

1 Jeffrey A. LeVee (State Bar No. 125863)
2 Erin L. Burke (State Bar No. 186660)
3 Rachel Tessa Gezerseh (State Bar No. 251299)
4 Amanda Pushinsky (State Bar No. 267950)
5 JONES DAY
6 555 South Flower Street
7 Fiftieth Floor
8 Los Angeles, CA 90071.2300
9 Telephone: +1.213.489.3939
10 Facsimile: +1.213.243.2539
11 Email: jleee@JonesDay.com

12 Attorneys for Defendant
13 INTERNET CORPORATION FOR
14 ASSIGNED NAMES AND NUMBERS

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

17 DOTCONNECTAFRICA TRUST,

18 Plaintiff,

19 v.

20 INTERNET CORPORATION FOR
21 ASSIGNED NAMES AND NUMBERS, *et*
22 *al.*,

23 Defendants.

CASE NO. BC607494

Assigned for all purposes to
Hon. Howard L. Halm

**DECLARATION OF CHRISTINE
WILLETT IN SUPPORT OF ICANN'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

DATE: December 22, 2016
TIME: 8:30 a.m.
DEPT: 53

1 **DECLARATION OF CHRISTINE WILLETT**

2 I, Christine Willett, declare the following:

3 1. I am the Vice President for Operations of the Global Domains Division of the
4 Internet Corporation for Assigned Names and Numbers (“ICANN”), a defendant in this action. I
5 have personal knowledge of the matters set forth herein and am competent to testify as to those
6 matters. I make this declaration in support of ICANN’s opposition to DotConnectAfrica Trust’s
7 (“DCA’s” or “Plaintiff’s”) Motion for a Preliminary Injunction.

8 2. In my role as Vice President for Operations, I have been responsible for
9 overseeing the evaluation of the 1,930 gTLD applications ICANN received in 2012 as part of
10 ICANN’s New gTLD Program. Those applications are evaluated in accordance with the
11 procedures set forth in the New gTLD Applicant Guidebook (“Guidebook”). A copy of the
12 Guidebook is attached as Exhibit 3 to the declaration of Sophia Bekele Eshete (“Bekele
13 Declaration”).

14 3. In the spring of 2012, Plaintiff DCA and defendant ZA Central Registry (“ZACR”)
15 each submitted applications to operate the .AFRICA gTLD. In doing so, they, like all new gTLD
16 applicants, expressly accepted and acknowledged the Guidebook, including the release and
17 covenant not to sue (“Covenant”) in paragraph 6 of Module 6.

18 4. In order to ensure the safety and stability of the domain name system, new gTLD
19 operators are required to demonstrate that they are stable business entities that have the
20 significant technical and financial wherewithal required to operate a gTLD registry, and pay a
21 \$185,000 application fee.

22 5. The new gTLD application was complex and required considerable detail. A list
23 of the information new gTLD applicants were required to submit with their applications can be
24 found in the Guidebook. Bekele Decl., Ex. 3 at A1-46. Among other things, each applicant was
25 required to submit an extensive, technical explanation of its plans for operating a gTLD registry,
26 and evidence of financial support.

27 6. In addition, because DCA and ZACR had each applied for a gTLD that represents
28 the name of a geographic region, the Guidebook requires that DCA and ZACR each provide

1 documentation of support or non-objection from at least 60% of the governments in the region.
2 Bekele Decl. Ex. 3 § 2.2.1.4.2. The Guidebook also provides that a Geographic Names Panel
3 operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of
4 an applicant's documentation of support. *Id.* §§ 2.4.2, 2.2.1.4.4. The Geographic Names Panel
5 evaluated the support letters submitted by the applicants pursuant to the criteria set forth in the
6 Guidebook. In particular, section 2.2.1.4.3 of the Guidebook required that letters of support for a
7 geographic name "clearly express the government's or public authority's support for or non-
8 objection to the applicant's application and demonstrate the government's or public authority's
9 understanding of the string being requested and its intended use." It further requires that a letter
10 of support "should demonstrate the government's or public authority's understanding that the
11 string is being sought through the gTLD application process and that the applicant is willing to
12 accept the conditions under which the string will be available, i.e., entry into a registry agreement
13 with ICANN requiring compliance with consensus policies and payment of fees." The
14 Geographic Names Panel treated both of these requirements as mandatory for all applicants
15 (including DCA and ZACR).

16 7. DCA submitted with its application for .AFRICA ("Application") what it called a
17 letter of support dated in 2009 (three years earlier) from the African Union Commission
18 ("AUC"). A copy of that letter is attached as Exhibit 6 to the Bekele Declaration. I now
19 understand that, in 2010, DCA had received a letter from the AUC that formally withdrew the
20 AUC's support for DCA's Application for the .AFRICA gTLD. A copy of that letter is attached
21 as Exhibit 7 to the Bekele Declaration. DCA did not submit to ICANN with its Application a
22 copy of the AUC's 2010 letter withdrawing its support for DCA.

23 8. DCA also submitted with its Application an August 2008 letter from the United
24 Nations Economic Commission for Africa ("UNECA"). A copy of that letter is attached as
25 Exhibit 8 to the Bekele Declaration. In September 2015, UNECA wrote in a letter that it was a
26 "United Nations entity [that] is neither a government nor public authority and therefore is not
27 qualified to issue a letter of support for a prospective applicant," and that its August 2008 letter
28 was "merely an expression of a view in relation to [DCA's] initiatives and efforts regarding

1 internet governance [and] cannot be properly considered as a ‘letter of support’ within the
2 context of ICANN’s requirements and cannot be used as such.” A true and correct copy of
3 UNECA’s September 2015 letter is attached as Exhibit 10 to the Bekele Declaration.

