

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DOTCONNECTAFRICA TRUST,) ICDR CASE NO. 50 117 T 1083 13
)
Claimant,)
)
and)
)
INTERNET CORPORATION FOR ASSIGNED)
NAMES AND NUMBERS,)
)
Respondent.)
_____)

**ICANN'S RESPONSE TO CLAIMANT'S REQUEST FOR EMERGENCY
ARBITRATOR AND INTERIM MEASURES OF PROTECTION**

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The Internet Corporation
For Assigned Names and Numbers

4 April 2014

INTRODUCTION

1. The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby submits this Response to the Request for Emergency Arbitrator and Interim Measures of Protection (“Emergency Request”) submitted by Claimant DotConnectAfrica Trust (“DCA”) on 28 March 2014.

2. Five months after initiating this Independent Review Process (“IRP”), DCA brings this Emergency Request pursuant to Article 37 of the ICDR Rules, which provides a means for applying for emergency measures of protection. DCA asks the Emergency Arbitrator to recommend¹ that a stay be issued to prevent ICANN from delegating the .AFRICA generic top level domain (“gTLD”) to ZA Central Registry (“ZACR”), a third party, pending the outcome of the IRP that DCA initiated in October 2013. For the reasons stated herein, DCA’s Emergency Request should be denied.

3. DCA’s Emergency Request should be denied because DCA has not demonstrated a reasonable possibility that it will succeed on the merits of this IRP, which the law requires DCA to demonstrate. DCA seems to believe that the mere fact that it has initiated IRP proceedings gives DCA the basis to cause ICANN to shut down the processing of the competing application for the .AFRICA gTLD. But in its Emergency Request, DCA does not provide any basis to demonstrate that it has a reasonable likelihood of success. DCA does not even respond to the evidence submitted by ICANN in its Response to DCA’s Amended Notice demonstrating definitively that DCA’s claims are frivolous. Instead, DCA ignores ICANN’s evidence and simply reiterates the arguments that it filed with its Amended

¹ ICANN notes that, because IRP proceedings are non-binding, the IRP and the Emergency Arbitrator are limited to making recommendations for ICANN to consider. Of course, ICANN has committed to take serious consideration of all recommendations arising out of all IRP proceedings.

Notice of IRP in January 2014. The arguments set forth in DCA's Amended Notice had no basis in fact, were not supported by any declaration, and now have been proven to be false by ICANN's Response and the supporting declarations in support thereof.

4. In making its decision whether to stay the processing of the competing application for .AFRICA, ICANN had to be cognizant of the potential for injury that might occur to ZACR as a result of any delay, and weighed that potential injury against the likelihood that the IRP Panel would conclude that DCA's claim was meritorious. After carefully weighing the options, ICANN elected to proceed with the processing of ZACR's application for .AFRICA.

5. ICANN also based its decision to proceed with the processing of ZACR's application on the fact that DCA did not seek a stay at the outset of these proceedings and then repeatedly sought to delay these proceedings. DCA initiated the IRP in October 2013, but did not file the papers that it was required to file. ICANN agreed to give DCA an extension of time to file its papers, but DCA then sought further extensions of time (over ICANN's objection). All this time, DCA could have sought emergency relief – or stated that it intended to seek emergency relief at an early stage of the proceedings – but DCA did not do either. All the while, ICANN openly continued to process ZACR's application for .AFRICA.

6. On 22 January 2014, DCA finally sent a letter in which DCA threatened to seek emergency relief, but even then, DCA did not file any such request with the ICDR.² In its letter of 22 January 2014, DCA's counsel stated that if ICANN refused to:

² See Annex D to DCA's Request.

suspend processing of applications for the .AFRICA domain name, we intend to seek emergency relief under Article 37 of the ICDR International Arbitration Rules. We believe we have the right to seek such relief because there is no standing panel (as anticipated in the Supplementary Procedures put together by ICANN), which would otherwise hear requests for emergency relief pending the constitution of the Tribunal.³

7. On 5 February 2014, ICANN's counsel responded to this letter and made clear that ICANN would not suspend the processing of competing applications because "ICANN believes that the grounds for DCA's IRP are exceedingly weak, and that the decision to refrain from further processing of other applications on the basis of the pending IRP would be unfair to others."⁴ ICANN did not disagree that Article 37 of the ICDR rules would permit DCA to seek emergency relief and fully anticipated that DCA would follow through on its promise to seek such relief.⁵ Instead, forty-six days passed without DCA taking any action to seek a stay. ICANN continued processing ZACR's application and then entered into a registry agreement with ZACR for .AFRICA, none of which should have surprised DCA because ICANN was doing exactly what it had told DCA it would do.

8. Finally, on 23 March 2014, DCA threatened (again) that it would file a request for an emergency stay.⁶ Another five days passed before DCA served the Emergency Request on 28 March 2014. As discussed herein, the Emergency Request should be denied

³ *Id.*

⁴ Annex E to DCA's Request.

⁵ DCA did not know until 25 March 2014 that the ICDR would take the position that Article 37 was inapplicable to these proceedings because of ICANN's Supplementary Procedures, and ICANN clarified that same day that Article 37 would, in fact, apply. *See* Annexes A and B to DCA's Request. Accordingly, DCA cannot credibly assert that it delayed its request for emergency relief due to any doubt on DCA's part as to whether Article 37 applied. DCA's counsel made it clear in his 22 January 2014 letter that DCA believed Article 37 did apply, and ICANN never stated otherwise.

⁶ *See* Annex I to DCA's Request.

because DCA has not demonstrated any reasonable possibility that it will succeed on the merits and because DCA waited far too long before seeking the stay.

FACTUAL AND PROCEDURAL BACKGROUND

9. On 24 October 2013, DCA filed a “Notice of Independent Review” with the ICDR. Because DCA had not yet paid its filing fees, the ICDR did not acknowledge receipt of DCA’s filing until 13 November 2013. DCA’s filing consisted of a single page document, which identified the parties to the IRP but did not otherwise set forth the grounds upon which DCA was seeking review as required by ICANN’s Bylaws and the ICDR Rules and Supplementary Procedures.⁷ During the initial administrative call with the ICDR, DCA requested (and ICANN agreed to provide) additional time (approximately two and a half weeks) to submit an amended notice setting forth the nature of DCA’s claims and any evidence supporting the claims.

10. Instead of filing an amended notice on the date agreed to by the parties, DCA requested additional extensions. On 10 December 2013, DCA requested a further extension to 10 January 2014 to file its claims and requested the same extension of time to confirm its position regarding the number of panelists and their method of appointment.⁸ Recognizing the need to resolve these types of disputes in an expedited manner, ICANN opposed the

⁷ ICANN notes that its Bylaws and Supplementary Procedures have been amended subsequent to the last time the Emergency Arbitrator was involved in an IRP Proceeding. The amendments require IRP filings (including supporting materials) to be served at the outset of the proceedings and limit those papers to 25 pages (not including declarations and exhibits). Both sides have now filed their papers, copies of which already have been furnished to the Emergency Arbitrator.

⁸ See 10 December 2013 Email from Nancy Kamau to Carolina Cardenás-Soto, attached hereto as Exhibit 1 at p. 7.

request, but the ICDR granted the extension.⁹ On 8 January 2014, DCA requested yet another extension, which ICANN again opposed.¹⁰ The ICDR, noting that it only had the authority to grant one extension without the consent of both parties, denied DCA's request.¹¹ Accordingly, DCA filed its Amended Notice on 10 January 2014.

