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11 DOTCONNECTAFRICA TRUST

12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES - CENTAL**

14 DOTCONNECTAFRICA TRUST, a Mauritius  
15 Charitable Trust;

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR  
19 ASSIGNED NAMES AND NUMBERS, *et al.*;

20 Defendants.

Case No. BC607494

Assigned for all purposes to the Honorable  
Howard L. Halm

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

Date: February 2, 2017

Time: 8:29 a.m.

Dept.: 53

**Objections to Declaration of Christine Willett**

| <b>Willett Declaration ¶</b>  | <b>DCA Objection</b>   | <b>Sustained</b> | <b>Overruled</b> |
|---|--|------------------|------------------|
| <p>¶ 2: In my role as Vice President for Operations, I have been responsible for overseeing the evaluation of the 1,930 gTLD applications ICANN received in 2012 as part of ICANN’s New gTLD Program. Those applications are evaluated in accordance with the procedures set forth in the New gTLD Applicant Guidebook (“Guidebook”). A copy of the Guidebook is attached as Exhibit 3 to the declaration of Sophia Bekele Eshete (“Bekele Declaration”).</p>   | <ol style="list-style-type: none"> <li>1. Lacks personal knowledge (Evid. Code § 702).</li> <li>2. Lacks foundation (Evid. Code § 403).</li> </ol>   |                  |                  |
| <b>Willett Declaration ¶</b>  | <b>DCA Objection</b>   | <b>Sustained</b> | <b>Overruled</b> |
| <p>¶ 3: In the spring of 2012, Plaintiff DCA and defendant ZA Central Registry (“ZACR”) each submitted applications to operate the .AFRICA gTLD. In doing so, they, like all new gTLD applicants, expressly accepted and acknowledged the Guidebook, including the release and covenant not to sue (“Covenant”) in paragraph 6 of Module 6.</p>   | <ol style="list-style-type: none"> <li>1. Lacks personal knowledge (Evid. Code § 702).</li> <li>2. Lacks foundation (Evid. Code § 403).</li> </ol>   |                  |                  |
| <b>Willett Declaration ¶</b>  | <b>DCA Objection</b>   | <b>Sustained</b> | <b>Overruled</b> |
| <p>¶ 6: In addition, because DCA and ZACR had each applied for a gTLD that represents the name of a geographic region, the Guidebook requires that DCA and ZACR each provide documentation of support or non-objection from at least 60% of the governments in the region. Bekele Decl. Ex. 3 § 2.2.1.4.2. The Guidebook also provides that a Geographic Names Panel operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of an applicant’s documentation of support. <i>Id.</i> §§ 2.4.2, 2.2.1.4.4. The Geographic Names Panel evaluated the support</p> | <ol style="list-style-type: none"> <li>1. Lacks personal knowledge (Evid. Code § 702).</li> <li>2. Lacks foundation (Evid. Code § 403).</li> <li>3. Best evidence rule (Evid. Code § 1520).</li> </ol> |                  |                  |

1 letters submitted by the applicants  
 2 pursuant to the criteria set forth in the  
 3 Guidebook. In particular, section  
 4 2.2.1.4.3 of the Guidebook required  
 5 that letters of support for a  
 6 geographic name “clearly express the  
 7 government’s or public authority’s  
 8 support for or nonobjection to the  
 9 applicant’s application and  
 10 demonstrate the government’s or  
 11 public authority’s understanding of  
 12 the string being requested and its  
 13 intended use.” It further requires that  
 14 a letter of support “should  
 15 demonstrate the government’s or  
 16 public authority’s understanding that  
 17 the string is being sought through the  
 18 gTLD application process and that  
 19 the applicant is willing to accept the  
 20 conditions under which the string will  
 21 be available, i.e., entry into a registry  
 22 agreement with ICANN requiring  
 23 compliance with consensus policies  
 24 and payment of fees.” The  
 25 Geographic Names Panel treated both  
 26 of these requirements as mandatory  
 27 for all applicants (including DCA and  
 28 ZACR).

