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11 DOTCONNECTAFRICA TRUST

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES - CENTRAL**

14 DOTCONNECTAFRICA TRUST, a Mauritius  
15 charitable trust,

16 Plaintiff,

17 v.

18 INTERNET CORPORATION FOR  
19 ASSIGNED NAMES AND NUMBERS, a  
20 California corporation; ZA Central Registry, a  
21 South African non-profit company, and DOES  
22 1 through 50, inclusive,

23 Defendants.

Case No. BC607494

**DECLARATION OF SOPHIA BEKELE  
ESHETE IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION**

Date: December 22, 2016  
Hearing: 8:30 a.m.  
Dept.: 53

[Filed concurrently: Declarations of Ethan J.  
Brown & Sara C. Colón; Motion for  
Preliminary Injunction and Memorandum of  
Points and Authorities]

**RESERVATION ID: 161115174199**

1 **DECLARATION OF SOPHIA BEKELE ESHETE**

2 I, Sophia Bekele Eshete, hereby declare as follows:

3 1. I am the founder and executive director of DotConnectAfrica Trust (“DCA”) and I  
4 coordinated DCA’s application for the .Africa generic Top-level Domain (“gTLD”). The matters  
5 referred to in this declaration are based upon my personal knowledge, and if called as a witness, I  
6 could and would testify competently thereto.

7 2. I believe that DCA submitted a well-qualified and compelling application for  
8 .Africa, which was undermined at each stage of the application process by Defendant the Internet  
9 Corporation for Assigned Names and Numbers’ (“ICANN”) through breaches of its Bylaws,  
10 Articles of Incorporation, and the New gTLD Guidebook due to its improper cooperation with the  
11 African Union Commission (“AUC”). The AUC is the backer of the competing application for  
12 the .Africa gTLD submitted by UniForum S.A., now known as Intervenor ZA Central Registry  
13 (“ZACR”).

14 3. DCA planned to execute its mission of providing a continental Internet domain  
15 name to provide access to internet services for the people of Africa by acting as the registry for the  
16 .Africa gTLD.

17 4. DCA paid \$185,000, the fee required to all applicants, to ICANN for processing of  
18 its application.

19 5. DCA does not act as the registry for any other gTLDs and has not applied to act as  
20 the registry for any other gTLD.

21 6. If .Africa is delegated to ZACR before this case is resolved, DCA’s mission will be  
22 seriously frustrated and funders will likely pull their support due to the uncertainty involved in the  
23 re-delegation process.

24 7. If .Africa is delegated to ZACR before this case is resolved DCA will likely be  
25 forced to stop operating due to a lack of funding.

26 8. The .Africa gTLD and the operating rights to the .Africa gTLD are unique assets.  
27 The .Africa gTLD is the regional identifier for the African continent, similar to the .LAT and .Asia  
28 domains. It is a valuable attribute for entities, professionals, and corporations seeking a regional

1 online identity. Only one entity can serve as the operator of .Africa and the rights to operate .Africa  
2 can only be delegated by ICANN. Once the gTLD is awarded and the party controlling it begins  
3 selling or offering its use to users of the Internet including businesses, organizations, persons and  
4 governments, it would be difficult if not impossible to unwind that control and provide it to another  
5 party.

6 9. Based on my understanding of ICANN's rules and the requirements of a registry,  
7 if .Africa were re-delegated from ZACR to DCA, third party registrar contracts would have to be  
8 unwound. Third parties with whom ZACR contracted to provide domain names under the .Africa  
9 gTLD would have to transition technically and contractually to DCA – a process that would be  
10 costly and burdensome for all such that re-delegation is simply not viable here. Further, ZACR  
11 plans to charge more to registrars than DCA, which will create more complications in the re-  
12 delegation process.

13 10. Attached hereto as **Exhibit 1** is a true and correct copy of the Internet Corporation  
14 for Assigned Names and Numbers (“ICANN”) Internal Review Process (“IRP”) Final Declaration  
15 dated July 9, 2015.

16 11. Attached hereto as **Exhibit 2** is a true and correct copy, as posted at  
17 <https://www.icann.org/en/system/files/files/irp-procedure-declaration-14aug14-en.pdf>, of the  
18 ICANN IRP Declaration on the IRP Procedure dated August 14, 2014.

19 12. Attached hereto as **Exhibit 3** is a true and correct copy, as I obtained it from  
20 ICANN, of the ICANN Applicant Guidebook (the “Guidebook”) DCA referred to when preparing  
21 and filing its application for .Africa.

22 13. ICANN required DCA to agree to the terms and conditions in the Guidebook upon  
23 submitting its application for the .Africa gTLD.

24 14. ICANN did not afford DCA the opportunity to negotiate any terms in the  
25 Guidebook, including the covenant not to sue. Nor did DCA contribute to any of the language of  
26 the terms in the Guidebook.

27 15. In fact, Module 6 of the Guidebook states that the applicant must agree to the terms  
28 and conditions “without modification.”

1           16.     DCA did not consult with an attorney regarding the provisions of the Guidebook  
2 before it signed, nor did ICANN encourage it to do so.

3           17.     Attached hereto as **Exhibit 4** is a true and correct copy, as posted at  
4 <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>, of ICANN’s bylaws.