11. DCA further delayed the IRP proceedings by proposing a slow panelist selection process. DCA did not confirm that it was requesting a three-member panel (as opposed to a single panelist) to consider its request for independent review until early January.¹² Soon thereafter, ICANN requested that DCA's selection of its party-appointed panelist occur "as soon as possible." With absolutely no sense of urgency, DCA instead opted to wait until the very end of January to make its initial appointment.¹³

12. In its Amended Notice, DCA challenges the 4 June 2013 unanimous decision of ICANN's New gTLD Program Committee ("NGPC") to accept "Consensus Advice" from ICANN's Governmental Advisory Committee ("GAC") that DCA's application for .AFRICA should not proceed. DCA argues that the NGPC should not have accepted the GAC's advice for two reasons. First, DCA contends that the African Union Commission ("AUC"), a member of the GAC, had a conflict of interest because the AUC supported the

⁹ *See id.* at pp. 5-6 (11 December 2013 Email from Jeffrey LeVee to Carolina Cardenás-Soto), Pg. 2 (13 December 2013 Email from Jeffrey LeVee to Carolina Cardenás-Soto), and p. 1 (13 December 2013 Email from Carolina Cardenás-Soto).

¹⁰ *See* Exhibit 2 at p. 3 (8 January 2014 Email from Marguerite Walter) and p. 2 (8 January 2014 Email from Jeffrey LeVee).

¹¹ *See id.* p. 1 (9 January 2014 Email from Carolina Cardenás-Soto).

¹² *See id.* at p. 7 (2 January 2014 Email from Marguerite Walter).

¹³ *See id.* at p. 3 (8 January 2014 Email from Jeffrey LeVee) and p. 3 (8 January 2014 Email from Marguerite Walter). ICANN also suggested that the two-party appointed panelists be given twenty days to select the chair of the panel in order to "get things moving." DCA, however, decided thirty days was more appropriate. *See* Exhibit 3 at pp. 1-2 (Email exchange between Marguerite Walter and Jeffrey LeVee).

competing application for .AFRICA submitted by ZACR. Second, DCA argues that the GAC's advice was not "consensus" advice because the country of Kenya opposed the advice. DCA also argues that two of the members of the NGPC had conflicts of interest and should not have voted on DCA's application (although the NGPC vote was unanimous and would have defeated DCA's application even if the two members had abstained). DCA did not submit any declarations to support its claims, a failure that became critically important when it turned out that the factual assertions DCA made in its Amended Notice were false, as ICANN demonstrated in its Response.

13. ICANN filed its Response to DCA's Amended Notice on 10 February 2014. The Response demonstrates that ICANN's acceptance of the GAC's advice was entirely consistent with ICANN's Bylaws, Articles of Incorporation, and the "Guidebook" that the Board adopted for implementing the New gTLD Program.

14. First, ICANN's Response points out that, as set forth in Module 2 of the Guidebook, applications for strings identified as "macro geographical (continental) region" strings," such as DCA's application for .AFRICA, must provide signed letters of support from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region.¹⁴ Accordingly, not only did the AUC—an intergovernmental organization—and the countries of Africa have every right to communicate their views regarding applications for gTLDs such as .AFRICA, no application for .AFRICA could have been successful without the support of at least 60% of the countries of Africa.¹⁵ The fact that the AUC and

¹⁴ Response at ¶ 12 (citing Guidebook, § 2.2.1.4.2.).

¹⁵ *Id.* at ¶ 36.

numerous other African countries supported ZACR's application for .AFRICA, and not DCA's application, does not mean that the process that ICANN established did not work. To the contrary, the process worked exactly as intended.

15. Second, ICANN's Response demonstrates definitively that DCA's contention that the GAC's advice was not "consensus" advice was not only incorrect but also based on an incomplete presentation of the evidence, and without a declaration that would support DCA's interpretation. Most critically, ICANN submitted the declaration of the chair of the GAC, Heather Dryden, who explained that DCA's allegations that the GAC improperly submitted "consensus" advice were false, and that DCA had only told a portion of the "story."¹⁶ In particular, DCA's papers argued that, prior to the meeting of the GAC at which the GAC considered DCA's application for .AFRICA, the "GAC Advisor" from Kenya had emailed the GAC to state his opposition to GAC Advice against DCA's application. Ms. Dryden explained that there had been a further email exchange prior to the GAC meeting, following which Ms. Dryden could not reasonably conclude that the GAC Advisor, on behalf of Kenya, "continued to hold a divergent view from the African Union Commission or its Member States, which supported the issuance of GAC advice in conjunction with DCA's application for .AFRICA."¹⁷ Further, Ms. Dryden explained that email in advance of GAC meetings does not control whether the GAC issues advice, and that at the meeting at which the GAC considered DCA's application for .AFRICA, there was in fact a consensus to block DCA's application. As a result, Ms. Dryden's declaration completely disposed of DCA's

¹⁶ See Declaration of Heath Dryden.

¹⁷ *Id.* at ¶¶ 9-11.

claims. Incredibly, DCA's Emergency Request does not even acknowledge Ms. Dryden's declaration.

16. Third, ICANN's Response negates any argument that ICANN failed to investigate properly DCA's allegation that two NGPC members had conflicts of interest.¹⁸ The Response notes, as a preliminary matter, that DCA fails to identify any procedure that ICANN supposedly failed to follow (and that might be appropriate to consider in an IRP proceeding that is limited to challenging whether ICANN's conduct conforms to its Bylaws and Articles of Incorporation). The Response then details the process by which ICANN investigated and rejected DCA's allegation, a process established by ICANN's conflict of interest policy, which ICANN clearly followed. Finally, the Response explains that the NGPC's decision to accept the GAC's advice was unanimous, and that the NGPC would have had the requisite number of votes even if the two allegedly-conflicted NGPC members had abstained.

17. In support of these arguments, ICANN submitted the declaration of Cherine Chalaby, an ICANN Board Member who Chairs the NGPC (the Board Committee delegated with the Board's authority over matters related to ICANN's New gTLD Program. Mr. Chalaby is also a member of ICANN's Board Governance Committee (BGC) Subcommittee on Ethics and Conflicts ("Subcommittee"). Mr. Chalaby explains the extensive process that Subcommittee undertook to evaluate DCA's assertion that two ICANN Board members had conflicts of interest relative to DCA's application for .AFRICA,

¹⁸ Response at ¶¶ 28-33.

and he explains the conclusion that was reached that these Board members did not, in fact, have any such conflicts of interest.¹⁹

18. DCA has never replied to ICANN's Response or the accompanying declarations. Although any such reply would be untimely under ICANN's Bylaws and the Supplementary Procedures, DCA's Emergency Request (submitted several weeks after ICANN filed its Response) does not even hint that DCA could have any reply that would support DCA's contentions.

19. As a result, the parties' papers establish that DCA's claims are frivolous because: (i) DCA has no basis to argue that the AUC should not have taken a position relative to DCA's application for .AFRICA (a position that the AUC was absolutely entitled to take even if it supported a competing application); (ii) DCA has no basis to argue that the GAC Advice against DCA's application was in any way improper; and (iii) DCA has no basis to argue that two of ICANN's Board members had conflicts of interest relative to DCA's application ("conflicts" that would not have changed the outcome in all events since the NGPC's vote against DCA's application was unanimous).

¹⁹ See Declaration of Cherine Chalaby.

20. In sum, DCA has no evidence to support any assertion that ICANN has violated its Bylaws or Articles of Incorporation. As a result, DCA's claims in this proceeding will fail. For this reason, in evaluating whether to stay the processing of ZACR's application for .AFRICA, ICANN properly weighed the potential injury that could result to ZACR by a delay in the processing of the .AFRICA application against the likelihood that the IRP would find in favor of DCA.