| <b>Willett Declaration ¶</b>   | <b>DCA Objection ¶</b>  | <b>Sustained</b> | <b>Overruled</b> |
|--|---|------------------|------------------|
| <p>¶ 7: ZACR submitted 41 letters of support with its application, including over thirty letters from individual African governments, and a 2012 letter from the African Union Commission ("AUC"). The AUC is the secretariat for the African Union, in which every African nation except Morocco is a member. DCA submitted six letters of support with its application for .AFRICA ("Application") - one from the AUC, one from the United Nations Economic Commission for Africa ("UNECA"), three from individual African countries, and one from the</p> | <ol style="list-style-type: none"> <li>1. Lacks foundation (Evid. Code § 403.)</li> <li>2. Best evidence rule (Evid. Code § 1520).</li> </ol> |                  |                  |

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|----|--|--|------------------|------------------|
| 1  | South African Embassy in Washington, D.C.  |  |                  |                  |
| 2  | <b>Willett Declaration ¶</b>   | <b>DCA Objection</b>   | <b>Sustained</b> | <b>Overruled</b> |
| 3  | <p>¶ 8: The AUC letter of support that DCA submitted was dated April 27, 2009. A copy of that letter is attached as Exhibit 6 to the Bekele Declaration. I now understand that, in 2010, DCA received a letter from the AUC that formally withdrew the AUC's support for DCA's Application. A copy of that letter is attached as Exhibit 7 to the Bekele Declaration. DCA did not submit to ICANN with its Application a copy of the AUC's 2010 letter withdrawing its support for DCA. Although the 2010 AUC letter indicates that ICANN was copied, the "cc" did not identify any specific person at ICANN, and ICANN has no record of receiving the letter. Inasmuch as the letter was sent two years before ICANN began receiving gTLD applications, ICANN had no "files" set up for any particular application.</p> | <ol style="list-style-type: none"> <li>1. Lacks personal knowledge (Evid. Code § 702).</li> <li>2. Lacks foundation and irrelevant (Evid. Code § 403).</li> <li>3. Best evidence rule (Evid. Code § 1520).</li> <li>4. Prejudicial because the statement is materially misleading because it fails to state that DCA specifically identified the purported withdrawal in its application ICANN and has done so on numerous occasions (Evid. Code § 352).</li> <li>5. Bekele Decl. ¶ __, Ex. __ (“Unlike the initial letter of support from the AUC the subsequent letter omitted any official stamp, was not signed by the AUC Chairman, and instead was signed by the Deputy Chairperson).</li> </ol> |                  |                  |
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| 21 | <b>Willett Declaration ¶</b>   | <b>DCA Objection</b>   | <b>Sustained</b> | <b>Overruled</b> |
| 22 | <p>¶ 9: The letter of support from UNECA that DCA submitted with its application was dated August 8, 2008. A copy of that letter is attached as Exhibit 8 to the Bekele Declaration. In September 2015, UNECA wrote in a letter to the AUC that it was a "United Nations entity [that] is neither a government nor public authority and therefore is not qualified to issue a letter of support</p>  | <ol style="list-style-type: none"> <li>1. Best evidence rule (Evid. Code § 1520).</li> <li>2. Lacks foundation (Evid. Code § 403.)</li> <li>3. Irrelevant (Evid. Code § 403).</li> <li>4. The GNP had already determined that UNECA</li> </ol>   |                  |                  |
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| <p>1 for a prospective applicant," and that<br/> 2 its August 2008 letter was "merely an<br/> 3 expression of a view in relation to<br/> 4 [DCA's] initiatives and efforts<br/> 5 regarding internet governance ....<br/> 6 [and] cannot be properly considered<br/> 7 as a 'letter of support' within the<br/> 8 context of ICANN's requirements and<br/> 9 cannot be used as such." A true and<br/> 10 correct copy of UNECA's September<br/> 11 2015 letter is attached as Exhibit 9 to<br/> 12 the Bekele Declaration.</p>  | <p>was a valid endorser.<br/> McFadden Decl. ¶ 6.</p> |                         |                         |
| <p><b>Willett Declaration ¶</b></p>   | <p><b>DCA Objection</b></p>                           | <p><b>Sustained</b></p> | <p><b>Overruled</b></p> |
| <p>9 ¶ 10: On June 5, 2013, at the time<br/> 10 when ICANN's Board accepted the<br/> 11 Governmental Advisory Committee's<br/> 12 ("GAC's") advice objecting to<br/> 13 DCA's Application, DCA had not yet<br/> 14 passed the Geographic Names Panel<br/> 15 review. At that time, the Geographic<br/> 16 Names Panel had been in the midst of<br/> 17 its review of DCA's Application; it<br/> 18 had determined that the support<br/> 19 documentation submitted by DCA,<br/> 20 including the letters from the AUC<br/> 21 and UNECA, did not meet the criteria<br/> 22 set forth in the Guidebook, and was<br/> 23 therefore planning to send "clarifying<br/> 24 questions" to DCA. Clarifying<br/> 25 questions are sent where support<br/> 26 documentation does not meet the<br/> 27 criteria set forth in the Guidebook,<br/> 28 and they are an accommodation to<br/> provide applicants an opportunity to<br/> explain/supplement their<br/> documentation. However, as a result<br/> of the ICANN Board's acceptance of<br/> the GAC's advice, DCA's<br/> Application was removed from<br/> processing, and the clarifying<br/> questions were not sent at that time.</p> | <p>1. Lacks foundation (Evid.<br/> Code § 403).</p>   |                         |                         |
| <p><b>Willett Declaration ¶</b></p>   | <p><b>DCA Objection</b></p>                           | <p><b>Sustained</b></p> | <p><b>Overruled</b></p> |
| <p>¶ 11: By July 31, 2015, following the<br/> ICANN Board's adoption of the<br/> recommendations of the Independent</p>   | <p>1. Lacks foundation (Evid.<br/> Code § 403).</p>   |                         |                         |

