ICANN'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO ATALLAH DECL.

2:16-cv-00862-RGK (JCx)

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Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby responds to Plaintiff DotConnectAfrica Trust's objections to the Declaration of Akram Atallah:

RESPONSE TO PLAINTIFF'S EVIDENTIARY OBJECTIONS

5	A 4 - 11 - 1.	D1	ICANINI'.	Court's Ruling
	Atallah	Plaintiff's	ICANN's	Court's Runnig
6	Declaration	Objection Leaks personal	Response Mr. Atallah	
7	¶8: "I am informed and believe that	Lacks personal knowledge, lacks	testified that he is	
8	prior to the	foundation [Fed. R.	the President,	
9	opening of the gTLD Program	Evid. 602; Local Rule 7-7	Global Domains Division, for	
10	application period,	(Declarations shall	ICANN (Atallah	
11	only one IRP had resulted in a	contain only factual, evidentiary	Decl. ¶ 1.) As such, he has	
12	written	matter and shall	knowledge of the	
13	determination, ICM Registry, LLC	conform as far as possible to the	IRPs in which ICANN has been	
14	v. ICANN. The	requirements of	involved and is	
15	ICM panel	F.R.Civ.P.	qualified to	
	declared that the	56(c)(4); <i>See also</i>	authenticate the	
16	determinations of	Bank Melli Iran v.	final declaration of	
17	IRP panels were not binding on	<i>Pahlavi</i> , 58 F.3d 1406, 1412-1413	the <i>ICM</i> Panel.	
18	ICANN's Board.	(9th Cir. 1995)		
19	Attached hereto as	(Holding "the		
	Exhibit A is a true	Bank's response to		
20	and correct copy of	Pahlavi's evidence was information		
21	an excerpt of the final declaration of	and belief		
22	the ICM Panel."	declarations from		
23		their counsel.		
		Those were		
24		entitled to no		
25		weight because the		
26		declarant did not have personal		
		knowledge."		
27		[emphasis		
28		added])]. Irrelevant		
	-		ICANNIC DI	SCHONGE TO DI AINTIEE'S

ICANN'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO ATALLAH DECL 2:16-cv-00862-RGK (JCx)

1	Atallah	Plaintiff's	ICANN's	Court's Ruling
	Declaration	Objection	Response	Court o Runnig
2	Deciaration	[Fed. R. Evid. 403;	Response	
3		Bekele Decl., ¶5,		
4		Ex. 1 ¶¶148-149:		
		"148. Based on the		
5		foregoing, after		
6		having		
7		carefully reviewed		
/		the Parties' written		
8		submissions,		
9		listened to the		
		testimony of the three witness,		
10		listened to the oral		
11		submissions of the		
12		Parties in various		
		telephone		
13		conference calls		
14		and at the in-		
15		person hearing of		
		this IRP in		
16		Washington, D.C.		
17		on 22 and 23 May 2015, and finally		
18		after much		
		deliberation,		
19		pursuant to Article		
20		IV, Section 3,		
21		paragraph 11 (c) of		
		ICANN's Bylaws,		
22		the Panel declares		
23		that both the		
		actions and inactions of the		
24		Board with respect		
25		to the application		
26		of DCA Trust		
		related to the		
27		.AFRICA gTLD		
28		were inconsistent		
			ICANDIC DI	ECDONCE TO DI AINTIEE'C

