1	Jeffrey A. LeVee (State Bar No. 125863)				
2	jlevee@JonesDay.com	,				
3	Kate Wallace (State Bar No. 234949)					
	kwallace@JonesDay.com					
4	Rachel H. Zernik (State Bar No. 281222) rzernik@jonesday.com					
5	JONES DAY					
6	555 South Flower Street					
7	Fiftieth Floor Los Angeles, CA 90071.2300					
8	Telephone: +1.213.489.3939					
9	Facsimile: +1.213.243.2539					
	Attorneys for Defendant					
10	INTERNET CORPORATION FOR					
11	ASSIGNED NAMES AND NUMBERS	 				
12	LINITED STATES	CDICTDICT	COUDT			
13	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA					
14	WESTERN DIVISION					
15						
	DOTCONNECTAFRICA TRUST, a	Case No.	2:16-cv-00862-RGK			
16	Mauritius Charitable Trust,	(JCx)	2.10 CV 00002 RGR			
17	Dlaintiff	Aggionad	for all numages to the			
18	Plaintiff,	_	for all purposes to the e R. Gary Klausner			
19	V.		•			
20	INTERNET CORPORATION FOR		S RESPONSE TO IFF'S EVIDENTIARY			
21	ASSIGNED NAMES AND	,	TIONS TO			
	NUMBERS, et al.,		RATION OF KEVIN			
22	DefendantS.	ESPINO	LA			
23		Date:	April 4, 2016			
24		Time:	9:00 a.m.			
25		Ctrm:	850			
26						
27						
28						
40						

1

2

3

Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby responds to Plaintiff DotConnectAfrica Trust's objections to the Declaration of Kevin Espinola:

4				
	Espinola Declaration	Plaintiff's	ICANN's	Court's
5		Objection	Response	Ruling
6	¶3: "The Generic Names	Lacks personal	Mr. Espinola	
7	Supporting Organization ("GNSO") – one of the	knowledge and lacks foundation	testified that he has served	
8	supporting organizations	[Fed. R. Evid.	outside counsel	
	that develops global	602].	for ICANN and	
9	Internet policy within		that in that	
10	ICANN – was responsible		position he assisted in the	
11	for policy development work on the introduction		development of	
12	of new generic top-level		ICANN's New	
	domains ("gTLDs") and		gTLD Program.	
13	approved a set of 19 policy		(Espinola Decl. ¶	
14	recommendations. The GNSO's work involved		1.) As such, he has personal	
15	representatives from a		knowledge of the	
16	wide variety of		matters about	
17	stakeholder groups –		which he is	
	governments, individuals,		testifying.	
18	civil society, business and intellectual property			
19	constituencies, the			
20	technology community,			
21	and others – engaging in			
	discussions on policy questions regarding			
22	new gTLDs, including the			
23	application criteria and the			
24	contractual conditions that			
25	should be required for new			
26	gTLD registries going forward. An overview of			
	the GNSO's policy work			
27	and its outcomes is			
28	available at			

1	Espinola Declaration	Plaintiff's	ICANN's	Court's
2	Espinola Declaration	Objection	Response	Ruling
	http://gnso.icann.org/issue	3	•	
3	s/new-gtlds. The			
4	culmination of the GNSO's policy			
5	development work was a			
6	June 2008 decision by the			
7	ICANN Board of			
	Directors to adopt the			
8	GNSO-developed new gTLD policy.			
9	gred poncy.			
10	7 4 7 11 · · · · ·			
11	¶4: Following this decision, ICANN and its	Lacks personal knowledge and	Mr. Espinola testified that he	
12	community began the	lacks foundation	has served	
	process of developing the	[Fed. R. Evid.	outside counsel	
13	New gTLD Applicant	602].	for ICANN and	
14	Guidebook		that in that	
15	("Guidebook"), which implemented the		position he assisted in the	
16	recommendations made by		development of	
	the GNSO and set forth		ICANN's New	
17	the requirements and the		gTLD Program.	
18	criteria by which new gTLD applications are		(Espinola Decl. ¶ 1.) As such, he	
19	evaluated. The Guidebook		has personal	
20	was developed as part of a		knowledge of the	
21	years-long, bottom-up		matters about	
	multistakeholder process		which he is	
22	during which numerous versions were published		testifying.	
23	by ICANN for public			
24	comment and revised, in			
25	part based on comments			
26	received. In total, six complete versions of the			
	Guidebook were published			
27	for public comment.			
28				