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| <p>1 Review Panel in <i>DCA v. ICANN</i><br/> 2 (“IRP Panel”), DCA’s Application<br/> 3 was returned to processing as the<br/> 4 Board directed. DCA’s Application<br/> 5 was returned to precisely the portion<br/> 6 of the review that was pending on the<br/> 7 date the Application was removed<br/> 8 from processing—the Geographic<br/> 9 Names Panel review. As the<br/> 10 Geographic Names Panel had been<br/> 11 preparing to do when DCA’s<br/> 12 Application was removed from<br/> 13 processing, the Geographic Names<br/> 14 Panel issued clarifying questions to<br/> 15 DCA on September 2, 2015,<br/> 16 regarding the documentation DCA<br/> 17 had submitted with its Application.<br/> 18 Those clarifying questions are<br/> 19 attached as Exhibit 13 to the Bekele<br/> 20 Declaration. DCA was given an<br/> 21 opportunity to respond to those<br/> 22 clarifying questions. Instead of<br/> 23 supplementing its documentation,<br/> 24 DCA wrote to ICANN on September<br/> 25 28, 2015, taking the position that the<br/> 26 documentation that it had submitted<br/> 27 with its Application in 2012 was<br/> 28 sufficient.</p> | <p>2. Lacks personal<br/> knowledge (Evid. Code<br/> § 702).</p> |                         |                         |
| <p><b>Willett Declaration ¶</b></p>  | <p><b>DCA Objection ¶</b></p>                                    | <p><b>Sustained</b></p> | <p><b>Overruled</b></p> |
| <p>¶ 12: On October 13, 2015, ICANN<br/> issued the Initial Evaluation Report<br/> regarding DCA’s Application. The<br/> Initial Evaluation Report noted that<br/> the Application had passed all<br/> reviews except for the Geographic<br/> Names Panel review. As provided by<br/> the Guidebook, the report stated that<br/> DCA would have the opportunity to<br/> participate in “Extended Evaluation,”<br/> which offered DCA additional time to<br/> provide the requisite documentation<br/> of support or nonobjection from<br/> African governments. A true and<br/> correct copy of the Initial Evaluation</p>   | <p>1. Best evidence rule<br/> (Evid. Code § 1520).</p>           |                         |                         |