ARGUMENT

I. **DCA HAS IGNORED THE UNIVERSAL LEGAL STANDARD THAT REQUIRES IT TO DEMONSTRATE A REASONABLE POSSIBILITY THAT DCA WILL SUCCEED ON THE MERITS.**

21. DCA argues that, in order to demonstrate an entitlement to interim relief on an emergency basis, it need only demonstrate that "the requested relief protects an existing right; the relief is necessary; and it is urgent."²⁰ In fact, it is generally accepted under both international and U.S. law that, in order to demonstrate entitlement to interim relief, the party seeking relief must also demonstrate a reasonable possibility of success on the merits. For example, Article 27(A)(1)(b) of the United Nations Commission on International Trade Law's ("UNCITRAL's") Model Law on International Commercial Arbitration states that a party requesting an interim measure must demonstrate that "[t]here is a reasonable possibility that the requesting party will succeed on the merits of the claim."²¹ Similarly, tribunals under the International Chamber of Commerce have required a party seeking interim relief to demonstrate a likelihood of success on the merits, noting that the requirement is generally

²⁰ Request at ¶ 18.

²¹ UNCITRAL Model Law on International Commercial Arbitration, Art. 17A(1)(b).

“found both in judicial and arbitral practice.”²² Likewise, under U.S. law, a party seeking a preliminary injunction must at least demonstrate that “the likelihood of success is such that serious questions going to the merits were raised.”²³

22. This requirement is appropriate in light of the fact that interim measures are, as one international tribunal has noted, “extraordinary measures not to be granted lightly.” And yet, even as the DCA moves for such an “extraordinary measure,” it completely ignores the Response filed by ICANN, including the two declarations that demonstrate definitively that DCA’s claims are false.

23. As explained above, ICANN’s Response refutes each claim made by DCA and demonstrates that ICANN did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Guidebook. DCA’s application for .AFRICA failed not because of any violation by ICANN, but as a result of the fact that DCA could not obtain the critical support it needed from governments of Africa to proceed. The Guidebook required DCA to demonstrate that DCA had the support of at least 60% of the countries of Africa, but DCA had virtually no such support. Instead, the AUC, as well as the vast majority of African countries, opted to support a different company’s application to operate .AFRICA, which they had every right to do.

24. The fact that DCA did not submit any declarations to support its claims and then failed in its Emergency Request to address the two outcome-determinative declarations submitted by ICANN demonstrates that DCA’s arguments on the merits will fail. DCA must

²² See, e.g., *Distributor A v. Manufacturer B*, ICC Case No. 10596 , Interlocutory Award of 2000, Yearbook Commercial Arbitration, Vol. XXX 68 n.3 (2005).

²³ *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132-32 (9th Cir. 2011) (internal quotation marks omitted); see also *Winter v. Nat’l Resources Defense Council, Inc.*, 555 U.S. 7, 31 (2008).

know this, as its Emergency Request devotes scant attention to the merits of the dispute.

This makes DCA ineligible for the extraordinary relief it seeks.

II. DCA HAS NOT DEMONSTRATED THAT THE HARM IT WOULD SUFFER IN THE ABSENCE OF INTERIM MEASURES SUBSTANTIALLY OUTWEIGHS THE POTENTIAL HARM THAT COULD RESULT TO THE PARTY AGAINST WHOM THE MEASURES WOULD BE DIRECTED.

25. As DCA acknowledges in its Request, in order to show necessity under international law, it must demonstrate proportionality, *i.e.* that the harm it would occur in the absence of interim relief measures would “exceed[] greatly the damage caused to the party affected” by those measures.²⁴ DCA contends that it would suffer serious harm in the absence of interim relief because the “operation of .AFRICA is a unique right” and “DCA was created expressly for the purpose of campaigning for, competing for and ultimately operating .AFRICA.”²⁵ But DCA fails to acknowledge that, whatever its unilateral plans might have been, its actual probability of harm is greatly diminished by its scant probability of success on the merits. DCA also fails to note the substantial potential harm that ZACR could suffer if the processing of its application for, and the ultimate delegation of, .AFRICA is delayed.

26. ICANN’s decision to proceed with the processing of ZACR’s application for .AFRICA despite DCA’s pending IRP is a reflection of ICANN’s belief that: (i) DCA’s

²⁴ *Burlington Resources Inc. v. Republic of Ecuador & Empresa Estatal Petroleos del Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 on Burlington Oriente’s Request for Provisional Measures, 29 June 2009, ¶ 81 (quoting *City Oriente Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/06/21, Decision on revocation of provisional measures of 13 May 2008, ¶ 72); *see also* UNCITRAL’s Model Law on Commercial Arbitration Art. 17(A)(1)(a) (requiring that a party requesting relief demonstrate that “[h]arm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted”) (emphasis added); *Paushok v. Mongolia*, Order on Interim Measures of 2 September 2008, ¶¶ 68-69.

²⁵ Request at ¶ 27.

IRP is frivolous and unlikely to succeed on the merits; and (ii) ZACR potentially could suffer substantial harm if the delegation of .AFRICA to it is further delayed. This is the same equitable consideration that is reflected in the proportionality requirement and represents another reason why DCA is not entitled to interim measures in this case.

27. As a result, DCA's request should be denied. If, however, the Emergency Arbitrator elects to recommend that a stay be entered, ICANN requests the stay be limited to the final delegation of the .AFRICA string, as opposed to ICANN's continued processing of ZACR's .AFRICA application. This would allow ICANN to continue processing the application, which in turn could minimize any delay ZACR is subject to due to the IRP proceedings.

III. DCA'S DELAY IN SEEKING EMERGENCY RELIEF BELIES ANY CLAIM OF IRREPARABLE HARM.

28. A party that views its claim to be meritorious and that genuinely believes that it will be injured in the event a stay is not issued pending the outcome of the proceeding almost always applies at the outset of the proceeding for a stay to maintain the status quo. This is particularly true when the party is aware that, in the absence of a stay, intervening events may moot the relevance of the proceeding, which ICANN acknowledges is a possibility here.

29. DCA filed its IRP Notice in October 2013, but it did not seek a stay. Nor did DCA mention a request for a stay during the ICDR's administrative call with the parties in December 2013, during which DCA asked for more time to file its papers. Nor did DCA seek a stay when it filed its Amended Notice of its claims on 10 January 2014. Nor did DCA seek a stay even after it expressly threatened to do so in its letter of 22 January 2014. All the

while, DCA knew that ICANN was continuing to process ZACR's application for the .AFRICA gTLD.

30. DCA's decision to wait five months before seeking a stay reflects the weakness of DCA's claims and the lack of any corresponding irreparable harm to DCA. This is compounded by the fact that DCA has done nothing to try to expedite these proceedings. To the contrary, DCA failed to file its fees timely, it sought multiple extensions of time to file its papers, and it requested a very leisurely amount of time for the parties to select the IRP Panel. ICANN, not DCA, has been the party trying to expedite these proceedings, and DCA has resisted at every turn.

31. If DCA truly thought it was going to be irreparably harmed, DCA should have been doing everything in its power to accelerate these proceedings; instead, DCA did exactly the opposite. Having moved slowly, and having delayed in seeking emergency relief for five months, DCA's belated request for a stay should be denied.

