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8 ASSIGNED NAMES AND NUMBERS

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **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 United 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 9<sup>th</sup> day of December 2016, in Los Angeles, California.

13   
14 Akram Atallah

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# **EXHIBIT E**

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

**ICDR Case No. 50 117 T 00224 08**

**In the Matter of an Independent Review Process:**

**ICM REGISTRY, LLC,**

**Claimant,**

**v.**

**INTERNET CORPORATION FOR ASSIGNED NAMES  
AND NUMBERS (“ICANN”),**

**Respondent**

**DECLARATION OF THE INDEPENDENT REVIEW PANEL**

**Judge Stephen M. Schwebel, *Presiding***  
**Mr. Jan Paulsson**  
**Judge Dickran Tevrizian**

**February 19, 2010**

**130. As to whether ICM was treated unfairly and was the object of discrimination, ICANN relies on the following statement of Dr. Cerf at the hearing:**

**“...I am surprised at an assertion that ICM was treated unfairly...the board could have simply accepted the recommendations of the evaluation teams and rejected the proposal at the outset...the board went out of its way to try to work with ICM through the staff to achieve a satisfactory agreement. We spent more time on this particular proposal than any other...We repeatedly defended our continued consideration of this proposal...If...ICM believes that it was treated in a singular way, I would agree that we spent more time and effort on this than any other proposal that came to the board with regard to sponsored TLDs.” (Tr. 654:3-655:7.)**

#### **PART FOUR: THE ANALYSIS OF THE INDEPENDENT REVIEW PANEL**

##### **The Nature of the Independent Review Panel Process**

**131. ICM and ICANN differ on the question of whether the Declaration to be issued by the Independent Review Panel is binding upon the parties or advisory. The conflicting considerations advanced by them are summarized above at paragraphs 51 and 91-94. In the light of them, the Panel acknowledges that there is a measure of ambiguity in the pertinent provisions of the Bylaws and in their preparatory work.**

**132. ICANN’s officers testified before committees of the U.S. Congress that ICANN had installed provision for appeal to “independent arbitration” (*supra*, paragraph 55). Article IV, Section 3 of ICANN’s Bylaws specifies that, “The IRP shall be operated by an international arbitration provider appointed from time to time by ICANN...using arbitrators...nominated by that provider”. The provider so chosen is the American Arbitration Association’s International Centre for Dispute Resolution (“ICDR”), whose Rules (at C-11) in Article 27 provide for the making of arbitral awards which “shall be final and binding on the parties. The parties undertake to carry out any such award without delay.” The Rules of the ICDR “govern the arbitration” (Article 1). It is unquestioned that the term, “arbitration” imports production of a binding award (in contrast to conciliation and mediation). Federal and California courts have so held. The Supplementary Procedures adopted to supplement the independent review procedures set forth in ICANN’s Bylaws provide that the ICDR’s “International Arbitration Rules...will govern the process in combination with these Supplementary Procedures”. (C-12.) They specify**

that the Independent Review Panel refers to the neutrals “appointed to decide the issue(s) presented” and further specify that, “DECLARATION refers to the decisions/opinions of the IRP”. “The DECLARATION shall specifically designate the prevailing party.” All of these elements are suggestive of an arbitral process that produces a binding award.

133. But there are other indicia that cut the other way, and more deeply. The authority of the IRP is “to declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws” – to “declare”, not to “decide” or to “determine”. Section 3(8) of the Bylaws continues that the IRP shall have the authority to “recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP”. The IRP cannot “order” interim measures but do no more than “recommend” them, and this until the Board “reviews” and “acts upon the opinion” of the IRP. A board charged with reviewing an opinion is not charged with implementing a binding decision. Moreover, Section 3(15) provides that, “Where feasible, the Board shall consider the IRP declaration at the Board’s next meeting.” This relaxed temporal proviso to do no more than “consider” the IRP declaration, and to do so at the next meeting of the Board “where feasible”, emphasizes that it is not binding. If the IRP’s Declaration were binding, there would be nothing to consider but rather a determination or decision to implement in a timely manner. The Supplementary Procedures adopted for IRP, in the article on “Form and Effect of an IRP Declaration”, significantly omit the provision of Article 27 of the ICDR Rules specifying that award “shall be final and binding on the parties”. (C-12.) Moreover, the preparatory work of the IRP provisions summarized above in paragraph 93 confirms that the intention of the drafters of the IRP process was to put in place a process that produced declarations that would not be binding and that left ultimate decision-making authority in the hands of the Board.