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| 1  | Report is attached hereto as <b>Exhibit A.</b>  |  |                  |                  |
| 2  | <b>Willett Declaration ¶</b>  | <b>DCA Objection</b>   | <b>Sustained</b> | <b>Overruled</b> |
| 3  | ¶ 13: As part of Extended Evaluation, the Geographic Names Panel again issued clarifying questions to DCA on October 30, 2015, identifying the issues with the documented support submitted by DCA. Those clarifying questions are attached as Exhibit 15 to the Bekele Declaration. DCA was given until January 28, 2016, to supplement its documentation. However, rather than supplementing its documentation, DCA submitted a letter from its counsel and again took the position that the documentation that it had submitted with its Application in 2012 was sufficient.   | 1. Lacks foundation (Evid. Code § 403).<br>2. Lacks personal knowledge (Evid. Code § 702).   |                  |                  |
| 13 | <b>Willett Declaration ¶</b>  | <b>DCA Objection</b>   | <b>Sustained</b> | <b>Overruled</b> |
| 14 | ¶ 14: Notably, nearly identical clarifying questions were sent to ZACR in 2013 when ZACR's application for .AFRICA was undergoing Geographic Name Review. True and correct copies of the clarifying questions issued to ZACR related to the AUC and UNECA letters are attached hereto as <b>Exhibits B and C.</b> Unlike DCA, ZACR submitted an updated letter from the AUC endorsing ZACR on July 3, 2013, which provided ZACR with the requisite support of 60% of the governments of Africa and allowed ZACR to pass Geographic Names Review. A true and correct copy of that letter is attached hereto as <b>Exhibit D.</b> Had DCA been able to obtain an updated, fully satisfactory letter from the AUC, it too would have passed Geographic Names Review. In that instance, contention resolution would have proceeded in accordance with Guidebook | 1. Lacks foundation (Evid. Code § 403).<br>2. Lacks personal knowledge and speculative (Evid. Code § 702).<br>3. Best evidence rule (Evid. Code § 1520). |                  |                  |

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| 1  | procedures; and, had the AUC not          |                             |                  |                  |
| 2  | expressed a preference for one            |                             |                  |                  |
| 3  | applicant over another, the contention    |                             |                  |                  |
| 4  | may have been resolved by way of an       |                             |                  |                  |
| 5  | auction between the two parties.          |                             |                  |                  |
| 6  | <b>Willett Declaration ¶</b>              | <b>DCA Objection</b>        | <b>Sustained</b> | <b>Overruled</b> |
| 7  | ¶ 15: On February 17, 2016, ICANN         | 1. Best evidence rule       |                  |                  |
| 8  | issued an Extended Evaluation Report      | (Evid. Code § 1520).        |                  |                  |
| 9  | stating that the Geographic Names         |                             |                  |                  |
| 10 | Panel had determined that DCA had         |                             |                  |                  |
| 11 | failed to provide the requisite           |                             |                  |                  |
| 12 | documentation of support or non-          |                             |                  |                  |
| 13 | objection from relevant governments,      |                             |                  |                  |
| 14 | despite the extended opportunity to       |                             |                  |                  |
| 15 | do so. A copy of the Extended             |                             |                  |                  |
| 16 | Evaluation Report is attached as          |                             |                  |                  |
| 17 | Exhibit 18 to the Bekele Declaration.     |                             |                  |                  |
| 18 | As a result, and as provided by the       |                             |                  |                  |
| 19 | Guidebook, ICANN stopped                  |                             |                  |                  |
| 20 | processing DCA's Application.             |                             |                  |                  |
| 21 | (Guidebook at 174 (§ 2.2.1.4.4).)         |                             |                  |                  |
| 22 | <b>Willett Declaration ¶</b>              | <b>DCA Objection</b>        | <b>Sustained</b> | <b>Overruled</b> |
| 23 | ¶ 16: On March 3, 2016, ICANN's           | 1. Lacks foundation (Evid.  |                  |                  |
| 24 | Board adopted a resolution lifting the    | Code § 403).                |                  |                  |
| 25 | stay on the delegation of .AFRICA. A      | 2. Lacks personal           |                  |                  |
| 26 | true and correct copy of the Board's      | knowledge (Evid. Code       |                  |                  |
| 27 | March 3, 2016 resolution is attached      | § 702).                     |                  |                  |
| 28 | to this declaration as <b>Exhibit E</b> . | 3. Best evidence rule       |                  |                  |
|    |   | (Evid. Code § 1520).        |                  |                  |
|    | <b>Willett Declaration ¶</b>              | <b>DCA Objection</b>        | <b>Sustained</b> | <b>Overruled</b> |
|    | ¶ 17: As described in the                 | 1. Irrelevant (Evid. Code § |                  |                  |
|    | concurrently-filed declaration of         | 403).                       |                  |                  |
|    | Akram Atallah, ICANN's Bylaws             | 2. Best evidence rule       |                  |                  |
|    | provide for several accountability        | (Evid. Code § 1520).        |                  |                  |
|    | mechanisms to ensure that ICANN           |                             |                  |                  |
|    | operates in accordance with its           |                             |                  |                  |
|    | Articles of Incorporation, Bylaws,        |                             |                  |                  |
|    | policies and procedures. For example,     |                             |                  |                  |
|    | an aggrieved applicant can file a         |                             |                  |                  |
|    | "request for reconsideration," which      |                             |                  |                  |
|    | is a mechanism that asks the ICANN        |                             |                  |                  |
|    | Board to re-evaluate certain Board or     |                             |                  |                  |
|    | staff actions or inactions that the       |                             |                  |                  |