CONCLUSION AND RESPONSE TO REQUESTED RELIEF

32. ICANN urges that DCA's request for a stay be denied. With respect to the specific requests contained in paragraphs 6 and 32 of DCA's Emergency Request, ICANN states as follows.

33. DCA has not met its burden with respect to seeking emergency relief because DCA has not demonstrated a reasonable possibility of success and because ICANN has demonstrated that DCA's claims are frivolous. However, in the event the Emergency Arbitrator recommends that a stay be issued, ICANN urges that the recommended stay be limited to the final delegation of the .AFRICA TLD into the root zone so that ICANN and

ZACR can continue preparing for the final delegation if they so choose and be in a position to move quickly once the stay is dissolved.

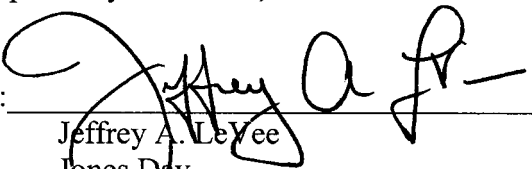
34. With respect to DCA's request that ICANN be ordered to "disclose all steps taken thus far toward delegating the .AFRICA gTLD," ICANN opposes DCA's request and does not understand how such disclosure possibly could be relevant to these emergency proceedings or the IRP as a whole. Certainly, DCA does not explain how any such discovery could be relevant. ICANN has consistently told DCA (and the general public) that it has continued processing ZACR's application for .AFRICA; the fact that ICANN has done what it promised to do does not make ICANN's conduct subject to discovery, particularly since such discovery would not aid the IRP Panel in assessing whether the Board violated ICANN's Bylaws or Articles of Incorporation. In all events, any request for discovery should be addressed to the IRP Panel, not to the Emergency Arbitrator (and the time for any discovery has long passed in all events).²⁶

35. With respect to DCA's request for disclosure of a "truthful approximation" of when the delegation of the .AFRICA gTLD will occur, ICANN estimates that, absent any delays associated with these proceedings, or other unforeseen delays, the length of time from the signing of the Registry Agreement to delegation of .AFRICA gTLD into the root zone is approximately 60 days, during which various testing and other activities occur.

²⁶ ICANN and ZACR signed a registry agreement for .AFRICA when representatives of both companies were in Singapore last week for ICANN's meeting. Contrary to DCA's suggestion, ICANN and ZACR did not "rush" the signing of the registry agreement for .AFRICA. A ceremonial signing had been previously scheduled for a time while the parties were in Singapore, but the actual signing registry agreements regularly occurs in advance of such a ceremony so that the paperwork can be timely processed. The date of the signing is irrelevant in any event in light of DCA's multiple months-long delay in seeking emergency relief and the fact that ICANN had told DCA that it was proceeding with the processing of ZACR's application.

Respectfully submitted,

Dated: 4 April 2014

By: 

Jeffrey A. LeVee
Jones Day
Counsel for Respondent ICANN

LAI-3212267v1

EXHIBIT 1



Subject: RE: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

From: Carolina Cardenas-Soto, LL.M.

12/13/2013 12:07 PM

To: Jeffrey LeVee, sbekele

Contact Information Redacted

Cc: Cindy Reichline, "Eric P. Enson" ,

Dear Counsel,

After careful review of the parties' contentions on Claimant's request for extension, the ICDR has decided to grant the parties until January 2, 2013 to provide comments regarding the number of panelists and method of appointment, further, Claimant may have until January 10, 2014 to submit the Amended Notice of Independent Review, consequently, Respondent will have until February 10, 2014 to provide an answer to the same.

Please do not hesitate to contact me should you have any questions.

Best regards and Happy Holidays,

Carolina

Contact Information Redacted

From: Jeffrey LeVee

Sent: Friday, December 13, 2013 12:01 PM

To: Carolina Cardenas-Soto, LL.M.

Cc: Cindy Reichline; Eric P. Enson; _Contact Information Redacted_, sbekele

Subject: Re: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Carolina:

I believe that my prior two email were very clear: ICANN does not agree to the extension to January 10, 2014.

Thank you.

Jeff LeVee

JONES DAY® - One Firm Worldwide

Telephone: 213.243.2572

From sbekele <sbekele@dotconnectafrica.org>

:

To: Jeffrey LeVee Contact Information
 Redacted "Carolina Cardenas-Soto, LL.M." <
 Contact Information Redacted

Cc: Cindy Reichline Contact Information Redacted
 Contact Information Redacted "Eric P. Enson" <

Date: 12/12/2013 04:51 PM

Subje Re: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet
ct: Corporation for Assigned Names and Numbers (ICANN)

Dear Carolina:

I have read Mr. LeVee's email well.

An extension up to January 10, 2014 would be more suitable for DCA Trust, since the January 2, 2014 date suggested by the ICANN Counsel is quite unsuitable, because of the New Year

holidays.

If ICANN will not accept the extended date of January 10, 2014 requested by DCA Trust, then DCA would be willing to accept an ICDR ruling/decision on the matter.

With Kind regards,

Sophia

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Nobody believes the official spokesman... but everybody trusts an unidentified source. -Ron Nesen

Sophia Bekele (Ms), BS, MBA, C.I.S.A, C.C.S, CGEIT, CBS International, Inc ,Ca, USA/Africa
Contact Information Redacted

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Contact Information Redacted

From: Jeffrey LeVee

To: "Carolina Cardenas-Soto, LL.M." Contact Information Redacted

Cc: Cindy Reichline Contact Information Redacted, Eric P. Enson Contact Information Redacted

Contact Information Redacted

Sent: Thursday, December 12, 2013 1:17 PM

Subject: Re: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Carolina:

Ms. Bekele did not read my email very carefully. ICANN objects to the further extension to January 10. DCA Trust was supposed to file its papers several weeks ago when it initiated this process, and it then agreed to file on December 18. ICANN's offer to give DCA Trust another extension to January 2 is quite generous. A further extension to January 10 is not appropriate.

Thank you.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Contact Information Redacted

From: sbেকে Contact Information Redacted

To: Jeffrey LeVee Contact Information Redacted "Carolina Cardenas-Soto, LL.M." <
Contact Information Redacted

Cc: Cindy Reichline Contact Information Redacted ; "Eric P. Enson" <
Contact Information Redacted

Date: 12/11/2013 07:26 PM

Subject: Re: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs.
Internet Corporation for Assigned Names and Numbers
(ICANN)

Dear Carolina:

I note the communication from Jeffery below.

We request a submission date of January the 10th primarily because of the holiday period, which runs up to January 2nd. If I recall correctly, Jeffrey also made a reference during the call to the holiday period in determining the extension date he himself was requesting.

I trust we can now proceed with the proposed date.

With best wishes,
Sophia
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Nobody believes the official spokesman... but everybody trusts an unidentified source. -Ron Nesen

Sophia Bekele (Ms), BS, MBA, C.I.S.A, C.C.S, CGEIT, CBS International, Inc
Contact Information Redacted

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Contact Information Redacted

From: Jeffrey LeVee

To: "Carolina Cardenas-Soto, I.I.M." <CardenasC@adr.org>

Cc: Cindy Reichline ; Eric P. Enson

Contact Information Redacted Nkamaw · Contact Information Redacted Sophia Bekele Contact Information Redacted

Sent: Wednesday, December 11, 2013 10:27 AM

Subject: RE: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Carolina:

ICANN is very disappointed to have received the request from DotConnectAfrica Trust ("DCA Trust") for another extension of time to file papers that should have accompanied DCA Trust's Notice of Independent Review several weeks ago. As explained in my letter of November 27, 2013, DCA Trust was supposed to have filed its complete papers at the time it filed its initial Request for Independent Review. In my letter of December 2, 2013, ICANN agreed that it would be acceptable, in this one instance, to give DCA Trust a brief extension of time to December 18, 2013 to file its papers. DCA Trust did not respond to that letter, and during our call on December 6, 2013, Ms. Bekele actually stated that DCA Trust was prepared to file earlier than December 18.