5           18.     Attached hereto as **Exhibit 5** is a true and correct copy of the description of  
6 ICANN’s Internal Review Process, as posted at ICANN’s website at [https://www.icann.org/  
7 resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-  
8 and-review](https://www.icann.org/resources/pages/reconsideration-and-independent-review-icann-bylaws-article-iv-accountability-and-review).

9           19.     Attached hereto as **Exhibit 6** is a true and correct copy of the August 27, 2009 DCA  
10 endorsement letter from the AUC to me.

11           20.     Attached hereto as **Exhibit 7** is a true and correct copy of the April 16, 2010 letter  
12 from the AUC to me.

13           21.     Attached hereto as **Exhibit 8** is a true and correct copy of the August 8, 2008 DCA  
14 endorsement letter from the United Nations Economic Commission on Africa (“UNECA”) to me.

15           22.     Attached hereto as **Exhibit 9** is a true and correct copy of the March 23, 2014 email  
16 I received as part of a group list email, from Alice Munyua. This email was also forwarded to me.

17           23.     Attached hereto as **Exhibit 10** is a true and correct copy of the September 21, 2015  
18 letter from UNECA to Dr. Ibrahim, a representative of the AUC, on which I was copied.

19           24.     Attached hereto as **Exhibit 11** is a true and correct copy of the August 7, 2012  
20 endorsement letter from Kenya to me.

21           25.     Attached hereto as **Exhibit 12** is a true and correct copy, as posted on ICANN’s  
22 website at [https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-  
23 en.pdf](https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf), of the March 8, 2012 letter from ICANN to AUC.

24           26.     Instead of allowing DCA’s application to proceed through the remainder of the  
25 application process after the IRP, ICANN restarted DCA’s application and re-reviewed its  
26 endorsements.

27           27.     Attached hereto as **Exhibit 13** is a true and correct copy of the first set of clarifying  
28 questions ICANN issued to DCA on September 2, 2015.

1           28. Attached hereto as **Exhibit 14** is a true and correct copy of ICANN’s response to  
2 DCA regarding the clarifying questions in the Initial Evaluation Results Report issued on  
3 October 13, 2015.

4           29. Attached hereto as **Exhibit 15** is a true and correct copy of the second set  
5 of clarifying questions ICANN issued to DCA on October 30, 2015 during the Extended  
6 Evaluation. The second set of clarifying questions from ICANN provided no further guidance  
7 or clarification to DCA on its application.

8           30. Attached hereto as **Exhibit 16** is a true and correct copy of the Extended  
9 Evaluation Report dated February 17, 2016 that DCA received from ICANN. DCA agreed to  
10 participate in an Extended Evaluation because it was hoping to gain insight into what more  
11 it needed for its application, but ICANN gave no further guidance or clarification.

12           31. Attached hereto as **Exhibit 17** is a true and correct copy of a March 15, 2013  
13 email from Mark McFadden of the ICC to ICANN employees, as produced to DCA during  
14 the IRP discovery process.

15           32. The members of the AUC committee formed to choose who to endorse for  
16 the .Africa gTLD were individuals who were also members of other organizations affiliated  
17 with ZACR.

18           33. Attached hereto as **Exhibit 18** is a true and correct copy of ZACR’s public  
19 application for the .Africa gTLD as posted on ICANN’s website.

20           34. Attached hereto as **Exhibit 19** is a true and correct copy of the AUC  
21 Communique on the AUC selecting ZACR, accessible at [http://dotconnectafrica.org/wp-](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf)  
22 [content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf).

23           35. After reviewing the ZACR endorsements produced to DCA, I noted that only  
24 five specifically reference ZACR by name and that many of the letters were actually endorsing  
25 AUC’s own initiative to make .Africa a “reserved” gTLD.

26           36. Attached hereto as **Exhibit 20** is a true and correct copy of the ICANN news  
27 article regarding InterConnect Communications (“ICC”) published at [https://](https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en)  
28 [newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en](https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en).

BEKELE DECLARATION

1 37. Attached hereto as **Exhibit 21** is a true and correct copy, as produced to DCA from  
2 ICANN, of the October 15, 2012 email from the ICC to ICANN with attachment.

3 38. Attached hereto as **Exhibit 22** is a true and correct copy, as produced to DCA by  
4 ICANN, of the April 9, 2013 email from Samuel Buruchara to Heather Dryden.

5 39. Attached hereto as **Exhibit 23** is a true and correct copy, as produced to DCA by  
6 ICANN, of the April 10, 2013 email from Michael Kutundu to Heather Dryden.

7 40. Attached hereto as **Exhibit 24** is a true and correct copy, as posted at  
8 <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>, of the April  
9 11, 2013 GAC Communique.

10 41. Attached hereto as **Exhibit 25** is a true and correct copy, as produced to DCA by  
11 ICANN, of the New GTLD Program Initial Evaluation Report for ZACR's application.

12 42. Attached hereto as **Exhibit 26** is a true and correct copy of the meeting schedule  
13 for the ICANN meeting from March 5, 2016 through March 10, 2016, as posted on ICANN's GAC  
14 website and accessible at <https://gacweb.icann.org/display/gacweb/Meeting+55%3A+Marrakech%2C+Morocco%2C+5-10+March+2016>.

16 43. Attached hereto as **Exhibit 27** is a true and correct copy, as posted at ICANN's  
17 website at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>, of the GAC  
18 Operating Principles.

19  
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21  
22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct. Executed on November 10, 2016.

24  
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26 

27 Sophia Bekele Eshete

28  
BEKELE DECLARATION