Exhibit I**. It is also available on ICANN’s website:

11 <https://www.icann.org/en/system/files/files/gtld-drd-ui-10sep13-en.pdf>

12 17. In my role as ZACR’s CEO, and based upon my numerous and ongoing
13 discussions with political, business and civic leaders from throughout the African Union, it is
14 my firm understanding and belief that the ongoing delay in the delegation of .Africa is depriving
15 the people of the Africa continent of an important opportunity to expand internet domain name
16 capabilities. The .Africa domain name would add brand value to the continent and would
17 provide a platform that connects products, businesses and individuals that have interests in
18 Africa. The African people are further harmed because the agreement between ZACR and the
19 AUC required that a foundation be created upon delegation and that a significant portion of the
20 revenues received from second level domain delegations (for example: xyz.africa) be directed to
21 the “dotAfrica Foundation.” The Foundation would use the revenues to fund various African //

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domain name and Internet related developmental projects which are now delayed as a result of the preliminary injunction.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 8 day of December 2016 at Guadalajara.



MOKGABUDI LUCKY MASILELA