The rules and deadlines for the Independent Review process that ICANN has established are for the benefit of ICANN's community and encourage these

types of disputes to be resolved in an expedited manner. As a result, ICANN does not agree with DCA Trust's request. Nevertheless, if DCA Trust truly believes that it needs more time, ICANN will not oppose one final extension for DCA Trust to file its papers, and suggests that the deadline be no later than January 2, 2014.

Jeff LeVee

JONES DAY® - One Firm Worldwide
Contact Information Redacted

From: "Carolina Cardenas-Soto, LL.M." Contact Information Redacted
m:

To: Nkamaw Contact Information Redacted

Cc: "Eric P. Enson" Contact Information Redacted Jeffrey LeVee
Contact Information Redacted, Cindy Reichline Contact Information Redacted
Sophia Bekek Contact Information Redacted

Date: 12/11/2013 09:31 AM
e:

Subject: RE: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) jec vs. Internet Corporation for Assigned Names and Numbers (ICANN)
t:

Dear Mr. LeVee,

May we have your comments on DotconnectAfrica's request today?

Thank you and best regards,
Carolina

Carolina Cardenas-Soto, LL.M.
International Senior Case Manager
American Arbitration Association

International Centre for Dispute Resolution
120 Broadway, 21st Floor
New York, NY 10271
www.icdr.org
Contact Information Redacted

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Contact Information Redacted

From: Nkamaw
Sent: Tuesday, December 10, 2013 5:47 PM
To: Carolina Cardenas-Soto, LL.M.
Cc: Eric P. Enson; Jeffrey LeVee; Cindy Reichline; Sophia Bekele
Subject: Re: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Ms. Cardenas-Soto:

We wish to request a further time extension up to January 10, 2014, to enable DCA Trust file an amended notice with accompanying memorandum for the IRP proceeding.

This request has been necessitated due to the unavailability of prospective legal personnel which has been caused by the impending holiday season. Accordingly, we wish we wish to be granted a further time extension, that should also apply to ICANN, to enable the respondent file its response within 30 days from January 10, 2014.

Furthermore, we would also like to request the same time extension for the confirmation of the number of arbitrators and/or plus other pertinent issues that were discussed by the parties during the recent Administrative Conference Call.

Thanking you in anticipation of your positive consideration of our request.

Kind Regards,
Nancy

[IMAGE]

Carolina Cardenas-Soto, LL.M.
International Senior Case Manager
American Arbitration Association
International Centre for Dispute Resolution
120 Broadway, 21st Floor
New York, NY 10271
www.icdr.org
Contact Information Redacted

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Nancy Kamau
(Embedded image moved to file: pic04098.gif) Personal Assistant to
Executive Director
DotConnectAfrica.org
www.dotconnectafrica.org
Contact Information Redacted

Please support our "yes2dotafrica" campaign by:
Following us on Twitter and Facebook
Email us at: yes2dotafrica@dotconectafrica.org
Press Room

DotConnectAfrica is a non-partisan, not-for-profit organization incorporated in Mauritius Africa, and will sponsor, establish and operate a TLD registry with global recognition and regional significance dedicated to the needs of the Pan-African and African community. DCA Reg. ID. CT8710DCA90.

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communication in error, please notify the sender immediately.

Contact Information Redacted

From: "Carolina Cardenas-Soto, LL.M."

To: Cindy Reichline Contact Information Redacted sbekele <
Contact Information Redacted

Cc: Eric P. Enson Contact Information Redacted; Jeffrey LeVee <
Contact Information Redacted

Sent: Wednesday, December 4, 2013 10:40 AM

Subject: RE: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA
Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear All,

Please find attached the Current Supplementary procedures for Internet
Corporation for Assigned Names and Numbers Independent Review Process.

Best regards,
Carolina

Contact Information Redacted

From: Cindy Reichline

Sent: Wednesday, December 04, 2013 1:25 PM

To: Carolina Cardenas-Soto, LL.M.

Cc: Eric P. Enson; Jeffrey LeVee

Subject: Re: FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA
Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Ms. Cardenas-Soto,

Please see attached pdf copy of the current Supplementary Procedures. The
procedures are available on the ICDR website --on the International -
Independent Review Panel Provider (IRPP) webpage -- but I'm having trouble
providing the link to that specific page. The link returns to the ICDR
home page.

http://www.icdr.org/icdr/faces/icdrservices/icann/irpp?_afLoop=2806768360272868&_afWindowMode=0&_afWindowId=null#%40%3F_afWindowId%3Dnull%26_afLoop%3D2806768360272868%26_afWindowMode%3D0%26_adf.ctrl-state%3D5muu5n338_58

Thanks.

Cindy

Cindy Reichline
Associate
JONES DAY® - One Firm Worldwide
Contact Information Redacted

From "Carolina Cardenas-Soto, LL.M." · Contact Information Redacted
:

To: Jeffrey LeVee Contact Information Redacted "Eric P. Enson" <Contact Information Redacted>
Contact Information Redacted Cindy Reichline Contact Information Redacted

Date 12/04/2013 08:11 AM
:

Subj FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust)
ect: vs. Internet Corporation for Assigned Names and Numbers (ICANN)

My apologies, I thought you had been informed. Please see attached
correspondent changing the time for today's call.

Best regards,
Carolina

Carolina Cardenas-Soto, LL.M.
International Senior Case Manager
American Arbitration Association
International Centre for Dispute Resolution
Contact Information Redacted

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From: Carolina Cardenas-Soto, LL.M.
Sent: Monday, November 25, 2013 7:52 PM
To: Contact Information Redacted
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)
Importance: High

Dear Parties,

We just realized that the time set for the administrative call in the above matter might be too early for you, therefore, for your convenience, we would be happy to move the call scheduled for December 4 at 8:00 AM Pacific/11:00 AM EST to 10:00 AM Pacific/1:00 PM EST or to any other date and time that works for both parties.

Please advise.

Many thanks,
Carolina Cárdenas

From: Carolina Cardenas-Soto, LL.M.
Sent: Monday, November 25, 2013 7:09 PM
To: Contact Information Redacted
Subject: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)
Importance: High

Dear Parties,

Please find the attached communication in connection with the above captioned matter.

Regards,
Carolina Cárdenas

----- Message from "Carolina Cardenas-Soto, LL.M." Contact Information Redacted on

Wed, 27 Nov 2013 13:45:22 -0500 -----

Contact Information Redacted

To: Contact Information Redacted sbekele

cc: Contact Information Redacted

Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Ms. Bekele,

Thank you for your email below. If it also works for Mr. Jeffrey we shall move the call to 10:00 AM Pacific time on Wednesday, December 4, 2013.

Please take note of the dial-in numbers and participant code:

Toll free number for the US, Canada and Puerto Rico: 888-537-7715
International number: 1-334-323-9858
Participant code: 59763001#

Please do not hesitate to contact me should you have any questions.

Happy Thanksgiving to all,

Carolina

Contact Information Redacted

From: sbekele

Sent: Wednesday, November 27, 2013 10:23 AM

To: Carolina Cardenas-Soto, LL.M.; Contact Information Redacted

Subject: Re: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Carolina:

Thank you for your message. If it is convenient with all, I would like to request 10AM Pacific Time on Dec 4th. I am now in California.