134. In the light of the foregoing considerations, it is concluded that the Panel’s Declaration is not binding, but rather advisory in effect.

**The Standard of Review Applied by the Independent Review Process**

135. For the reasons summarized above in paragraph 56, ICM maintains that this is a *de novo* review in which the decisions of the ICANN Board do not enjoy a deferential standard of review. For the reasons summarized above in paragraphs 100-103, ICANN maintains that the decisions of the Board are entitled to deference by the IRP.

# **EXHIBIT F**

GET  
STARTEDNEWS &  
MEDIA

POLICY

PUBLIC  
COMMENT

RESOURCES

COMMUNITY

IANA  
STEWARDSHIP  
& ACCOUNTABILITY

## Resources

- About ICANN
- Board
- Accountability
- Governance
- Groups
- Business
- Civil Society
- Contractual Compliance
- Registrars
- Registries
- GDD Metrics
- Identifier Systems Security, Stability and Resiliency (IS-SSR)
- ccTLDs
- Internationalized Domain Names
- Universal Acceptance Initiative
- Policy
- Public Comment
- Root Zone KSK Rollover
- Technical Functions
- Contact
- Help

## Approved Board Resolutions | Special Meeting of the ICANN Board

This page is available in: English | العربية | Español | Français | Русский | 中文

16 Jul 2015

### 1. Main Agenda

- a. DotConnectAfrica Trust (DCA) v. ICANN IRP Final Declaration  
*Rationale for Resolutions 2015.07.16.01 – 2015.07.16.05*

### 1. Main Agenda

#### a. DotConnectAfrica Trust (DCA) v. ICANN IRP Final Declaration

Whereas, on 9 July 2015, an independent review panel ("Panel") issued a final Declaration ("Declaration") in the independent review proceedings (IRP) initiated by DotConnectAfrica Trust (DCA), in which DCA sought relief relating to Board action or inaction on its application for .AFRICA.

Whereas, in the Declaration, the Panel set forth the following:

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witness [sic], listened to the oral submissions of the Parties in various telephone conference calls and at the in-person hearing of this IRP in Washington D.C. on 22 and 23 May 2015, and finally after much deliberation, pursuant to Article IV, Section 3, paragraph 11 (c) of ICANN's Bylaws, the Panel declares that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN.

149. Furthermore, pursuant to Article IV, Section 3, paragraph 11 (d) of ICANN's Bylaws, the Panel recommends that ICANN continue to refrain from delegating the .AFRICA gTLD and permit DCA Trust's application to proceed through the remainder of the new gTLD application process.

150. The Panel declares DCA trust to be the prevailing party in this IRP and further declares that ICANN is to bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of the Supplementary Procedures and Article 31 of the ICDR Rules, the totality of the costs of this IRP and the totality of the costs of the IRP Provider as follows:

- a) the fees and expenses of the panelists;
- b) the fees and expenses of the administrator, the ICDR;
- c) the fees and expenses of the emergency panelist incurred in

connection with the application for interim emergency relief sought pursuant to the Supplementary Procedures and the ICDR Rules; and  
d) the fees and expenses of the reporter associated with the hearing on 22 and 23 May 2015 in Washington D.C.  
e) As a result of the above, the administrative fees of the ICDR totalling US\$4,600 and Panelists' compensation and expenses totalling US\$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US\$198,046.04.

151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The parties shall also each bear their own legal representation fees.

