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7 DOTCONNECTAFRICA TRUST  
8

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

12 DOTCONNECTAFRICA TRUST, a Mauritius  
13 Charitable Trust,

14 Plaintiff,

15 v.

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

18 Defendants.  
19  
20  
21

Case No. BC607494

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

**DECLARATION OF SOPHIA BEKELE  
ESHETE IN SUPPORT OF DCA'S  
OPPOSITION TO DEFENDANT  
ICANN'S MOTION FOR PROTECTIVE  
ORDER**

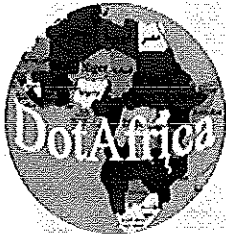
Date: December 13, 2017  
Hearing: 8:30 a.m.  
Dept.: 53

[Filed concurrently: Opposition to Motion for  
Protective Order]





# EXHIBIT 1



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**Africa's map in the digital inclusion!**

July 18, 2012

The Chief Executive Officer  
Internet Corporation for Assigned Names & Numbers (ICANN)  
4676 Admiralty Way, Suite 330  
Marina Del Rey, CA 90292-6601  
United States of America

Dear Sir,

**Subject: Reporting a Matter of Conflict of Interest on .AFRICA (DotAfrica) new gTLD Applications Regarding Mr. Mike Silber a Member of the ICANN Board from South Africa**

DCA Trust has submitted an application for the .AFRICA (DotAfrica) gTLD string – the geographic name for Africa.

Mr. Mike Silber is a current member of the ICANN Board of Directors from South Africa. He is also a current member of the Board of Directors of the South African Domain Names Authority (**ZADNA**). However, we believe that he is already deeply conflicted over dotAfrica (.AFRICA) gTLD, and this could affect any views he may have on .AFRICA (dotAfrica); as to possibly affect both his judgment and inputs he would be required to make as an ICANN Director in any decision regarding the approval and delegation of the dotAfrica (.AFRICA) gTLD.

Mr. Mike Silber was a former director of UniForum SA, the administrator of the .co.za domain registry. UniForum SA, trading as Registry.Africa (or ZA Central Registry) has also submitted an application for the dotAfrica (.AFRICA) gTLD (Application ID: 1-1243-89583). Since DCA Trust has also applied for the same geographical string name, we are indeed troubled by the fact that Mr. Mike Silber would use his presence on the ICANN Board of Directors to act deliberately as to pose an unwarranted risk to DCA's application whilst trying to take decisions that would have a favourable outcome for the competing application submitted by UniForum. In a nutshell, we really believe that Mike Silber might use his ICANN Board position to favour UniForum in any decision regarding .AFRICA.

To further buttress our point, we would like to add that the South African Domain Names Authority proposed the establishment of the South Africa Central Registry (ZA CR), which is part of UniForum. We therefore have very strong reasons to suppose that ZADNA, who have already expressed support for the UniForum ZA Central Registry application for dotAfrica (.AFRICA) gTLD; and Mike Silber, by virtue of his current affiliation to ZADNA and previous affiliation to UniForum SA, has an undeclared Conflict of Interest regarding the outcome of the DotAfrica (.AFRICA) application that has been submitted by UniForum ZA Central Registry (also trading as Registry.Africa). We believe that these relationships would pose insurmountable ethical difficulties for Mr. Mike Silber as to make him become biased against the application for the .AFRICA (DotAfrica) geographical string name that has been submitted by DCA Trust.

It is for these reasons that we strongly believe that Mr. Mike Silber would be strongly prejudiced against DCA's application and, to avoid a conflict of interest, should therefore recuse himself from participating in any future Board-level, Executive-level or Committee-level discussions and or decisions regarding any of the .AFRICA (dotAfrica) gTLD application(s) submitted to ICANN. We remain seriously concerned that his presence on the ICANN Board would be used to advance negative positions that would weaken DCA's application whilst advocating for the competing application submitted by UniForum ZA Central Registry.

Before closing, we also would like to expressly request the ICANN Board to censure Mr. Mike Silber for activities unbecoming, and request him not to engage in any further discussions with prospective third-party registry services providers and giving advice or either making or recommending business connections between such prospective providers of registry technical services and new gTLD applicants. Before the closing of applications window, DCA Trust was approached by a certain provider of registry data escrow services an expressed the interest in wanting to be the registry data escrow agent for DCA's .AFRICA application, and claimed that he had been referred to DCA by Mr. Mike Silber. On the basis of this compelling evidence, we therefore suspect that Mr. Mike Silber has been regularly engaging in this type of activity of advising registry services providers and recommending them to associate or affiliate themselves to new gTLD applicants; or assisting such service providers or providing informal consultancy or assistance or simply engaging in the process of aiding and abetting. DCA Trust believes that recklessly engaging in such activities would compromise the integrity of an ICANN Board member.