1				~ .
1	Espinola Declaration	Plaintiff's	ICANN's	Court's
2	45 40 D 1 12	Objection	Response	Ruling
3	¶5: "On December 13,	Lacks personal	Mr. Espinola	
	2010, as part of this	knowledge and lacks foundation	testified that he has served	
4	process, Plaintiff submitted a written public	[Fed. R. Evid. 602;	outside counsel	
5	comment regarding the	Local Rule 7-7	for ICANN and	
6	November 12, 2010	(Declarations shall	that in that	
O	version of the Guidebook	contain only	position he	
7	("November 2010	factual, evidentiary	assisted in the	
8	Guidebook"), noting its	matter and shall	development of	
	support for the New gTLD	conform as far as	ICANN's New	
9	Program and for a	possible to the	gTLD Program.	
10	.AFRICA gTLD. Attached	requirements of	(Espinola Decl. ¶	
11	hereto as Exhibit A is a	F.R.Civ.P.	1.) As such, he is	
	true and correct copy of	56(c)(4)); <i>See also</i>	qualified to	
12	Plaintiff's comment.	Bank Melli Iran v.	authenticate	
13	Attached hereto as Exhibit B is a true and correct	Pahlavi, 58 F.3d 1406, 1412-1413	Exhibits A and B.	
14	copy of an excerpt of the	(9th Cir. 1995)		
14	"New gTLDs Proposed	(Holding "the		
15	Final Applicant	Bank's response to		
16	Guidebook Public	Pahlavi's evidence		
	Comment	was		
17	Summary," summarizing	information and		
18	comments received	belief declarations		
19	regarding the November	from their counsel.		
	2010 Guidebook.	Those were entitled		
20	Plaintiff's comment is	to no weight because the		
21	addressed on page 3. I am informed and believe that	declarant did not		
22	Plaintiff did not submit	have personal		
	any comments regarding	knowledge."		
23	Section 6 of Module 6 of	[emphasis		
24	the Guidebook ("Covenant	added])].		
25	Not to Sue").	Completeness		
		doctrine [Fed. R.		
26		Evid. 106].		
27				
28				
20				

1	Espinola Declaration	Plaintiff's	ICANN's	Court's	
2		Objection	Response	Ruling	
3	¶7: "It is my belief that this addition was	Lacks personal	Mr. Espinola		
	principally made in	knowledge and lacks foundation	testified that he has served		
4	response to comments	[Fed. R. Evid. 602;	outside counsel		
5	from ICANN's	Local Rule 7-7	for ICANN and		
6	Governmental Advisory	(Declarations shall	that in that		
	Committee ("GAC")	contain only	position he		
7	regarding the Covenant	factual, evidentiary	assisted in the		
8	Not to Sue, as reflected on	matter and shall	development of		
9	page 2 of a February 21,	conform as far as	ICANN's New		
	2011 document	possible to the	gTLD Program.		
10	responding to those comments. A true and	requirements of F.R.Civ.P.	(Espinola Decl. ¶ 1.) As such, he is		
11	correct copy of that	56(c)(4)); See also	qualified to		
12	document "ICANN Board-	Bank Melli Iran v.	authenticate		
	GAC Consultation: 'Legal	Pahlavi, 58 F.3d	Exhibit D.		
13	Recourse' for New gTLD	1406, 1412-1413			
14	Registry Applicants," is	(9th Cir. 1995)			
15	attached to this declaration	(Holding "the			
	as Exhibit D."	Bank's response to Pahlavi's evidence			
16		was			
17		information and			
18		belief declarations			
19		from their counsel.			
		Those were entitled			
20		to no weight			
21		because the declarant did not			
22		have personal			
		knowledge."			
23		[emphasis			
24		added])].			
25					
	TR. "ICANIN's designer to	Lacks parsanal	Mr Egninole		
26	¶8: "ICANN's decision to include the Covenant Not	Lacks personal knowledge, lacks	Mr. Espinola testified that he		
27	to Sue reflected its	foundation, and	has served		
28	reasoned determination	speculative [Fed.	outside counsel		

