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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

[Assigned for all purposes to Hon. Howard L.
Halm, Dept. 53]

**DECLARATION OF SOPHIA BEKELE
ESHETE IN SUPPORT OF *EX PARTE*
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER**

Date: January 4, 2017

Hearing: 8:30 a.m.

Courtroom: 53

[Filed concurrently: *Ex Parte* Application for
Temporary Restraining Order; Declaration of
Ethan J. Brown; [Proposed] Temporary
Restraining Order; and [Proposed] Order to
Show Cause]

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 have over 10 years’ experience in the Domain Name Systems (“DNS”) business,
8 which includes first hand experience in the Registrar business which includes sales of domain
9 names services. I was also a previous policy advisor for New gTLDs to ICANN, and was involved
10 in assisting to develop the New gTLD guidebook, which also governs the global DNS business.

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

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

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

20 6. ICANN required DCA to agree to the terms and conditions in the Guidebook upon
21 submitting its application for the .Africa gTLD.

22 7. ICANN did not afford DCA the opportunity to negotiate any terms in the
23 Guidebook, including the covenant not to sue. Nor did DCA contribute to any of the language of
24 the terms in the Guidebook. In fact, Module 6 of the Guidebook states that the applicant must
25 agree to the terms and conditions “without modification.” DCA did not consult with an attorney
26 regarding the provisions of the Guidebook before it signed, nor did ICANN encourage it to do so.

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

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

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

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

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

11 13. Attached hereto as **Exhibit 9** is a true and correct copy of the September 21, 2015
12 letter from UNECA to Dr. Ibrahim, a representative of the AUC, on which I was copied.

13 14. Attached hereto as **Exhibit 10** is a true and correct copy, as posted on ICANN’s
14 website at [https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-
15 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.

16 15. Instead of allowing DCA’s application to proceed through the remainder of the
17 application process after the IRP, ICANN sent DCA’s application back to the Geographic Names
18 Evaluation and re-reviewed its endorsements.

19 16. Attached hereto as **Exhibit 11** is a true and correct copy of the first set of clarifying
20 questions ICANN issued to DCA post IRP ruling on September 2, 2015.

21 17. Attached hereto as **Exhibit 12** is a true and correct copy of ICANN’s response to
22 DCA regarding the clarifying questions in the Initial Evaluation Results Report issued on October
23 13, 2015.

24 18. Attached hereto as **Exhibit 13** is a true and correct copy of the second set of
25 clarifying questions ICANN issued to DCA on October 30, 2015 during the Extended Evaluation.
26 The second set of clarifying questions from ICANN provided no further guidance or clarification
27 to DCA on its application.
28

1 19. Attached hereto as **Exhibit 14** is a true and correct copy of the Extended Evaluation
2 Report dated February 17, 2016 that DCA received from ICANN. DCA agreed to participate in
3 an Extended Evaluation because it was hoping to gain insight into what more it needed for its
4 application, but ICANN gave no further guidance or clarification.

5 20. Attached hereto as **Exhibit 15** is a true and correct copy of a March 15, 2013 email
6 from Mark McFadden of the ICC to ICANN employees, as produced to DCA during the IRP
7 discovery process.

8 21. The members of the AUC committee formed to choose who to endorse for the
9 .Africa gTLD were individuals who were also members of other organizations affiliated with
10 ZACR.

11 22. Attached hereto as **Exhibit 16** is a true and correct copy of ZACR's public
12 application for the .Africa gTLD as posted on ICANN's website.

13 23. Attached hereto as **Exhibit 17** is a true and correct copy of the AUC Communique
14 on the AUC selecting ZACR, accessible at [http://dotconnectafrica.org/wp-](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf)
15 [content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf](http://dotconnectafrica.org/wp-content/uploads/2016/09/AUC-dotAfrica-Communique-2.pdf)

16 24. After reviewing the ZACR endorsements produced to DCA during IRP, I noted that
17 only five specifically reference ZACR by name and that many of the letters were actually
18 endorsing AUC's own initiative to make .Africa a "reserved" gTLD.

19 25. Attached hereto as **Exhibit 18** is a true and correct copy of the ICANN news article
20 regarding InterConnect Communications ("ICC") published at [https://newgtlds.icann.org/](https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en)
21 [en/blog/preparing-evaluators-22nov11-en](https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en)

22 26. Attached hereto as **Exhibit 19** is a true and correct copy, as produced to DCA from
23 ICANN, of the October 15, 2012 email from the ICC to ICANN with attachment.