Whereas, the independent review process is an integral ICANN accountability mechanism that helps support ICANN's multistakeholder model, and the Board thanks the Panel for its efforts in this IRP, and would like to specifically honor the memory of former panelist Hon. Richard C. Neal, who passed away during the proceedings.

Whereas, in addition to the Declaration, the Board must also take into account other relevant information, including but not limited to: (i) that ICANN received and accepted GAC consensus advice that DCA's application for .AFRICA should not proceed; and (ii) that ICANN has a signed Registry Agreement with ZA Central Registry ("ZACR") to operate the .AFRICA top-level domain.

Whereas, pursuant to Article IV, Section 3.21 of the Board considered the Declaration at the Board's next meeting, which the Board specifically scheduled in order to take action on this matter as quickly as possible.

Resolved (2015.07.15.01), the Board has considered the entire Declaration, and has determined to take the following actions based on that consideration:

1. ICANN shall continue to refrain from delegating the .AFRICA gTLD;
2. ICANN shall permit DCA's application to proceed through the remainder of the new gTLD application process as set out below; and
3. ICANN shall reimburse DCA for the costs of the IRP as set forth in paragraph 150 of the Declaration.

Resolved (2015.07.16.02), since the Board is not making a final determination at this time as to whether DCA's application for .AFRICA should proceed to contracting or delegation, the Board does not consider that resuming evaluation of DCA's application is action that is inconsistent with GAC advice.

Resolved (2015.07.16.03), the Board directs the President and CEO, or his designee(s), to take all steps necessary to resume the evaluation of DCA's application for .AFRICA and to ensure that such evaluation proceeds in accordance with the established process(es) as quickly as possible (see Applicant Guidebook at <http://newglds.icann.org/en/applicants/agb> for established processes).

Resolved (2015.07.16.04), with respect to the GAC's consensus advice in the Beijing Communiqué that DCA's application for .AFRICA should not proceed, which was confirmed in the London Communiqué, the Board will ask the GAC if it wishes to refine that advice and/or provide the Board with further information regarding that advice and/or otherwise address the concerns raised in the Declaration.

Resolved (2015.07.16.05), in the event that DCA's application for .AFRICA

successfully passes the remainder of the evaluation process, at that time or before, the Board will consider any further advice or information received from the GAC, and proceed as necessary, balancing all of the relevant material information and circumstances. Should the Board undertake any action that may be inconsistent with the GAC's advice, the Board will follow the established process set out in the Bylaws (see ICANN Bylaws, Article XI, Section 2.1).

### *Rationale for Resolutions 2015.07.16.01 – 2015.07.16.05*

On 24 October 2013, DotConnectAfrica Trust (DCA) initiated an independent review proceeding (IRP) against ICANN, and filed a notice of independent review with the International Centre for Dispute Resolution (ICDR), ICANN's chosen IRP provider. In the IRP proceedings, DCA challenged the 4 June 2013 decision of the ICANN Board New gTLD Program Committee (NGPC), which was delegated authority from the Board to make decisions regarding the New gTLD Program. In that decision, the NGPC accepted advice from ICANN's Governmental Advisory Committee (GAC) that DCA's application for .AFRICA should not proceed.

On 9 July 2015, the IRP Panel (Panel) issued its Final Declaration (Declaration or Decl.). The Panel cited two main concerns relating to the GAC's advice on DCA's application: (1) the Panel was concerned that the GAC did not include, and that ICANN did not request, a rationale on the GAC's advice; and (2) the Panel expressed concern that ICANN took action on the GAC's advice without conducting diligence on the level of transparency and the manner in which the advice was developed by the GAC. The Panel found that ICANN's conduct was inconsistent with the ICANN Articles and Bylaws because of certain actions and inactions of the ICANN Board.

As provided in Article IV, Section 3 of the Bylaws, any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. The Panel is charged with comparing the contested Board actions to the Articles of Incorporation and Bylaws, and declaring whether the Board acted consistently with the provisions of those Articles of Incorporation and Bylaws. The Panel must apply a defined standard of review to the IRP request focusing on:

- a. did the Board act without conflict of interest in taking its decision?;
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?

