

1 Jeffrey A. LeVee (State Bar No. 125863)
Erin L. Burke (State Bar No. 186660)
2 Rachel Tessa Gezerseh (State Bar No. 251299)
Amanda Pushinsky (State Bar No. 267950)
3 JONES DAY
555 South Flower Street
4 Fiftieth Floor
Los Angeles, CA 90071.2300
5 Telephone: +1.213.489.3939
Facsimile: +1.213.243.2539
6 Email: jlevec@JonesDay.com

7 Attorneys for Defendant
INTERNET CORPORATION FOR
8 ASSIGNED NAMES AND NUMBERS

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 DOTCONNECTAFRICA TRUST,

13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR
16 ASSIGNED NAMES AND NUMBERS, *et*
al.,

17 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: February 2, 2017
TIME: 8:30 a.m.
DEPT: 53

1 **DECLARATION OF AKRAM ATALLAH**

2 I, Akram Atallah, declare the following:

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

7 **ICANN and the New gTLD Program**

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

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

23 4. Throughout its history, ICANN has sought to expand the number of accessible
24 TLDs in the DNS in order to promote consumer choice and competition. The New gTLD
25 Program (“Program”), launched in 2012, constitutes ICANN’s most ambitious expansion of the
26 Internet’s naming system. The Program’s goals include enhancing competition and consumer
27 choice, and enabling the benefits of innovation via the introduction of new generic TLDs
28

1 (“gTLDs”), including both new ASCII gTLDs and new non-ASCII, internationalized domain
2 name gTLDs. It resulted in the submission of 1,930 applications for new gTLDs, including
3 DCA’s and ZA Central Registry’s (“ZACR’s”) applications for the .AFRICA gTLD.

4 5. A number of “Advisory Committees” advise ICANN’s Board on various topics
5 described in the ICANN Bylaws. The Governmental Advisory Committee (“GAC”) has
6 members composed of national governments and distinct economies as recognized in
7 international fora, including the Unites States, and its purpose is to “consider and provide advice
8 on the activities of ICANN as they relate to concerns of governments, particularly matters where
9 there may be an interaction between ICANN’s policies and various laws and international
10 agreements or where they may affect public policy issues.” Bekele Decl., Ex. 4 (Bylaws, Art. XI,
11 § 2.1).

12 **ICANN’s Accountability Mechanisms**

13 6. ICANN’s Bylaws provide for several accountability mechanisms to ensure that
14 ICANN operates in accordance with its Articles of Incorporation, Bylaws, policies and
15 procedures. *See* Bekele Decl., Ex. 4 (Bylaws, Arts. IV-V). For example, an aggrieved applicant
16 can file a “request for reconsideration,” which is a mechanism that asks the ICANN Board to re-
17 evaluate certain Board or staff actions or inactions that the applicant believes have harmed it. *Id.*
18 (Bylaws, Art. IV, § 2). In addition, an aggrieved applicant can file a “request for independent
19 review,” a unique process set forth in ICANN’s Bylaws that asks independent panelists to
20 evaluate whether an action of ICANN’s Board was consistent with ICANN’s Articles of
21 Incorporation and Bylaws. *Id.* (Bylaws, Art. IV, § 3).

22 7. The Bylaws provide for the IRP panel to issue a written determination “declar[ing]
23 whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or
24 Bylaws” and “recommend[ing] that the Board stay any action or decision, or that the Board take
25 any interim action, until such time as the Board reviews and acts upon the opinion of the IRP.”
26 Bekele Decl., Ex. 4 (Bylaws, Art. IV, § 3.11). The ICANN Board then considers and acts on the
27 determination. *Id.* (Bylaws, Art. IV, § 3.21).

28 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

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

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

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

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

13 
14 Akram Atallah

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 I, Diane Sanchez, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On January 20,
6 2017, I served a copy of the within document(s):

7 **DECLARATION OF AKRAM ATALLAH IN SUPPORT OF ICANN'S**
8 **OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

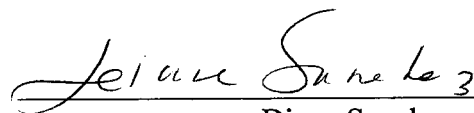
- 9 by placing the document(s) listed above in a sealed envelope with postage thereon
10 fully prepaid, in the United States mail at Los Angeles, California addressed as set
forth below.
- 11 by placing the document(s) listed above in a sealed Federal Express envelope and
12 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery
Service agent for delivery.
- 13 by personally delivering the document(s) listed above to the person(s) at the
14 address(es) set forth below.
- 15 by transmitting via e-mail or electronic transmission the document(s) listed above
to the person(s) at the e-mail address(es) set forth below.

16 Ethan J. Brown
17 ethan@bnsllawgroup.com
18 Sara C. Colón
sara@bnsllawgroup.com
19 Rowennakete "Kete" Barnes
kete@bnsllaw.com
20 BROWN NERI & SMITH LLP
11766 Wilshire Boulevard, Suite 1670
21 Los Angeles, California 90025
Telephone: (310) 593-9890

David W. Kesselman, Esq.
Kesselman Brantly Stockinger LLP
1230 Rosecrans Ave, Suite 690
Manhattan Beach, CA 90266
(310) 307-4556
(310) 307-4570 fax
dkesselman@kbsllaw.com

22 I declare that I am employed in the office of a member of the bar of this court at whose
23 direction the service was made.

24 Executed on January 20, 2017, at Los Angeles, California.

25
26 
27 _____
Diane Sanchez

28 NAI-1501037652v2