Kind regards

Sophia

Support our "YES" to .africa Campaign!

www.dotconnectafrica.org

Follow us on twitter and facebook
Email us at: yes2dotafrica@dotconnectafrica.org
Visit our press room

Nobody believes the official spokesman... but everybody trusts an unidentified source. -Ron Nesen

Sophia Bekele (Ms), BS, MBA, C.I.S.A, C.C.S, CGEIT, CBS International, Inc
Contact Information Redacted

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Thank you.

Contact Information Redacted

From: "Carolina Cardenas-Soto, LL.M."

To: Contact Information Redacted

Contact Information Redacted

Sent: Monday, November 25, 2013 4:52 PM

Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Parties,

We just realized that the time set for the administrative call in the above matter might be too early for you, therefore, for your convenience, we would be happy to move the call scheduled for December 4 at 8:00 AM Pacific/11:00 AM EST to 10:00 AM Pacific/1:00 PM EST or to any other date and time that works for both parties.

Please advise.

Many thanks,
Carolina Cárdenas

Carolina Cardenas-Soto, LL.M.
International Senior Case Manager
American Arbitration Association
International Centre for Dispute Resolution
Contact Information Redacted

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From: Carolina Cardenas-Soto, LL.M.
Sent: Monday, November 25, 2013 7:09 PM
To: Contact Information Redacted
Subject: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)
Importance: High

Dear Parties,

Please find the attached communication in connection with the above captioned matter.

Regards,
Carolina Cárdenas

----- Message from John Jeffrey Contact Information Redacted on Tue, 26 Nov 2013 16:57:58 -0500 -----

To: "Carolina Cardenas-Soto, LL.M." Contact Information Redacted

cc: Contact Information Redacted

Subject: Re: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Thanks, could you please add Amy Stathos, ICANN's Deputy General Counsel on copy as well. Contact email is Amy.Stathos@icann.org, same address.

best,

John Jeffrey
General Counsel & Secretary
ICANN
Contact Information Redacted

12025 Waterfront Drive, Suite 300
Los Angeles, California 90094-2536

On Nov 25, 2013, at 4:52 PM, "Carolina Cardenas-Soto, LL.M." <
Contact Information Redacted

Dear Parties,

We just realized that the time set for the administrative call in the above matter might be too early for you, therefore, for your convenience, we would be happy to move the call scheduled for December 4 at 8:00 AM Pacific/11:00 AM EST to 10:00 AM Pacific/1:00 PM EST or to any other date and time that works for both parties.

Please advise.

Many thanks,
Carolina Cárdenas

<[imagebd2fb4.png@99d4e1b9.ab4f4aa3](#)> Carolina Cardenas-Soto, LL.M.
International Senior Case Manager
American Arbitration Association
International Centre for Dispute Resolution
Contact Information Redacted

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From: Carolina Cardenas-Soto, LL.M.
Sent: Monday, November 25, 2013 7:09 PM
To: Contact Information Redacted
Subject: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)
Importance: High

Dear Parties,

Please find the attached communication in connection with the above captioned matter.

Regards,
Carolina Cárdenas

=====
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Carolina Cardenas-Soto, LL.M.
International Senior Case Manager
American Arbitration Association
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- image9580c4.png@4791a3e2.e6984dba

EXHIBIT 2



Subject:
RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

From:
Carolina Cardenas-Soto, LL.M.
01/09/2014 09:48 AM

To:
Walter, Marguerite, Jeffrey LeVee

Cc:
"Ali, Arif", Cindy Reichline, "Eric P. Enson", "Franzetti, Erica"

Hide Details Contact Information Redacted

From: "Carolina Cardenas-Soto, LL.M."

To: "Walter, Marguerite" Contact Information Redacted Jeffrey LeVee
Contact Information Redacted

Cc: "Ali, Arif" Contact Information Redacted Cindy Reichline Contact Information Redacted, "Eric P. Enson" Contact Information Redacted "Franzetti, Erica" Contact Information Redacted

History: This message has been forwarded.

Dear Counsel,

Thank you for your recent communications in connection with this matter.

As it was stated during the administrative conference call, without the consent of the parties, the ICDR can only grant one extension per deadline. Since the deadline for the filing of the amended notice has already been extended once, we do not have the authority to extend it a second time. This request will have to be decided by the Independent Review Panel once appointed. Nevertheless, please be kindly reminded that Article 4 of the International Arbitration Rules allows the parties to amend or supplement their claims at any time before the arbitrator is appointed.

Please do not hesitate to contact me should you have any questions.

Best regards,
Carolina



Carolina Cardenas-Soto, LL.M.
International Senior Case Manager

American Arbitration Association
International Centre for Dispute Resolution
Contact Information Redacted

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From: Walter, Marguerite Contact Information Redacted
Sent: Wednesday, January 08, 2014 1:01 PM

To: Jeffrey LeVee; Carolina Cardenas-Soto, LL.M.
Cc: Ali, Arif; Cindy Reichline; Eric P. Enson; Franzetti, Erica
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Just two brief observations on Jeff's response below. First, whether or not these proceedings require counsel, ICANN has been represented by counsel from the beginning, and one can hardly fault DCA Trust for seeking to level the playing field by retaining its own counsel.

Second, ICANN's website instructs applicants wishing to initiate the IRP process as follows: "To initiate a request for Independent Review, please complete the ICDR form which can be found here [with active link]." It then states: "ICDR will then contact you to discuss the process in more detail." It says nothing about needing to file a supporting brief with the notice, so it is not surprising that there was some confusion on this point. We are in the process of putting together that brief, but as explained in our email, we need additional time to ensure that the issues are clearly laid out for ICANN's response and for the panel's benefit once it is constituted.

Best,

Marguerite

Weil

Marguerite C. Walter

Contact Information Redacted

From: Jeffrey LeVee Contact Information Redacted
Sent: Wednesday, January 08, 2014 12:45 PM
To: Carolina Cardenas-Soto, LL.M.
Cc: Ali, Arif; Cindy Reichline; Eric P. Enson; Franzetti, Erica; Walter, Marguerite
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Carolina:

DCA Trust already has received two extensions of time to file its papers, the second of which the ICDR granted on December 13, 2013 over ICANN's objection. Thus, ICANN does indeed object to a third extension of time. These proceedings do not require counsel, and in any event DCA Trust's delay in retaining counsel is not a basis for a further extension.

DCA Trust has known since December 13, 2013 that its papers would be due on January 10, 2014 (the date that DCA Trust itself proposed). There has been no uncertainty as to the applicable rules, and certainly none that should result in a further delay in the filing of papers that should have been filed with the original request for independent review.

Jeff LeVee

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Contact Information Redacted

From: "Walter, Marguerite" **Contact Information Redacted**
To: Jeffrey LeVee **Contact Information Redacted** **Contact Information Redacted**
Cc: "Ali, Arif" **Contact Information Redacted**, Cindy Reichline **Contact Information Redacted** "Eric P. Enson" **Contact Information Redacted** "Franzetti, Erica" **Contact Information Redacted**
Date: 01/08/2014 09:15 AM
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Jeff: We agree with your proposal regarding the nomination of arbitrators and selection of a chair, and will nominate our arbitrator by January 31.