After the Panel issues its final Declaration, the Board is then required to consider the Declaration at its next meeting (where feasible). Pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board has considered and discussed the Declaration and is taking action to: (1) continue to refrain from delegating the .AFRICA gTLD; (2) permit DCA's application to proceed through the remainder of the new gTLD application process; and (3) reimburse DCA for the costs of the IRP as set forth in paragraph 150 of the Declaration.

Additionally, the Board will communicate with the GAC and attempt to ascertain whether the GAC wishes to refine its advice concerning DCA's application for .AFRICA and/or provide the Board with further information regarding that advice and/or otherwise address the concerns raised in the Declaration. The Board will consider any response the GAC may choose to provide, and proceed as necessary, balancing all of the relevant material information and circumstances. Should the Board undertake any action that may be inconsistent with the GAC's advice, the Board will follow the established processes set out in the Bylaws. As required by the Bylaws, if the Board

decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The Board's action represents a careful balance, weighing the opinion of the Panel, as well as other significant factors discussed in this rationale. In taking this action today, each of the Board members exercised independent judgment, was not conflicted on this matter, and believes that this decision is in the best interests of the ICANN. The Board considered several significant factors as part of its consideration of the Declaration and had to balance its consideration with other factors. Among the factors the Board considered to be significant are the following:

1. The IRP is an integral ICANN accountability mechanism that helps support ICANN's multistakeholder model. The Board considers the principles found in ICANN's accountability mechanisms to be fundamental safeguards in ensuring that ICANN's bottom-up, multistakeholder model remains effective, and ICANN achieves its accountability and transparency mandate. The Board has carefully considered the Declaration, and in taking its action the Board, as did the Panel, takes specific note of the following regarding the independent review process and its obligations for accountability and transparency:
  - ICANN is bound by its own Articles of Incorporation to act fairly, neutrally, non-discriminatorily and to enable competition. (Decl. ¶ 94.)
  - ICANN is also bound by its own Bylaws to act and make decisions "neutrally and objectively, with integrity and fairness." (Decl. ¶ 95.)
  - As set out in Article IV (Accountability and Review) of ICANN's Bylaws, in carrying out its mission as set out in its Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws and with due regard for the core values set forth in Article I of the Bylaws. (Decl. ¶ 97.)
2. ICANN has a signed Registry Agreement with ZA Central Registry NPC trading as Registry.Africa (ZACR) under which ZACR is authorized to operate the .AFRICA top-level domain. Parties affected by these resolutions have had, and may continue to have, the ability to challenge or otherwise question DCA's application through the evaluation and other processes.
3. The Board considered the community-developed processes in the New gTLD Program Applicant Guidebook (Guidebook). According to Section 3.1 of the Guidebook, the GAC may provide public policy advice to the ICANN Board on any application, which the Board must consider. When the GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, it "will create a strong presumption for the ICANN Board that the application should not be approved." In its 11 April 2013 Beijing Communiqué, the GAC stated it had reached consensus on GAC Objection Advice for .AFRICA application number 1-1165-42560, thereby creating a strong presumption for the ICANN Board that this application should not proceed through the program. Additionally, in its 25 June 2014 London Communiqué, the GAC stated that "Consistent with the new gTLD applicant guidebook, the GAC provided consensus advice articulated in the April 11 2013 communiqué that the DotConnectAfrica (DCA) application number 1-1165-42560 for dot Africa should not proceed. The GAC welcomes the June 2013 decision by the New gTLD Program Committee to accept GAC advice on this application."

