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ASSIGNED NAMES AND NUMBERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DOTCONNECTAFRICA TRUST, Plaintiff, v. INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, *et al*., Defendants.	**CASE NO. BC607494** Assigned to Hon. Howard L. Halm **DECLARATION OF AKRAM ATALLAH IN SUPPORT OF ICANN'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** DATE: December 22, 2016 TIME: 8:30 a.m. DEPT: 53

DECLARATION OF AKRAM ATALLAH

I, Akram Atallah, declare the following:

1.   I am the President, Global Domains Division, for the Internet Corporation for Assigned Names and Numbers ("ICANN"), a defendant in this action. I have personal knowledge of the matters set forth herein and am competent to testify as to those matters. I make this declaration in support of ICANN's Opposition to DotConnectAfrica Trust's ("DCA's") Motion for Preliminary Injunction.

ICANN and the New gTLD Program

2.   ICANN is a California not-for-profit public benefit corporation. ICANN oversees the technical coordination of the Internet's domain name system ("DNS") on behalf of the Internet community, ensuring the DNS's continued security, stability, and integrity. As set forth in the version of ICANN's Bylaws relevant to this dispute ("Bylaws"), ICANN's mission "is to coordinate, at the overall level, the global Internet's system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems," including the DNS. Declaration of Sophia Bekele Eshete ("Bekele Decl."), Ex. 4 (Bylaws, Art. I, § 1). ICANN's amended Bylaws became effective October 1, 2016, and DCA does not contend that the amended Bylaws are relevant to this dispute.

3.   The essential function of the DNS is to convert numeric IP addresses into easily-remembered domain names that permit users to find specific websites, such as "USCOURTS.GOV" and "ICANN.ORG." The ".GOV" and ".ORG" in these addresses, just like the more well-known ".COM," are referred to as top-level domains ("TLDs"). ICANN is solely responsible for evaluating potential TLD operators and recommending that TLDs be added to the DNS. No government entity or regulatory scheme governs ICANN's decisions in that respect.

4.   Throughout its history, ICANN has sought to expand the number of accessible TLDs in the DNS in order to promote consumer choice and competition. The New gTLD Program ("Program"), launched in 2012, constitutes ICANN's most ambitious expansion of the Internet's naming system. The Program's goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new generic TLDs

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("gTLDs"), including both new ASCII gTLDs and new non-ASCIII, internationalized domain

name gTLDs. It resulted in the submission of 1,930 applications for new gTLDs, including

DCA's and ZA Central Registry's ("ZACR's") applications for the .AFRICA gTLD.

5. A number of "Advisory Committees" advise ICANN's Board on various topics

described in the ICANN Bylaws. The Governmental Advisory Committee ("GAC") has

members composed of national governments and distinct economies as recognized in

international fora, including the Unites States, and its purpose is to "consider and provide advice

on the activities of ICANN as they relate to concerns of governments, particularly matters where

there may be an interaction between ICANN's policies and various laws and international

agreements or where they may affect public policy issues." Bekele Decl., Ex. 4 (Bylaws, Art. XI,

§ 2.1).

ICANN's Accountability Mechanisms

6. ICANN's Bylaws provide for several accountability mechanisms to ensure that

ICANN operates in accordance with its Articles of Incorporation, Bylaws, policies and

procedures. *See* Bekele Decl., Ex. 4 (Bylaws, Arts. IV-V). 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 applicant believes have harmed it. *Id.*

(Bylaws, Art. IV, § 2). In addition, an aggrieved applicant can file a "request for independent

review," a unique process set forth in ICANN's Bylaws that asks independent panelists to

evaluate whether an action of ICANN's Board was consistent with ICANN's Articles of

Incorporation and Bylaws. *Id.* (Bylaws, Art. IV, § 3).

7. The Bylaws provide for the IRP panel to issue a written determination "declar[ing]

whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or

Bylaws" and "recommend[ing] that the Board stay any action or decision, or that the Board take

any interim action, until such time as the Board reviews and acts upon the opinion of the IRP."

Bekele Decl., Ex. 4 (Bylaws, Art. IV, § 3.11). The ICANN Board then considers and acts on the

determination. *Id.* (Bylaws, Art. IV, § 3.21).

8. I am informed and believe that prior to the opening of the New gTLD Program

1 application period, only one IRP had resulted in a written determination, *ICM Registry, LLC v.*

2 *ICANN*. The *ICM* Panel declared that the determinations of IRP panels were not binding on

3 ICANN's Board. Attached hereto as **Exhibit E** is a true and correct copy of an excerpt of the

4 Final Declaration of the *ICM* Panel.

5   9.   To my knowledge, ICANN has never represented that IRPs are binding. Instead,

6 ICANN has consistently argued that IRP declarations are not binding.

7   10.   In the case of the *DCA* IRP, the *DCA* Panel declared that its decision would be

8 binding on ICANN's Board. But the question of whether the Panel's declaration was or was not

9 legally binding became a moot issue once ICANN's Board elected to adopt all of the DCA

10 Panel's recommendations, contrary to the representations in Plaintiff's Motion for Preliminary

11 Injunction.

12   11.   Specifically, on July 9, 2015, the *DCA* Panel issued its Final Declaration. Bekele

13 Decl., Ex. 1. The *DCA* Panel determined that ICANN's Board had violated ICANN's Articles of

14 Incorporation and Bylaws by accepting the GAC's consensus advice that Plaintiff's application

15 for .AFRICA ("Application") should not proceed. The *DCA* Panel therefore recommended that

16 "ICANN continue to refrain from delegating the .AFRICA gTLD and permit [Plaintiff]'s

17 application to proceed through the remainder of the new gTLD application process." Bekele

18 Decl., Ex. 1 ¶ 149.

19   12.   ICANN's Board promptly considered and adopted each of the *DCA* Panel's

20 recommendations. On July 16, 2015, the Board resolved to "continue to refrain from delegating

21 the .AFRICA gTLD," "permit [Plaintiff's] application to proceed through the remainder of the

22 new gTLD application process," and "reimburse DCA for the costs of the IRP." Attached hereto

23 as **Exhibit F** is a true and correct copy of ICANN Board Resolutions 2015.07.16.01-05, adopting

24 the *DCA* Panel's recommendations.

25   13.   In the event ICANN is permitted to delegate the .AFRICA gTLD to ZACR, a

26 transfer or assignment of the gTLD in the future would still be possible, feasible and consistent

27 with ICANN's previous conduct. In fact, over forty gTLDs have had their registry contracts

28 transferred from one registry operator to a different registry operator, *i.e.*, transferred for

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operation by a different registry operator than the operator when the registry contract was initially executed. These transfers have occurred for a number of reasons, and transfers are not limited to situations where a registry's contract with ICANN was expiring.

14.   Nor is there any truth to DCA's argument in its Motion (at p. 12) that "the U.S. government's ties with ICANN ceased" and therefore "the current procedure for gTLD re-delegation is uncertain." In fact, nothing about the recent transition of the Internet Assigned Numbers Authority ("IANA") functions from the United States government to ICANN has any effect whatsoever upon the fact that it is possible to transfer the rights to operate a new gTLD from one registry operator to another, post-delegation.

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

Executed this 9th day of December 2016, in Los Angeles, California.

_____
                                                    Akram Atallah

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