4 9. On June 5, 2013, at the time when ICANN’s Board accepted the Governmental
5 Advisory Committee’s (“GAC’s”) advice objecting to DCA’s Application, DCA had not yet
6 passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been
7 in the midst of its review of DCA’s Application; it had determined that the support documentation
8 submitted by DCA, including the letters from the AUC and UNECA, did not meet the criteria set
9 forth in the Guidebook, and was therefore planning to send “clarifying questions” to DCA.
10 Clarifying questions are sent where support documentation does not meet the criteria set forth in
11 the Guidebook, and they are an accommodation to provide applicants an opportunity to
12 explain/supplement their documentation. However, as a result of the ICANN Board’s acceptance
13 of the GAC’s advice, DCA’s Application was removed from processing, and the clarifying
14 questions were not sent at that time.

15 10. By July 31, 2015, following the ICANN Board’s adoption of the recommendations
16 of the Independent Review Panel in *DCA v. ICANN* (“IRP Panel”), DCA’s Application was
17 returned to processing as the Board directed. DCA’s Application was returned to precisely the
18 portion of the review that was pending on the date the Application was removed from
19 processing—the Geographic Names Panel review. As the Geographic Names Panel had been
20 preparing to do when DCA’s Application was removed from processing, the Geographic Names
21 Panel issued clarifying questions to DCA on September 2, 2015, regarding the documentation
22 DCA had submitted with its Application. Those clarifying questions are attached as Exhibit 13 to
23 the Bekele Declaration. DCA was given an opportunity to respond to those clarifying questions.
24 Instead of supplementing its documentation, DCA wrote to ICANN on September 28, 2015,
25 taking the position that the documentation that it had submitted with its Application in 2012 was
26 sufficient.

27 11. On October 13, 2015, ICANN issued the Initial Evaluation Report regarding
28 DCA’s Application. The Initial Evaluation Report noted that the Application had passed all

1 reviews except for the Geographic Names Panel review. As provided by the Guidebook, the
2 report stated that DCA would have the opportunity to participate in “Extended Evaluation,”
3 which offered DCA additional time to provide the requisite documentation of support or non-
4 objection from African governments. A true and correct copy of the Initial Evaluation Report is
5 attached hereto as **Exhibit A**.

6 12. As part of Extended Evaluation, the Geographic Names Panel again issued
7 clarifying questions to DCA on October 30, 2015, identifying the issues with the documented
8 support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele
9 Declaration. DCA was given until January 28, 2016, to supplement its documentation. However,
10 rather than supplementing its documentation, DCA submitted a letter from its counsel and again
11 took the position that the documentation that it had submitted with its Application in 2012 was
12 sufficient.

13 13. Notably, nearly identical clarifying questions were sent to ZACR in 2013 when
14 ZACR’s application for .AFRICA was undergoing Geographic Name Review. True and correct
15 copies of the clarifying questions issued to ZACR related to the AUC and UNECA letters are
16 attached hereto as **Exhibits B and C**. Unlike DCA, ZACR submitted an updated letter from the
17 AUC endorsing ZACR on July 3, 2013. That letter is attached as Exhibit A to Exhibit 2 of the
18 Declaration of Sara Colón (“Colón Decl.”).

19 14. On February 17, 2016, ICANN issued an Extended Evaluation Report stating that
20 the Geographic Names Panel had determined that DCA had failed to provide the requisite
21 documentation of support or non-objection from relevant governments, despite the extended
22 opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 18 to the
23 Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing
24 DCA’s Application. (Guidebook at 174 (§ 2.2.1.4.4).)

25 15. On March 3, 2016, ICANN’s Board adopted a resolution lifting the stay on the
26 delegation of .AFRICA. A true and correct copy of the Board’s March 3, 2016 resolution is
27 attached to this declaration as **Exhibit D**. ICANN is now prepared to delegate the rights to
28 operate .AFRICA to ZACR. However, ICANN has voluntarily stayed the delegation pending the

1 Court's ruling on DCA's Motion for Preliminary Injunction. *See* Colón Decl. ¶ 2.

2 16. As described in the concurrently-filed declaration of Akram Atallah, ICANN's
3 Bylaws provide for several accountability mechanisms to ensure that ICANN operates in
4 accordance with its Articles of Incorporation, Bylaws, policies and procedures. For example, an
5 aggrieved applicant can file a "request for reconsideration," which is a mechanism that asks the
6 ICANN Board to re-evaluate certain Board or staff actions or inactions that the applicant believes
7 have harmed it. In addition, an aggrieved applicant can file a "request for independent review," a
8 unique process set forth in ICANN's Bylaws that asks independent panelists to evaluate whether
9 an action of ICANN's Board was consistent with ICANN's Articles of Incorporation and Bylaws.
10 Bekele Decl., Ex. 4 (Bylaws, Art. IV, §§ 2-3). DCA could have filed, but did not file, a
11 reconsideration request or a request for an independent review process ("IRP") related to the
12 clarifying questions issued to it, or to the determination that DCA had failed the Geographic
13 Names Review.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed this 8th day of December 2016, in Los Angeles, California.

17
18 

19 _____
Christine A. Willett