We therefore appeal to the ICANN leaders represented by the ICANN Board and ICANN Executives to disallow Mr. Mike Silber from taking part in any discussion or decision or evaluation activities relating to the new gTLD applications submitted for Africa (.africa).

Thanking you in anticipation of your kind co-operation.

Yours sincerely,

*Sbekele*

Sophia Bekele  
For DCA Trust (An Applicant for the DotAfrica (.AFRICA) gTLD  
Application ID: 1-1165-42560

cc: Dr. Stephen Crocker, Chairman of the ICANN Board

# EXHIBIT 2

**From:** "Chris LaHatte" <chris.lahatte@icann.org>  
**To:** "nkamaw@dotconnectafrica.org" <nkamaw@dotconnectafrica.org>  
**Cc:** "sbekele@dotconnectafrica.org" <sbekele@dotconnectafrica.org>  
**Sent:** Tue, Oct 2, 2012 at 11:49 AM  
**Subject:** RE: Reporting a Matter of Conflict of Interest on .AFRICA (DotAfrica) new gTLD Applications Regarding Mr. Mike Silber and Mr. Chris Disspain, Members

Dear Ms. Kamau

Thank you for this. I look forward to the formal complaint and supporting material.

Regards

Chris LaHatte

Ombudsman

Blog <https://omblog.icann.org/>

Facebook <http://www.facebook.com/ICANNOmbudsman>

Webpage <http://www.icann.org/en/help/ombudsman>

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**From:** nkamaw@dotconnectafrica.org [mailto:nkamaw@dotconnectafrica.org]  
**Sent:** Tuesday, October 02, 2012 9:03 PM  
**To:** Chris LaHatte  
**Cc:** sbekele@dotconnectafrica.org  
**Subject:** RE: Reporting a Matter of Conflict of Interest on .AFRICA (DotAfrica) new gTLD Applications Regarding Mr. Mike Silber and Mr. Chris Disspain, Members of the ICANN Board and the New gTLD Program Committee

Dear Mr LaHatte

Thank you for your prompt response. Apologies for not sending separately to you.

Indeed Ms. Bekele wants to make a formal referral, please.

I have copied her email address above, on this message for your direct communication.

Thank you for your advise.

Kind Regards,

Nancy

---

Nancy Kamau



Personal Assistant to Executive Director

[DotConnectAfrica.org](http://DotConnectAfrica.org)  
[www.dotconnectafrica.org](http://www.dotconnectafrica.org)

CIC Plaza , Ground floor, Mara Road Upper Hill,

Box 39466-00623 Nairobi Kenya.  
Tel: +254-703 250 969  
Fax: +254-020-2731146  
Please support our "yes2dotafrica" campaign by:  
Following us on Twitter and Facebook  
Email us at: [yes2dotafrica@dotconnectafrica.org](mailto:yes2dotafrica@dotconnectafrica.org)  
[Press Room](#)

DotConnectAfrica is a non-partisan, not-for-profit organization incorporated in Mauritius Africa, and will sponsor, establish and operate a TLD registry with global recognition and regional significance dedicated to the needs of the Pan-African and African community. **DCA Reg. ID. CT8710DCA90.**

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----- Original Message -----

Subject: RE: Reporting a Matter of Conflict of Interest on .AFRICA (DotAfrica) new gTLD Applications Regarding Mr. Mike Silber and Mr. Chris Disspain, Members of the ICANN Board and the New gTLD Program Committee

From: Chris LaHatte <[chris.lahatte@icann.org](mailto:chris.lahatte@icann.org)>

Date: Tue, October 02, 2012 12:42 am

To: "nkamaw@dotconnectafrica.org" <[nkamaw@dotconnectafrica.org](mailto:nkamaw@dotconnectafrica.org)>