The Guidebook does not require the Board to engage the GAC in a dialogue about its advice when consensus has been reached, or question the GAC how such consensus was reached. The acceptance of the GAC advice on this

matter was fully consistent with the Guidebook. Notably, however, the Board has requested additional information from the GAC when the Board thought it needed more information before taking a decision, both before and during the New gTLD Program. Here, the NGPC did not think it required additional information from the GAC. Further, in addition to the GAC advice, the Board also had DCA's response to that advice, which the NGPC considered before accepting the GAC advice. Notwithstanding the Guidebook, the Panel has suggested that, "... the GAC made its decision without providing any rationale ..." (Decl. ¶ 104), and "... the Panel would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting DCA Trust's application." (Decl. ¶ 113).

4. The Board considered Section 5.1 of the Guidebook, which provides that, "ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism."

On balance, the Board has determined that permitting DCA's application to proceed through the remainder of the new gTLD application evaluation process is the best course of action at this time. Doing so helps promote ICANN's ability to make a decision concerning DCA's application for .AFRICA by applying documented procedures in the most transparent, neutral and objective manner possible, while also recognizing the importance of ICANN's accountability mechanisms. Completion of the application evaluation would allow DCA's application to undergo the same review processes as other gTLD applicants, and is not inconsistent with the GAC's advice. Further, completing the evaluation will provide additional relevant information for ICANN to consider as part of any final determination as to whether DCA's application for .AFRICA should proceed beyond initial evaluation.

There will be a financial impact on ICANN in taking this decision in that resuming the evaluation process for DCA's application for .AFRICA will result in additional cost, but that cost was anticipated in the application fee already received. The Board directs the President and CEO to re-engage the evaluation processes for DCA's application as quickly as possible, and to strongly encourage any third-party providers charged with performing the relevant New gTLD Program evaluations and analysis also to act as quickly as possible in concluding their evaluations in accordance with the established processes and procedures in the Guidebook.

There may also be additional costs to ICANN the extent any party challenges this decision. This action will have no impact on the security, stability or resiliency of the domain name system.

The significant materials related to the matters at issue in the Determination include, but are not limited to the following:

- Dakar Communiqué (27 October 2011) (<https://gacweb.icann.org/download/attachments/27132037/Communique%20Dakar%20-%2027%20October%202011.pdf?version=1&modificationDate=1323819889000&api=v2>)
- Letter from Stephen Crocker to Elham M.A. Ibrahim (<https://www.icann.org/en/system/files/correspondence/crocker-to-ibrahim-08mar12-en.pdf>)
- African Union Communiqué (<https://www.icann.org/resources/files/african-union-communication-2011-10-21-en>)