Carolina: ICANN has refused our request for a brief extension of time – until Friday, January 17 – to file our amended notice of independent review. We therefore request that the ICDR grant us an extension until Wednesday, January 15, to file the amended notice. We understand that DCA Trust has already received an extension of time, but as you know, there has been some confusion about the proper procedure and the applicable rules for this process, and Ms. Bekele – who was handling this until we were retained last week – is not an attorney. This short extension of time will cause no prejudice to ICANN, but denying the extension would cause significant prejudice to DCA Trust, and would risk harming the transparency and fairness of the accountability process ICANN has put in place.

Best,

Marguerite



Marguerite C. Walter

Contact Information Redacted

From: Jeffrey LeVee **Contact Information Redacted**
Sent: Wednesday, January 08, 2014 10:22 AM
To: Carolina Cardenas-Soto, LL.M.
Cc: Ali, Arif; Cindy Reichline; Eric P. Enson; Franzetti, Erica; Walter, Marguerite
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Carolina: Thanks for your note. The parties had a conference call yesterday to discuss panelist selection, and I believe we are very close to an agreement.

Marguerite and Arif: Following up on our telephone call yesterday regarding panelist selection, now that DCA Trust has confirmed that it wants 3 panelists, ICANN agrees that each side should select one panelist. DCA Trust should select its panelist, and ICANN will select its panelist 30 days later. ICANN is flexible as to the timing for DCA Trust's initial selection, but we suggest that the selection occur as soon as possible.

As for the presiding panelist, we like your idea of having the 2 party-nominated panelists come up with a list for the presiding panelist. We also like your idea, discussed during yesterday's phone call, of giving each side the right to strike a limited number of proposed presiding panelists. Accordingly, ICANN's proposal is that the 2 party-nominated panelists should create a list of 8 possible presiding panelists, each side will then have the right to strike no more than 2 of those 8, and each side would then rank the 4 (or more) remaining names as per Marguerite's email below.

We will look forward to hearing from you.

Jeff LeVee

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Contact Information Redacted

Contact Information Redacted

From: "Carolina Cardenas-Soto, LL.M."
To: "Walter, Marguerite" Contact Information Redacted Jeffrey LeVee Contact Information Redacted
Cc: sbeke Contact Information , "Ali, Arif" Contact Information Redacted "Franzetti, Erica" Contact Information Redacted "Eric P. Enson" Contact Information Redacted Cindy Reichline Contact Information Redacted
Date: 01/08/2014 06:58 AM
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Counsel,

We are in receipt of your most recent communications in connection with this matter. Please let us know if you would like to have a conference call in order to discuss the issue of the appointment of the third arbitrator. If no call is necessary, kindly advise whether you have been able to reach an agreement.

We look forward to your response.

Best regards,

Carolina

[IMAGE]

Carolina Cardenas-Soto, LL.M.

International Senior Case Manager
American Arbitration Association
International Centre for Dispute Resolution
Contact Information Redacted

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From: Walter, Marguerite Contact Information Redacted
Sent: Thursday, January 02, 2014 7:19 PM
To: Jeffrey LeVee
Cc: Carolina Cardenas-Soto, LL.M.; sbekel; Ali, Arif; Franzetti, Erica; Eric P. Enson; Cindy Reichline
Subject: Re: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

That's fine with us. Let's aim to have a call on Monday or Tuesday.

Best,

Marguerite

Contact Information
Redacted

Jeffrey LeVee wrote:

I disagree with the proposal from DCA Trust as to selection of the third panelist. I suggest that the parties confer over the next few days to see if we can find common ground.

Thanks.

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----- Original Message -----

From : "Walter, Marguerite" <Contact Information Redacted>
To : Jeffrey LeVee <Contact Information Redacted>
Cc : "Carolina Cardenas-Soto, LL.M." <Contact Information Redacted>
Contact Information Redacted, sbekel <Contact Information Redacted> "Ali, Arif" <Arif.Ali@weil.com>, "Franzetti, Erica" <Erica.Franzetti@weil.com>, "Eric P. Enson" <Contact Information Redacted>, Cindy Reichline <Contact Information Redacted>
Sent on : 01/02 06:15:18 PM EST
Subject : Re: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Mr. LeVee,

I believe we can clear up any confusion very easily. If you take a look at the 13 December email from Ms. Cardenas that we referenced, you'll see that she directed both parties to provide comments on the nomination of arbitrators by today. We therefore look forward to receiving ICANN's comments later this evening.

Best,

Marguerite C. Walter

Contact Information Redacted

Jeffrey LeVee <Contact Information Redacted> wrote:

Carolina:

I am a bit uncertain on the timing of ICANN's response on the issue of arbitrator selection. Now that we have this proposal by DCA Trust, I suggest that ICANN respond by January 8.

Thank you.

Jeff LeVee
JONES DAY® - One Firm WorldwideSM
Contact Information Redacted

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----- Original Message -----

From : "Walter, Marguerite" Contact Information Redacted
To : "Carolina Cardenas-Soto, LL.M." Contact Information Redacted
Contact Information Redacted
Cc : Contact Information Redacted "sbekele
Contact Information Redacted , "Ali,
ARIIT
Contact Information "Franzetti, Erica" Contact Information Redacted
Sent on : 01/02 04:46:21 PM EST
Subject : ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs.
Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Ms. Cárdenas-Soto,

We write further to your email of 13 December 2013 to DCA Trust regarding the parties' comments on the number and method of appointment of the arbitrators in the above-referenced matter.

DCA Trust proposes that there be three arbitrators, to be appointed as follows: each party shall name one arbitrator, with the third, presiding arbitrator to be named either by agreement of the parties or based on a list of five potential presiding arbitrators prepared by the two party-appointed arbitrators. In the latter case, each party will rank the proposed presiding arbitrators in order of preference, from 1 (highest preference) to 5 (lowest preference). The rankings will be kept completely confidential, with no disclosure of the parties' respective rankings to the ICDR, the Tribunal, or any other person. The candidate with the lowest combined score will be jointly nominated by the parties as the presiding arbitrator, contingent on the arbitrator's availability and the absence of

any conflicts. In the event that the first arbitrator is not available, the parties will nominate the arbitrator with the next-lowest score. In the event of a tie, the parties will negotiate in order to agree on the arbitrator to be nominated. If this procedure does not result in a viable nomination, either as a result of the parties' inability to resolve a tie or the unavailability of both the first and second 'winning' candidates, the parties will ask the ICDR to make the appointment. None of the candidates that were put forward in this procedure will be eligible to be appointed by the ICDR.

Sincerely,

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Marguerite C. Walter

Contact Information Redacted

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[attachment "[image84e6cf.png@3c5ba76a.28f1434a](#)" deleted by Jeffrey LeVee/JonesDay]

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EXHIBIT 3



Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)
From: Walter, Marguerite 03/19/2014 07:28 AM
To: Jeffrey LeVee
Cc: "Ali, Arif", "Franzetti, Erica", "Cindy Reichline" Contact Information Redacted
"Eric P. Enson Contact Information Redacted"

Ok, let's go with 30. Thanks, Jeff.

Best,

Marguerite

Marguerite C. Walter

Contact Information Redacted

-----Original Message-----

From: Jeffrey LeVee Contact Information Redacted
Sent: Tuesday, March 18, 2014 4:20 PM
To: Walter, Marguerite
Cc: Ali, Arif; Franzetti, Erica; Cindy Reichline Contact Information Redacted
Eric P. Enson Contact Information Redacted
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

I would be amenable to 20 days to get things moving, but 30 is fine as well.

