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11 DOTCONNECTAFRICA TRUST

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14 DOTCONNECTAFRICA TRUST, a  
15 Mauritius Charitable Trust;

16 Plaintiff,

17 v.

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

24 Defendants.

Case No. 2:16-cv-00862-RGK (JCx)

**PLAINTIFF’S REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
OF ITS OPPOSITION TO  
DEFENDANT INTERNET  
CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS’  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

Date: April 25, 2016

Hearing: 9:00 a.m.

Courtroom: 850

[Filed concurrently: Plaintiff’s  
Opposition to Defendant Internet  
Corporation for Assigned Names and  
Numbers’ Motion to Dismiss First  
Amended Complaint]

1 **TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Pursuant to Federal Rule of Evidence 201,  
3 Plaintiff DOTCONNECTAFRICA TRUST (“DCA”) hereby requests the Court take  
4 judicial notice of the following documents, attached as Exhibits 1–3, in support of  
5 DCA’s Opposition to Defendant Internet Corporation for Assigned Names and  
6 Numbers’ (“ICANN”) Motion to Dismiss First Amended Complaint:

7 1. ICANN’s Bylaws, as amended effective April 1, 2013, a true and  
8 correct copy of which is attached hereto as **Exhibit 1**.

9 2. The New gTLD Applicant Guidebook (“Guidebook”), a true and  
10 correct copy of which is attached hereto as **Exhibit 2**.

11 3. ICANN Board-GAC Consultation: “Legal Recourse” for New gLTD  
12 Registry Applicants, a true and correct copy of which is attached hereto as **Exhibit**  
13 **3**.

14 When ruling on a 12(b)(6) motion, a court may look beyond the pleadings “at  
15 documents incorporated by reference, and matters of which a court may take judicial  
16 notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2509 (2007).

17 Under the incorporation by reference doctrine, a court may consider a  
18 document when plaintiff’s complaint necessarily relies on it and its authenticity is  
19 uncontested. *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002); *see also In re*  
20 *Silicon Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999). This includes  
21 documents that are not attached or explicitly referenced by plaintiff’s complaint.  
22 *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d 1101, 1114 (C.D. Cal. 2003).

23 Under Federal Rule of Evidence 201, judicial notice is proper when a fact is  
24 not subject to reasonable dispute and capable of accurate and ready determination  
25 by resort to sources whose accuracy cannot reasonably be questioned. *Wible v.*  
26 *Aetna Life Ins. Co.*, 375 F. Supp. 2d 956, 966 (C.D. Cal. 2005); Fed. R. Evid. 201.  
27 Judicial notice of information obtained from a website is proper when neither party  
28 questions the authenticity of the site. *Pollstar v. Gigmania Ltd.*, 170 F. Supp. 2d

1 974, 978 (E.D. Cal. 2000). A Court may take judicial notice of a matter of public  
2 record. *Moore v. Navarro*, 2004 U.S. Dist. LEXIS 6039, \*5 (N.D. Cal. Mar. 31,  
3 2004.)

#### 4 **ICANN’s Bylaws (Exhibit 1)**

5 ICANN’s Bylaws are integral to Plaintiff’s First Amended Complaint  
6 (“FAC”) and may be considered without converting the 12(b)(6) motion. *See*  
7 *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 n.4 (9th Cir. 1998), *superseded by statute*  
8 *on other grounds as recognized by Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d  
9 676, 681 (9th Cir. 2006). Plaintiff’s FAC continually refers to ICANN’s Bylaws to  
10 demonstrate ICANN’s failure to comply with its obligations. (*See, e.g.*, FAC ¶¶ 4,  
11 16, 17, 20, 66.) Additionally, ICANN does not dispute the authenticity of its Bylaws.  
12 Indeed, ICANN has already requested that this Court take judicial notice of several  
13 articles of ICANN’s Bylaws. (*See* Defendant’s Request for Judicial Notice 3:1-13.)  
14 Further, a complete version of ICANN’s Bylaws are available on ICANN’s website  
15 at <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>. Thus, under the  
16 incorporation by reference doctrine and the standards for proper judicial notice, the  
17 Court may properly consider ICANN’s Bylaws.

#### 18 **The New gTLD Applicant Guidebook and Modules (Exhibit 2)**

19 Similarly to ICANN’s Bylaws, the Guidebook and Modules are referenced  
20 and relied on throughout Plaintiff’s FAC. (*See, e.g.*, FAC ¶¶ 20, 22, 25, 66, 74.)  
21 ICANN has also requested the Court take judicial notice of the Guidebook and  
22 Modules (*See* Defendant’s RJN 3:14–4:19.) As a part of this, ICANN agreed that  
23 “[t]he authenticity of the Guidebook . . . is beyond dispute.” (*Id.* at 3:27-28). Finally,  
24 the Guidebook and Modules are available on ICANN’s website at  
25 <https://newgtlds.icann.org/en/applicants/agb>.

#### 26 **“Legal Recourse” for New gTLD Registry Applicants (Exhibit 3)**

27 On a Rule 12(b)(6) motion, the Court may take judicial notice of matters of  
28 public record. *Moore v. Navarro*, 2004 U.S. Dist. LEXIS 6039, \*5 (N.D. Cal. Mar.

1 31, 2004.) ICANN’s “Legal Recourse” for New gTLD Registry Applicants (“Legal  
2 Recourse”) became a public record when ICANN filed it as Exhibit D to the  
3 Declaration of Kevin Espinola in Support of ICANN’s Opposition to Plaintiff’s  
4 Motion for Preliminary Injunction. (Docket No. 37). As a public record, the Court  
5 may take judicial notice of ICANN’s “Legal Recourse.” Further, the “Legal  
6 Recourse” is relevant to Plaintiff’s FAC, where ICANN’s covenant not to sue is  
7 referenced and discussed in Plaintiff’s Eleventh Cause of Action. (*See, e.g.*, FAC  
8 ¶¶134, 135, 136, 137, 138, 141, and 142.) Lastly, the “Legal Recourse” is not in  
9 dispute as ICANN itself has presented it as evidence. (*See* Decl. of Kevin Espinola  
10 ¶7.)

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Dated: April 4, 2016

**BROWN NERI & SMITH LLP**

By:  /s/ Ethan J. Brown  
Ethan J. Brown

*Attorneys for Plaintiff*  
DOTCONNECTAFRICA TRUST

**CERTIFICATE OF SERVICE**

I, Ethan J. Brown, hereby declare under penalty of perjury as follows:

I am a partner at the law firm of Brown, Neri & Smith LLP, with offices at 11766 Wilshire Blvd., Los Angeles, California 90025. On April 4, 2016, I caused the foregoing **PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS OPPOSITION TO DEFENDANT INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS’ MOTION TO DISMISS FIRST AMENDED COMPLAINT** to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on April 4, 2016

/s/ Ethan J. Brown