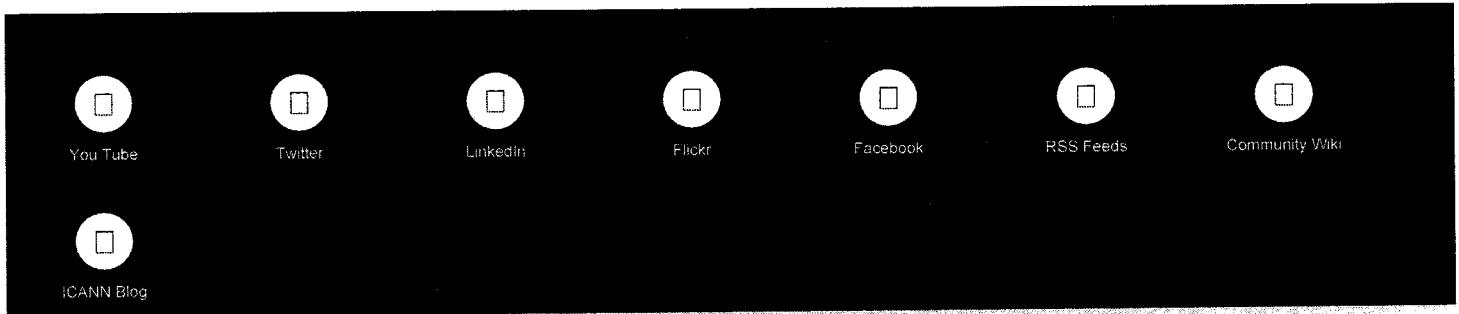
- DotConnectAfrica Trust's application for .AFRICA  
(<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1276?t:ac=1276>)
- ZACR's application for .AFRICA (<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1184?t:ac=1184>)
- Letter from Heather Dryden to Stephen Crocker (17 June 2012) re: Processing of Applications for New Generic TopLevel Domain  
(<https://www.icann.org/en/news/correspondence/dryden-to-crocker-17jun12-en>)
- Letter from Stephen Crocker to Heather Dryden (27 July 2012) re: Processing of applications for New Generic Top-Level Domains  
(<http://www.icann.org/en/system/files/correspondence/crocker-to-dryden-27jul12-en.pdf>)
- GAC Early Warnings filed against DCA's application for .AFRICA
  - African Union Commission:  
<https://gacweb.icann.org/download/attachments/27131927/Africa-AUC-42560.pdf?version=1&modificationDate=1353382039000&api=v2>
  - Comoros: <https://gacweb.icann.org/download/attachments/27131927/Africa-KM-42560.pdf?version=1&modificationDate=1353384893000&api=v2>
  - Kenya: <https://gacweb.icann.org/download/attachments/27131927/Africa-KE-42560.pdf?version=1&modificationDate=1353389367000&api=v2>
  - Cameroon: <https://gacweb.icann.org/download/attachments/27131927/Africa-CM-42560.pdf?version=1&modificationDate=1353430788000&api=v2>
  - DRC: <https://gacweb.icann.org/download/attachments/27131927/Africa-CD-42560.pdf?version=2&modificationDate=1353432869000&api=v2>
  - Benin: <https://gacweb.icann.org/download/attachments/27131927/Africa-BJ-42560.pdf?version=1&modificationDate=1353433003000&api=v2>
  - Egypt: <https://gacweb.icann.org/download/attachments/27131927/Africa-EG-1-42560.pdf?version=1&modificationDate=1353378092000&api=v2>
  - Gabon: <https://gacweb.icann.org/download/attachments/27131927/Africa-GA-42560.pdf?version=1&modificationDate=1353451525000&api=v2>
  - Burkina Faso: <https://gacweb.icann.org/download/attachments/27131927/Africa-BF-42560.pdf?version=1&modificationDate=1353451829000&api=v2>
  - Ghana: <https://gacweb.icann.org/download/attachments/27131927/Africa-GH-42560.pdf?version=1&modificationDate=1353451997000&api=v2>
  - Mali: <https://gacweb.icann.org/download/attachments/27131927/Africa-ML-42560.pdf?version=1&modificationDate=1353452174000&api=v2>
  - Uganda: <https://gacweb.icann.org/download/attachments/27131927/Africa-UG-42560.pdf?version=1&modificationDate=1353452442000&api=v2>
  - Senegal: <https://gacweb.icann.org/download/attachments/27131927/Africa-SN-42560.pdf?version=1&modificationDate=1353452452000&api=v2>
  - South Africa:  
<https://gacweb.icann.org/download/attachments/27131927/Africa-ZA-89583.pdf?version=1&modificationDate=1353452595000&api=v2>
  - Nigeria: <https://gacweb.icann.org/download/attachments/27131927/Africa-NG-2-42560.pdf?version=1&modificationDate=1353378092000&api=v2>