1 applicant believes have harmed it. In  
 2 addition, an aggrieved applicant can  
 3 file a “request for independent  
 4 review,” a unique process set forth in  
 5 ICANN’s Bylaws that asks  
 6 independent panelists to evaluate  
 7 whether an action of ICANN’s Board  
 8 was consistent with ICANN’s  
 9 Articles of Incorporation and Bylaws.  
 10 Bekele Decl., Ex. 4 (Bylaws, Art. IV,  
 11 §§ 2-3). DCA could have filed, but  
 12 did not file, a reconsideration request  
 13 or a request for an independent  
 14 review process (“IRP”) related to the  
 15 clarifying questions issued to it, or to  
 16 the determination that DCA had  
 17 failed the Geographic Names Review.

| <b>Willett Declaration ¶</b> | <b>DCA Objection</b> | <b>Sustained</b> | <b>Overruled</b> |
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| <p>12 ¶ 18: There is nothing in the<br/>         13 Guidebook that prevents an applicant<br/>         14 for a new gTLD from assigning<br/>         15 intellectual property rights to a third<br/>         16 party. Accordingly, that ZACR<br/>         17 intends to assign certain rights to the<br/>         18 AUC upon delegation of .AFRICA<br/>         19 does not violate any terms of the<br/>         Guidebook. The AUC itself could<br/>         have applied for .Africa. There is no<br/>         basis to assert that any assignment of<br/>         rights to the AUC was improper.</p> | <p>1. Irrelevant (Evid. Code §<br/>         403).<br/>         2. Misleading as the<br/>         Masilela declaration<br/>         clearly shows that the<br/>         AUC was ZACR’s<br/> <i>partner</i> in applying.<br/>         Masilela Decl. ¶8, Ex.<br/>         A.</p> |  |  |
|--|--|--|--|

| <b>Willett Declaration ¶</b> | <b>DCA Objection</b> | <b>Sustained</b> | <b>Overruled</b> |
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| <p>20 ¶ 19: Both DCA and ZACR<br/>         21 submitted standard (meaning, not<br/>         22 community-based) applications for<br/>         23 the .AFRICA gTLD. Even if the<br/>         24 applicants intend to operate the<br/>         25 .AFRICA gTLD on behalf of the<br/>         26 African community, they are not<br/>         27 obligated to submit a "community"<br/>         28 application for the gTLD. A<br/>         "community" application is a special<br/>         application available under the<br/>         Guidebook that requires an<br/>         application to meet heightened<br/>         criteria; and, if a community</p> | <p>1. Best evidence rule<br/>         (Evid. Code § 1520).</p> |  |  |
|---|--|--|--|

1 application prevails in Community  
 2 Priority Evaluation, that application is  
 3 given priority over all other  
 4 applications in the contention set.  
 Here, neither DCA nor ZACR  
 submitted, nor were required to  
 submit, a community application.

5 **Willett Declaration ¶**

**DCA Objection**

**Sustained**

**Overruled**

6 ¶ 21: A "registrar" is an entity that  
 7 sells domain name subscriptions to  
 8 consumers. This is in contrast to a  
 "registry" which is the entity that  
 9 operates the gTLD. In nearly all  
 10 situations, it is permissible for a  
 gTLD registry operator to also act as  
 registrar. ICANN has allowed such  
 11 "cross-ownership" of TLDs since  
 2010. The ICANN Registry  
 12 Agreement compels registry  
 operators to deal with all registrars in  
 13 a fair and equitable manner, and  
 ICANN has compliance mechanisms  
 14 in place to monitor cross-ownership.  
 Thus, ZACR cannot provide  
 15 preferential treatment or access to its  
 own registrar; instead, ZACR (like  
 16 any gTLD registry) must treat all of  
 its registrars equally and on the same  
 17 terms.  
 18

1. Best evidence rule (Evid. Code § 1520).
2. Speculative. (Evid. Code §702).

19  
 20  
 21  
 22  
 23 Dated: January 26, 2017

**BROWN NERI SMITH & KHAN LLP**

24  
 25 By:   
 26 Sara C. Colón

*Attorneys for Plaintiff*  
 DOTCONNECTAFRICA TRUST