1	Atallah	Plaintiff's	ICANN's	Court's Ruling
	Declaration	Objection	Response	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
2	Deviation	with the Articles of	response	
3		Incorporation and		
4		Bylaws of ICANN.		
		149. Furthermore,		
5		pursuant to Article		
6		IV, Section 3,		
7		paragraph 11 (d) of		
		ICANN's Bylaws,		
8		the Panel		
9		recommends that ICANN continue		
		to refrain from		
10		delegating the		
11		.AFRICA gTLD		
12		and permit DCA		
		Trust's application		
13		to proceed through		
14		the remainder of		
15		the new gTLD		
		application		
16	T10. "In the case	process."].	Mr. Atolloh	
17	¶10: "In the case of the DCA IRP,	Lacks personal knowledge, lacks	Mr. Atallah testified that he is	
18	the <i>DCA</i> Panel	foundation,	the President,	
	declared that its	conclusory [Fed.	Global Domains	
19	decision would be	R. Evid. 602;	Division, for	
20	binding on	Local Rule 7-7	ICANN (Atallah	
21	ICANN's Board.	(Declarations shall	Decl. ¶ 1.) As	
	But, most	contain only	such, he has	
22	importantly, the	factual, evidentiary	personal	
23	question of	matter and shall	knowledge of	
24	whether the Panel's declaration	conform as far as	ICANN Board's	
	was or was not	possible to the requirements of	response to the <i>DCA</i> IRP Panel's	
25	legally binding	F.R.Civ.P.	declaration.	
26	became a moot	56(c)(4)]. The IRP	W V I W I W I O I I .	
	issue once	Panel Declaration	The Court may	
27	ICANN's Board	is the best evidence	refer to the	
28	elected to adopt all	of the document	declaration of the	

1	Atallah	Plaintiff's	ICANN's	Court's Ruling	
2	Declaration	Objection	Response	-	
3	of the <i>DCA</i> Panel's	[Fed. R. Evid.	DCA IRP Panel,		
	recommendations,	1002; Bekele	which is part of the		
4	contrary to the representations in	Decl., ¶5, Ex. 1 ¶¶148-149: "148.	record. (Eshete Decl. Ex. 1, ECF		
5	Plaintiff's motion	Based on the	No. 17-1.)		
6	for preliminary	foregoing, after	110. 17 1.)		
	injunction and	having carefully			
7	TRO application."	reviewed the			
8		Parties' written			
9		submissions,			
		listened to the			
10		testimony of the three witness,			
11		listened to the oral			
12		submissions of the			
		Parties in various			
13		telephone			
14		conference calls			
15		and at the in-			
16		person hearing of this IRP in			
		Washington, D.C.			
17		on 22 and 23 May			
18		2015, and finally			
19		after much			
		deliberation,			
20		pursuant to Article IV, Section 3,			
21		paragraph 11 (c) of			
22		ICANN's Bylaws,			
		the Panel declares			
23		that both the			
24		actions and			
25		inactions of the			
26		Board with respect to the application			
		of DCA Trust			
27		related to the			
28		.AFRICA gTLD			
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1	Atallah	Plaintiff's	ICANN's	Court's Ruling
2	Declaration	Objection	Response	
3		were inconsistent		
		with the Articles of		
4		Incorporation and Bylaws of ICANN.		
5		149. Furthermore,		
6		pursuant to Article		
		IV, Section 3,		
7		paragraph 11 (d) of		
8		ICANN's Bylaws,		
9		the Panel		
		recommends that		
10		ICANN continue to refrain from		
11		delegating the		
12		.AFRICA gTLD		
		and permit DCA		
13		Trust's application		
14		to proceed through		
15		the remainder of		
16		the new gTLD application		
		process."].		
17		L		
18	¶11: "Specifically,	The IRP Panel	The Court may	
19	on July 9, 2015,	Declaration is the	refer to the	
	the DCA Panel	best evidence of	declaration of the	
20	issued its final declaration. The	the document [Fed. R. Evid. 1002].	DCA IRP Panel, which is part of the	
21	DCA Panel	Irrelevant [Fed. R.	record. (Eshete	
22	determined that	Evid. 403; Bekele	Decl. Ex. 1.) The	
	ICANN's Board	Decl., ¶5, Ex. 1	understanding of	
23	had violated	¶¶148-149: "148.	ICANN's	
24	ICANN's Articles	Based on the	President, Global	
25	of Incorporation	foregoing, after	Domains Division,	
26	and Bylaws by accepting the	having carefully reviewed the	is clearly relevant to assessing	
	GAC's consensus	Parties' written	ICANN's response	
27	advice that	submissions,	to the declaration.	
28	Plaintiffs	listened to the		