Cc: Cherine Chalaby <[cherine.chalaby@icann.org](mailto:cherine.chalaby@icann.org)>, "heather.dryden@ic.gc.ca" <[heather.dryden@ic.gc.ca](mailto:heather.dryden@ic.gc.ca)>, Kurt Pritz <[kurt.pritz@icann.org](mailto:kurt.pritz@icann.org)>, "ssene@ntia.doc.gov" <[ssene@ntia.doc.gov](mailto:ssene@ntia.doc.gov)>, "ocl@gih.com" <[ocl@gih.com](mailto:ocl@gih.com)>, John Jeffrey <[john.jeffrey@icann.org](mailto:john.jeffrey@icann.org)>, Steve Crocker <[steve.crocker@icann.org](mailto:steve.crocker@icann.org)>, Chris Mondini <[chris.mondini@icann.org](mailto:chris.mondini@icann.org)>

Dear Ms Bekele

Thank you for the email and letter. May I assume I am being copied for information, rather than because you are asking that I open a file? If you do want to make a formal referral please advise, but restrict the response to me alone. This would be to maintain the required confidentiality of the process.

Regards

Chris LaHatte

Ombudsman

Blog <https://omblog.icann.org/>

Facebook <http://www.facebook.com/ICANNOmbudsman>

Webpage <http://www.icann.org/en/help/ombudsman>

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**From:** [nkamaw@dotconnectafrica.org](mailto:nkamaw@dotconnectafrica.org) [<mailto:nkamaw@dotconnectafrica.org>]

**Sent:** Tuesday, October 02, 2012 7:32 PM

**To:** Chris Mondini; Steve Crocker

**Cc:** Cherine Chalaby; [heather.dryden@ic.gc.ca](mailto:heather.dryden@ic.gc.ca); Kurt Pritz; [ssene@ntia.doc.gov](mailto:ssene@ntia.doc.gov); [ocl@jih.com](mailto:ocl@jih.com); John Jeffrey; Chris LaHatte

**Subject:** Reporting a Matter of Conflict of Interest on .AFRICA (DotAfrica) new gTLD Applications Regarding Mr. Mike Silber and Mr. Chris Disspain, Members of the ICANN Board and the New gTLD Program Committee

**Importance:** High

*October 2, 2012*

*Dear Mr. Fadi Chehadé*

*Chief Executive Officer*

*Dr. Stephen D. Crocker*

*Chairman of the ICANN Board*

*(By email: [steve.crocker@icann.org](mailto:steve.crocker@icann.org))*

*I have been instructed by our Executive Director, Ms. Sophia Bekele to send to you the **attached letter, Subject: Reporting a Matter of Conflict of Interest on .AFRICA (DotAfrica) new gTLD Applications Regarding Mr. Mike Silber and Mr. Chris Disspain, Members of the ICANN Board and the New gTLD Program Committee.***

*Please also accept Ms. Sophia Bekele's thanks and regards.*

Kind Regards,

Nancy

---

Nancy Kamau

Personal Assistant to Executive Director

[DotConnectAfrica.org](http://DotConnectAfrica.org)  
[www.dotconnectafrica.org](http://www.dotconnectafrica.org)

CIC Plaza , Ground floor, Mara Road Upper Hill,

Box 39466-00623 Nairobi Kenya.

Tel: +254-703 250 969

Fax: +254-020-2731146

Please support our "yes2dotafrica" campaign by:

Following us on [Twitter](#) and [Facebook](#)

Email us at: [yes2dotafrica@dotconnectafrica.org](mailto:yes2dotafrica@dotconnectafrica.org)

[Press Room](#)

DotConnectAfrica is a non-partisan, not-for-profit organization incorporated in Mauritius Africa, and will sponsor, establish and operate a TLD registry with global recognition and regional significance dedicated to the needs of the Pan-African and African community. **DCA Reg. ID. CT8710DCA90.**

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# EXHIBIT 3

**From:** "Chris LaHatte" <chris.lahatte@icann.org>  
**To:** "sbekele@dotconnectafrica.org" <sbekele@dotconnectafrica.org>  
**Sent:** Sat, Dec 8, 2012 at 5:39 AM  
**Subject:** RE: Final Report

Dear Sophia

I have had that discussion with John Jeffrey, who observed that I do not have the power to do so, and I agree. The wording makes it clear, and I set this out to remind you *"It is likely this complaint has led to increased awareness of the possibilities of conflict of interest, which the Board will carefully consider in terms of the existing policy about conflict, when the issue arises. I consider this should continue to be a matter for consideration in gTLD decision making by the Board."*

Because the Board will be observed by all in decision making this is a clear flag for the 2 members and all the board in fact.