1		D1 : .: 000	101222	
1	Espinola Declaration	Plaintiff's	ICANN's	Court's
2		Objection Objection	Response	Ruling
3	regarding the sort of risk, including financial, to	R. Evid. 602].	for ICANN and	
	which ICANN – a non-	Irrelevant [Fed. R. Evid. 403].	that in that position he	
4	profit public benefit	Eviu. 403].	assisted in the	
5	corporation – should		development of	
6	reasonably subject itself as		ICANN's New	
6	part of the New gTLD		gTLD Program.	
7	Progam."		(Espinola Decl. ¶	
8			1.) As such, he	
			has personal	
9			knowledge of the	
10			matters about	
11			which he is	
		mi 1	testifying.	
12	¶9: "In response to public	The best evidence	The Court may	
13	comments regarding the	of the document	refer to the	
	Covenant Not to Sue in the	described is the document itself	February 2009 Guidebook,	
14	February 18, 2009 draft of the Guidebook ("February	[Fed. R. Evid.	which is part of	
15	2009 Guidebook"),	1002].	the record.	
16	ICANN explained: "Under	Completeness	(Espinola Decl.	
	its Bylaws ICANN's	Doctrine [Fed. R.	Ex. E, ECF No.	
17	actions are subject to	Evid. 106].	37-5.)	
18	numerous transparency,	-	,	
19	accountability and review			
19	safeguards, and are guided			
20	by core values including			
21	'Making decisions by			
22	applying documented			
22	policies neutrally and			
23	objectively, with integrity and fairness[,'] but it			
24	would not be feasible for			
	ICANN to subject itself to			
25	unlimited exposure to			
26	lawsuits from potential			
27	unsuccessful applicants."			
	Attached hereto as Exhibit			
28	E is a true and correct			

Case 2:16-cv-00862-RGK-JC Document 58 Filed 03/28/16 Page 7 of 8 Page ID #:2690

1	Espinola Declaration	Plaintiff's	ICANN's	Court's
2		Objection	Response	Ruling
3	copy of an excerpt of the			
	report of public comments to the February 2009			
4	Guidebook. The relevant			
5	language appears on p.			
6	184."			
7				
8	¶10: "In the case of the	That ICANN's	TP1 1	
	DCA IRP, the DCA Panel	board elected to	The language to which Plaintiff	
9	declared that its decision	adopt all of the IRP	objects is not in	
10	would be binding on	panel's	Mr. Espinola's	
11	ICANN's Board. But, most importantly, the	recommendations is irrelevant to the	declaration.	
12	question of whether the	issue of whether		
	Panel's declaration was or	ICANN actually		
13	was not legally binding	followed the IRP		
14	became a moot	panel's ruling.		
15	issue once ICANN's	[Fed. R. Evid.		
	Board elected to adopt all of the <i>DCA</i> Panel's	403].		
16	recommendations,			
17	contrary to the			
18	representations in			
19	Plaintiff's motion for			
	preliminary injunction and			
20	TRO application."			
21				
22				

ICANN'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO TO ESPINOLA DECL. 2:16-cv-00862-RGK (JCx)

Case	2:16-cv-00	862-RGK-JC	Document 58	Filed 03/28/16	Page 8 of 8	Page ID #:2691
1	Dated:	March 28, 2	2016	JONES 1	DAY	
2						
3				Bv: /s/J	effrey A. LeV	Tee
4					effrey A. Le	
5				Attorney	s for Defend	ant
6				INTERN	NET CORPO	RATION FOR
7				ASSIGN	NED NAMES	S AND NUMBERS
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
				_		SPONSE TO PLAINTIFF'S TO TO ESPINOLA DECL.