Jeff LeVee
JONES DAY® - One Firm WorldwideSM
Contact Information Redacted

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----- Original Message -----

From : "Walter, Marguerite" Contact Information Redacted
To : Contact Information Redacted
Cc : "Ali, Arif" Contact Information Redacted "Franzetti, Erica"

Contact Information Redacted

Contact Information Redacted , "Cindy Reichline
"Eric P. Enson Contact Information Redacted

Sent on : 03/18 01:17:05 PM PDT
Subject : FW: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust)
vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Jeff,

We suggest a deadline of 30 days, which should give the arbitrators plenty of time to come up with a list. Let us know your thoughts.

Thanks,

Marguerite

(Embedded image moved to file: pic06191.jpg)

Marguerite C. Walter
Contact Information Redacted

From: Carolina Cardenas-Soto, LL.M. Contact Information Redacted
Sent: Tuesday, March 18, 2014 3:30 PM
To: Ali, Arif; jlevee@JonesDay.com
Cc: Contact Information Redacted Franzetti, Erica; Walter, Marguerite
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Counsel,

We are in receipt of your recent communications in connection with this matter.

present dispute, and that the presiding arbitrator should have the level of international arbitration expertise and stature of someone like Judge Schwebel.

2. A US resident is different from a US national.

3. It remains our view that the presiding panelist should not share the nationality of the parties. Residency is a different matter.

4. We appreciate that the final determination of what is communicated to the co-arbitrators will be up to the ICDR. We ask that the ICDR provide DCA Trust's communications on the subject of the presiding panelists nationality to the co-panelists.

Kind regards,

Arif

Arif Hyder Ali

Contact Information Redacted

Contact Information Redacted

From: Jeffrey LeVee

Sent: Monday, March 17, 2014 01:03 PM Eastern Standard Time

To: Ali, Arif

Cc: Carolina Cardenas-Soto, LL.M. Contact Information Redacted Cindy Reichline <

Contact Information Redacted Eric P. Enson Contact Information Redacted Franzetti, Erica; Walter, Marguerite

Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Arif:

ICANN is absolutely confident that the parties' agreement regarding the appointment of the panelists in this matter will result in a balanced and objective panel, without placing restrictions or conditions on the panelists' nationality. There is no reason whatsoever that two U.S. residents cannot serve on the panel, and I certainly do not recall your client ICM objecting when the two party-appointed panelists, one from the U.S. and one from Europe, appointed Judge Schwebel, a U.S. resident, to be the presiding panelist.

DCA did not raise this issue while we were negotiating the manner for appointing the panel, and ICANN never would have agreed that two of the panelists could not reside in the same country. Accordingly, we ask that the ICDR notify the two party-appointed panelists in this matter that they should confer regarding the identification of the 8 names for the presiding panelist, with no strings attached as to the nationality of the presiding panelist.

Jeff LeVee

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global resource. Our client is not a US national. The administering body is the AAA's International Center for Dispute Resolution, and the main rules of procedure are its International Arbitration Rules. The Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process are what they say they are - "supplementary" procedures.

Fifth, aside from the nationality-related considerations mentioned above, we believe it is important that the presiding panelist have considerable experience in international arbitration, particularly under ICDR rules. I look forward to your further thoughts regarding how you think we should proceed.

Arif

Contact Information Redacted

From: Jeffrey LeVee
Sent: Friday, March 14, 2014 2:28 PM
To: Ali, Arif
Cc: Carolina Cardenas-Soto, LL.M.; Cindy Reichline; Eric P. Enson; Franzetti, Erica; Walter, Marguerite
Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Arif:

I am stunned that you would take the position that "we will, under no circumstances, accept a presiding panelist who has a US nationality." Are you really saying that DCA believes that it has the ability to "reject" a panel that the ICDR selects according to its rules and the parties' agreements related to panelist selection?

You and I previously agreed to the rules by which the two party-nominated panelists would prepare a list of names for the presiding panelist, and not once did you say that there were any sort of conditions as to the nationality of the presiding panelist, or that the presiding panelist had to come from a country other than the country where the two party-nominated panelists preside. In any event, I never would have agreed to any such condition, and the ICANN Bylaws that govern this process do not contain any such conditions either.

Jeff LeVee
JONES DAY® - One Firm Worldwide
Contact Information Redacted

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| Fro | "Ali, Arif" Contact Information Redacted
| m:  |
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| To: | Jeffrey LeVee Contact Information Redacted "Walter, Marguerite" <
|     | Contact Information Redacted
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| Cc: | "Franzetti, Erica" Contact Information Redacted , "Eric P. Enson" <
|     | Contact Information Redacted Cindy Reichline Contact Information Redacted
|     | "Carolina Cardenas-Soto, LL.M." Contact Information Redacted
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|Dat|03/14/2014 09:58 AM
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Jeff -

Our client is not a US entity. This is an international proceeding, relating to a global resource. The panel should therefore also be international.

We believe the panelists should be provided with the parties' input on the characteristics of the presiding panelist.

In this regard, we will, under no circumstances accept a presiding panelist who has US nationality. Please let us know if you agree, otherwise we will inform the two panelists of our view.

Arif Hyder Ali

From: Jeffrey LeVee [mailto:jlevee@JonesDay.com]
 Sent: Friday, March 14, 2014 11:00 AM
 To: Walter, Marguerite
 Cc: Ali, Arif; Franzetti, Erica; Eric P. Enson; Cindy Reichline
 Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Marguerite:

My instinct is to let the two panelists do what they think is right. Why do you say that you would not accept a president who is American?

Jeff LeVee
 JONES DAY® - One Firm Worldwide
 Contact Information Redacted

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|From|"Walter, Marguerite"          Contact Information Redacted
|: |
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|To: |Jeffrey LeVee Contact Information Redacted
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|Cc: |"Ali, Arif" Contact Information Redacted, "Franzetti, Erica" <
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|Date|03/14/2014 07:56 AM
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|Subj|RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust)
|ect:|vs. Internet Corporation for Assigned Names and Numbers (ICANN)
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Jeff,

We think it would be useful to give the arbitrators at least some guidance as to what characteristics would be appropriate for the presiding arbitrator.

For instance, we would not accept a president who was American, and you may not want an arbitrator who was French, since Kessedjian is French. Let us know what you think.

Thanks,

Marguerite

Marguerite C. Walter

Contact Information Redacted

-----Original Message-----

From: Jeffrey LeVee Contact Information Redacted

Sent: Thursday, March 13, 2014 6:12 PM

To: Carolina Cardenas-Soto, LL.M.

Cc: Ali, Arif; Contact Information Redacted

Franzetti,

Erica; Walter, Marguerite; Contact Information Redacted

Subject: RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Carolina:

On behalf of ICANN, we are comfortable having the two panelists proceed immediately. Thank you.

Jeff LeVee
JONES DAY(r) - One Firm Worldwide
Contact Information Redacted

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| From: |
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| "Carolina Cardenas-Soto, LL.M." Contact Information Redacted
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| To: |
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| Jeffrey LeVee Contact Information Redacted, "Walter, Marguerite" <
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| "Ali, Arif" Contact Information
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| RE: ICDR Case 50 117 T 1083 13 DotConnectAfrica Trust (DCA Trust) vs.
| Internet Corporation for Assigned Names and Numbers (ICANN) |
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Dear Counsel,

With respect to the list of potential candidates for presiding panelist, please clarify whether the two appointed panelists can now initiate the process of putting together the list or do they have to wait until the March 27 deadline for objections has passed?

Thank you and best regards,
Carolina

Carolina Cardenas-Soto, LL.M.
International Senior Case Manager
American Arbitration Association
International Centre for Dispute Resolution
Contact Information Redacted

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