Regards

Chris LaHatte

Ombudsman

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Webpage <http://www.icann.org/en/help/ombudsman>

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**From:** sbekele [mailto:sbekele@dotconnectafrica.org]  
**Sent:** Saturday, December 08, 2012 3:33 PM  
**To:** Chris LaHatte  
**Subject:** Re: Final Report

Dear Chris-

I understand that you do not tell the board but only recommend. However why can't you recommend a language that would include something of ....should there be any gTLD decision on .africa, the board should consider asking the two board members to rescue themselves....

The point is that your investigation was on current meetings and did not consider the future. DCA's fear is when gTLD decisions are made the two board members should not be involved. Surly of they do not have interest, then they should not have a problem agreeing. The publicity of an incomplete report will hurt all of us despite what the group thinks and not DCA. The COI particularly on Mike is quite glaring for anyone to see and IMHO, DCA will continue to escalate the issue.

I hope you can speak with John and come up with a compromise, please.

With best wishes,

*Sophia*

Support our "YES" to .africa Campaign!  
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*Nobody believes the official spokesman... but everybody trusts an unidentified source. -Ron Nesen*

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*Sophia Bekele (Ms), BS, MBA, C.I.S.A, C.C.S, CGEIT, CBS International, Inc, Ca, USA/Africa +1 925-935-1589:US  
Tel; +1 925-818-4322:US ; +251-91-120-1449 :ET; +254-703-250-969 Kenya Cell, skype: sbekele, Google: "sophia  
bekele"*

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**From:** Chris LaHatte <[chris.lahatte@icann.org](mailto:chris.lahatte@icann.org)>  
**To:** sbekele <[sbekele@dotconnectafrica.org](mailto:sbekele@dotconnectafrica.org)>  
**Sent:** Friday, December 7, 2012 6:08 PM  
**Subject:** RE: Final Report

Dear Sophia

I need to clarify that this report is not a negotiated report, but my conclusions. I have taken your concerns into account however. I do not think you realize that my powers as ombudsman are limited, and that I cannot tell the Board to do anything. All I can do is observe, as I have done, that they will be aware of possible conflicts.

Regards

Chris LaHatte

Ombudsman

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**From:** sbekele [<mailto:sbekele@dotconnectafrica.org>]  
**Sent:** Saturday, December 08, 2012 1:19 PM  
**To:** Chris LaHatte  
**Subject:** Re: Final Report

Dear Chris-

As I have stated, the links on the newsletter are what is already in public domain and nothing new. It is a summary of activities of update for DCA and there was nothing to hide. I have already removed DCA's commentary from our own blog and I think that is what me and you discussed. I cannot take back what others published.

If you say it is a negotiated position, then you did not consider our position of compromise. If your report did not include any of our concerns, then it did not qualify for a negotiated position between all parties. I do not think it is fair that you will publish a report without our consensus based on a newsletter update of DCA.

In any case, if the public position of exonerating the two directors is what has been negotiated as the conclusion, so be it. However I also gather from you previous communication below you recommendation was to make it public anyway. However at this instance, the decision of enforcing it rather seem like a punishment to DCA instead of addressing the CORE issues.

Therefore, DCA will insist that the report is not complete, balanced and acceptable to DCA.

*With best wishes,*

*Sophia*

Support our "YES" to .africa Campaign!  
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Email us at: [yes2dotafrica@dotconnectafrica.org](mailto:yes2dotafrica@dotconnectafrica.org)  
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*Nobody believes the official spokesman... but everybody trusts an unidentified source. -Ron Nesen*

*Sophia Bekele (Ms), BS, MBA, C.I.S.A, C.C.S, CGEIT, CBS International, Inc, Ca, USA/Africa +1 925-935-1589:US Tel; +1 925-818-4322:US ; +251-91-120-1449 :ET; +254-703-250-969 Kenya  
Cell, skype: sbekele, Google: "sophia bekele"*

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**From:** Chris LaHatte <[chris.lahatte@icann.org](mailto:chris.lahatte@icann.org)>  
**To:** sbekele <[sbekele@dotconnectafrica.org](mailto:sbekele@dotconnectafrica.org)>  
**Sent:** Friday, December 7, 2012 2:41 PM  
**Subject:** RE: Final Report

Dear Sophia

The process of making a complaint is followed by an investigation, and then if needed, a report. This is not a negotiated process, but the reason I discuss the draft is to enable me to consider all submissions. The filter of the examination of the draft is important, and I have taken into account what you have said. But this does need to be concluded. The link you provided illustrates my point, that you chose to engage on this issue in a public manner, and the fair result is to publish my report.