- Tanzania: <https://gacweb.icann.org/download/attachments/27131927/Africa-TZ-42560.pdf?version=1&modificationDate=1353452982000&api=v2>
- DCA Response to GAC Early Warning (<http://www.dotconnectafrica.org/wp-content/uploads/2012/12/Response-to-the-ICANN-GAC-Early-Warning-Advice-against-the-Africa-Application-Submitted-by-DotConnectAfrica-Trust.pdf>)
- GAC Beijing Communiqué (11 April 2013) (<https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>)
- DCA Response to GAC Advice in Beijing Communiqué (<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1165-42560-en.pdf>)
- NGPC Resolution 2014.06.04.NG01 (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en#1.a>)
- The NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013) (<https://www.icann.org/en/groups/board/documents/new-gtld-resolution-annex-1-04jun13-en.pdf>)
- DCA Trust Reconsideration Request 13-4 and attachments (<https://www.icann.org/en/groups/board/governance/reconsideration/13-4/request-dca-trust-19jun13-en.pdf>)
- BGC Recommendation on Reconsideration Request 13-14 (<https://www.icann.org/en/groups/board/governance/reconsideration/13-4/recommendation-dca-trust-01aug13-en.pdf>)
- NGPC Action Adopting BGC Recommendation on Reconsideration Request 13-4 (<https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-13aug13-en.htm#1.c>)
- GAC London Communiqué (25 June 2014) (<https://www.icann.org/en/system/files/correspondence/gac-to-board-25jun14-en.pdf>)
- DCA Response to GAC Advice in London Communiqué (<http://newgtlds.icann.org/sites/default/files/applicants/11aug14/gac-advice-response-1-1165-42560.pdf>)
- NGPC Resolution 2014.09.08.NG02 (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-09-08-en-1.b>)
- The NGPC Scorecard - GAC Advice (London, Singapore, Buenos Aires, Durban, Beijing): Actions and Updates (as of 8 September 2014) (<https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-08sep14-en.pdf>)
- Letter from Steve Crocker to Heather Dryden re: NGPC Meeting of 8 September 2014 (<https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-10sep14-en.pdf>)
- All briefs, declarations, and supporting documents filed by DCA Trust and ICANN in the Independent Review Proceeding *DCA Trust v. ICANN* (<https://www.icann.org/resources/pages/dca-v-icann-2013-12-11-en>)
- Letter from Akram Atallah to Neil Dundas (13 July 2015) re: Final Declaration in the DotConnectAfrica Trust (DCA) Independent Review Proceeding (IRP) (<https://www.icann.org/en/system/files/correspondence/atallah-to-unddas-13jul15-en.pdf>)

- Letter from Dr. Elham M.A. Ibrahim to Steve Crocker (14 July 2015) re: Independent Review Panel (IRP) recommendation on the matter between DCA and ICANN related to Dot Africa gTLD  
(<https://www.icann.org/en/system/files/correspondence/ibrahim-to-crocker-14jul15-en.pdf>)
- Letter from Lucky Masilela to Steve Crocker (15 July 2015) re: ZACR Response on the Independent Review Process (IRP) Final Declaration  
(<https://www.icann.org/en/system/files/correspondence/masilela-to-crocker-15jul15-en.pdf>)

This is an Organizational Administrative function that does not require public comment.

Published on 16 July 2015



**Who We Are**

- Get Started
- Learning
- Participate
- Groups
- Board
- President's Corner
- Staff
- Careers
- Newsletter
- Development and Public Responsibility

**Contact Us**

- Offices
- Global Support
- Security Team
- PGP Keys
- Certificate Authority
- Registry Liaison
- Specific Reviews
- Organizational Reviews
- Request a Speaker For Journalists

**Accountability & Transparency**

- Accountability Mechanisms
- Independent Review Process
- Request for Reconsideration
- Ombudsman

**Governance**

- Documents
- Agreements
- Specific Reviews
- Annual Report
- Financials
- Document Disclosure
- Planning
- KPI Dashboard
- RFPs
- Litigation
- Correspondence

**Help**

- Dispute Resolution
- Domain Name Dispute Resolution
- Name Collision
- Registrar Problems
- WHOIS

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**

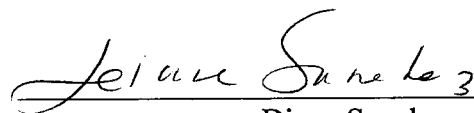
- 9  by placing the document(s) listed above in a sealed envelope with postage thereon  
10 fully prepaid, in the United States mail at Los Angeles, California addressed as set  
forth below.
- 11  by placing the document(s) listed above in a sealed Federal Express envelope and  
12 affixing a pre-paid 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  
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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