24 27. Attached hereto as **Exhibit 20** is a true and correct copy, as posted at
25 <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf> of the April
26 11, 2013 GAC Communique.

27 28. Attached hereto as **Exhibit 21** is a true and correct copy, as produced to DCA by
28 ICANN, of the New GTLD Program Initial Evaluation Report for ZACR's application.

1 29. Attached hereto as **Exhibit 22** is a true and correct copy, as posted at ICANN's
2 website at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles> of the GAC
3 Operating Principles.

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

11 31. DCA planned to execute its mission of providing a continental Internet domain
12 name to provide access to internet services for the people of Africa by acting as the registry for the
13 .Africa gTLD.

14 32. DCA paid \$185,000, the fee required to all applicants, to ICANN for processing of
15 its application.

16 33. DCA does not act as the registry for any other gTLDs and has not applied to act as
17 the registrar for any other gTLD.

18 34. If .Africa is delegated to ZACR before this case is resolved, DCA's mission will be
19 seriously frustrated and its funders have informed me that they will likely pull their support due to
20 the uncertainty involved in the re-delegation process.

21 35. If .Africa is delegated to ZACR before this case is resolved DCA will likely be
22 forced to stop operating due to a lack of funding.

23 36. The .Africa gTLD and the operating rights to the .Africa gTLD are unique assets.
24 The .Africa gTLD is the regional identifier for the African continent, similar to the .LAT and .Asia
25 domains. It is a valuable attribute for entities, professionals, and corporations seeking a regional
26 online identity. Only one entity can serve as the operator of .Africa and the rights to operate .Africa
27 can only be delegated by ICANN. Once the gTLD is awarded and the party controlling it begins
28 selling or offering its use to users of the Internet including businesses, organizations, persons and

1 governments, it would be difficult if not impossible to unwind that control and provide it to another
2 party.

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

10 38. Until the New gTLD Program was instituted in 2012, ICANN used to have a strict
11 policy over separating a Registry (the entity that holds the rights to a gTLD) and Registrar (the
12 entity responsible for selling individual domain names under the gTLD to consumers) operation
13 to manage the business conflict over the same organization having to register and sell a domain
14 name. ICANN now permits a combined operation of allowing a Registry operator to also be a
15 Registrar, provided the organization file a disclosure of such with ICANN. Despite the disclosure
16 to ICANN, this process of allowing a registry to also run its own sales registrar operation is still
17 subject to manipulation, depending on the contract relations set up by the registry, which has not
18 been thoroughly vetted.

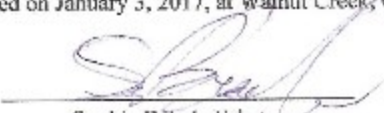
19 39. Registry Operator can sell domains and collect the money without restraint. Using
20 a current gTLD “.club” as an example, below sales channels include – auctions, registrar channel,
21 direct deals, portfolio deals, brokers, and the aftermarket. *See*
22 [http://www.thedomains.com/2015/12/03/club-has-record-month-selling-over-1-6-in-premium-
24 domains](http://www.thedomains.com/2015/12/03/club-has-record-month-selling-over-1-6-in-premium-
23 domains) [“November was a record-breaking month for both regular .CLUB registrations and
25 premium domain name sales. It was our first month with more than \$1 million in Premium Name
26 sales, with strong deals coming from two auctions, our registrar channel, registry direct deals
27 (including several portfolio deals) as well as through brokers and the aftermarket.”]
28

1 40. Therefore, the revenue share on each of the above channels would be variable and
2 potentially open to manipulation and the contractual relation with the registry cannot always be
3 monitored and reported.

4 41. Importantly, once a premium domain name is sold, there is no way to reverse the
5 sale. The next opportunity to re-make these sales comes at renewal, which is somewhere between
6 1 and 10 years.

7 42. Due to the "unique" business model of the registrar/registry industry, the first
8 phase of the launch process called a "sunrise" period of 3-4 months, is allotted for Premium Name
9 sales, such as google.africa or microsoft.africa for sale at a significantly higher price depending
10 on what the customer would pay. It is part of what is called "defensive" registry phase, as
11 customers would be forced to buy their propriety names so others would not register it first. This
12 is what makes up the majority of the initial revenue for the registry and the registrar, as in the .club
13 example above. In this regard, reversing the process of the sale on the name is likely impossible,
14 if another registry is to take over.

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16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed on January 3, 2017, at Walnut Creek, California.

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Sophia Bেকে Eshete

BUKELE DECLARATION