1	Atallah	Plaintiff's	ICANN's	Court's Ruling
2	Declaration	Objection	Response	
3	application for	testimony of the		
3	.AFRICA	three witness,		
4	("Application")	listened to the oral		
5	should not	submissions of the Parties in		
	proceed. The Panel therefore	various telephone		
6	recommended that	conference calls		
7	"ICANN continue	and at the in-		
8	to refrain from	person hearing of		
	delegating the	this IRP in		
9	.AFRICA gTLD	Washington, D.C.		
10	and permit	on 22 and 23 May		
11	[Plaintiff] 's	2015, and finally		
	application to	after much		
12	proceed through	deliberation,		
13	the remainder of the new gTLD	pursuant to Article IV, Section 3,		
14	application	paragraph 11 (c) of		
	process." (Eshete	ICANN's Bylaws,		
15	Decl Ex. 1 at 61-	the Panel declares		
16	62 ¶149.)"	that both the		
17	" ·	actions and		
		inactions of the		
18		Board with respect		
19		to the application		
		of DCA Trust related to the		
20		.AFRICA gTLD		
21		were inconsistent		
22		with the Articles of		
		Incorporation and		
23		Bylaws of ICANN.		
24		149. Furthermore,		
25		pursuant to Article IV, Section 3,		
26		paragraph 11 (d) of		
27		ICANN's Bylaws,		
28		the Panel recommends that		
40		recommends that		

1	A + a 11 a la	Dlaintiff	ICANINI'a	Court's Ruling
	Atallah Declaration	Plaintiff's Objection	ICANN's Response	Court 5 Ruining
2	Deciaration	ICANN continue	Response	
3		to refrain from		
4		delegating the		
		.AFRICA gTLD		
5		and permit DCA		
6		Trust's application		
		to proceed through		
7		the remainder of		
8		the new gTLD		
9		application		
9		process."].		
10	¶12: "As it has	Irrelevant [Fed. R.	Plaintiff's claims	
11	done with every	Evid. 403; Bekele	are based in part on	
	IRP declaration to	Decl., ¶5, Ex. 1	its allegation that	
12	date, ICANN's Board	¶¶148-149: "148.	ICANN's Board	
13		Based on the foregoing, after	failed to adhere to the findings of the	
14	promptly considered and	having carefully	DCA Panel. (See,	
	adopted each of the	reviewed the	e.g., FAC ¶¶ 57,	
15	DCA Panel's	Parties' written	60, 81.) Plaintiff	
16	recommendations.	submissions,	even brings a claim	
	Specifically, on	listened to the	for declaratory	
17	July 16, 2015, the	testimony of the	relief seeking	
18	Board resolved to	three witness,	"confirmation of	
19	'continue to refrain	listened to the oral	[the] IRP	
	from delegating the	submissions of the	declaration." (Id.	
20	.AFRICA gTLD,'	Parties in various	¶¶ 115-18.) As	
21	'permit	telephone	such, Mr. Atallah's	
	[Plaintiff's]	conference calls	testimony	
22	application to	and at the in-	regarding the	
23	proceed through the remainder of	person hearing of this IRP in	Board's acceptance of the <i>DCA</i> Panel's	
24	the new gTLD	Washington, D.C.	Final Declaration	
	application	on 22 and 23 May	is plainly relevant.	
25	process,' and	2015, and finally	15 planing relevant.	
26	'reimburse DCA	after much		
	for the costs of the	deliberation,		
27	IRP."	pursuant to Article		
28		IV, Section 3,		

1	Atallah	Plaintiff's	ICANN's	Court's Ruling
2	Declaration	Objection	Response	
3		paragraph 11 (c) of		
5		ICANN's Bylaws,		
4		the Panel declares		
5		that both the actions and		
		inactions of the		
6		Board with respect		
7		to the application		
8		of DCA Trust		
		related to the		
9		.AFRICA gTLD		
10		were inconsistent		
11		with the Articles of		
		Incorporation and		
12		Bylaws of ICANN.		
13		149. Furthermore,		
		pursuant to Article IV, Section 3,		
14		paragraph 11 (d) of		
15		ICANN's Bylaws,		
16		the Panel		
17		recommends that		
17		ICANN continue		
18		to refrain from		
19		delegating the		
		.AFRICA gTLD		
20		and permit DCA Trust's application		
21		to proceed through		
22		the remainder of		
		the new gTLD		
23		application		
24		process."].		
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ICANN'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO DECL. OF AKRAM ATALLAH 2:16-cv-00862-RGK (JCx)

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