Regards

Chris LaHatte

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**From:** sbekele [<mailto:sbekele@dotconnectafrica.org>]  
**Sent:** Saturday, December 08, 2012 2:58 AM  
**To:** Chris LaHatte  
**Subject:** Re: Final Report

Greetings Chris-

We have not reached an agreement and find we have already suggested a compromise wording which they have not agreed to as it did not address the code issues which we have raised, and in our estimation the matter remains unresolved.

It is not an issues whether the report has found in our favor or not in our favor. The issues is for us to protect our application that potentially conflicted board members may make decisions on. It is for this reason that we are insisting that the report should recommend at a minimum that they should recuse themselves of any decisions regarding .africa.

Regrading the newsletter, here is the link and we have not made any fresh allegations and it is the same letter than we have sent to ICANN that we are referring to in the newsletter.

<http://archive.constantcontact.com/fs123/1102516344150/archive/1111195813946.html>

I hope this help and I look forward yo hearing from you.

*With best wishes,*

*Sophia*

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*Sophia Bekele (Ms), BS, MBA, C.I.S.A, C.C.S, CGEIT, CBS International, Inc, Ca, USA/Africa +1 925-935-1589:US Tel; +1 925-818-4322:US ; +251-91-120-1449 :ET; +254-703-250-969 Kenya Cell, *skype: sbekele, Google: "sophia bekele"**

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**From:** Chris Disspain <[ceo@auda.org.au](mailto:ceo@auda.org.au)>  
**To:** "mike.silber@icann.org" <[mike.silber@icann.org](mailto:mike.silber@icann.org)>  
**Cc:** sbekele <[sbekele@dotconnectafrica.org](mailto:sbekele@dotconnectafrica.org)>; Chris LaHatte <[chris.lahatte@icann.org](mailto:chris.lahatte@icann.org)>; John Jeffrey <[john.jeffrey@icann.org](mailto:john.jeffrey@icann.org)>  
**Sent:** Friday, December 7, 2012 12:32 AM  
**Subject:** Re: Final Report

Chris,

I agree with Mike.

Mike, would you be kind enough to forward me the link to the "newsletter" you refer to so that I may pass it to my attorneys.

Cheers,

Chris Disspain | Chief Executive Officer

.au Domain Administration Ltd

T: +61 3 8341 4111 | F: +61 3 8341 4112

E: [ceo@auda.org.au](mailto:ceo@auda.org.au) | W: [www.auda.org.au](http://www.auda.org.au)

auDA - Australia's Domain Name Administrator

On 7 Dec 2012, at 19:21, Mike Silber <[mike.silber@icann.org](mailto:mike.silber@icann.org)> wrote:

Chris

Given that the complainant continues to give her spurious allegations significant prominence in her email "newsletter" in in the DCA website, I would respectfully request that the report be made public.

The complainant's objection seems to be that an objective factual review did not find in her favour. This is no reason to withhold publication. It would be as logical as me requesting the report to be withheld if it went against me.

Mike

On 05/12/2012 20:43, sbekele wrote:

*Dear Chris:*

*Thank you for your message.*

*I wanted to inform by this email that the final report is not acceptable to us and DCA does not agree with it.*

*We do not accept the report since it did not address the code issues we have reported. Your report as presently written seem to exonerate the two board members, without addressing the future conflict of interest regarding the said ".africa" gTLD.*

*Finally, until we reach a mutually acceptable report, DCA insists that there no need to publish or distribute the report.*

*Thanks and regards,*

*Sophia*

Support our "YES" to .africa Campaign!  
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**From:** Chris LaHatte <[chris.lahatte@icann.org](mailto:chris.lahatte@icann.org)>  
**To:** "sophiabekele@yahoo.com" <[sophiabekele@yahoo.com](mailto:sophiabekele@yahoo.com)>  
**Cc:** "mike.silber@icann.org Silber" <[mike.silber@icann.org](mailto:mike.silber@icann.org)>; Chris Disspain <[ceo@auda.org.au](mailto:ceo@auda.org.au)>; John Jeffrey <[john.jeffrey@icann.org](mailto:john.jeffrey@icann.org)>  
**Sent:** Tuesday, December 4, 2012 10:36 PM  
**Subject:** Final Report

Dear parties

I have had input and amended this report. Note the changes in Italics. Thank you for the careful and considered comments. The next issue is whether this report should be placed on my website. The default position is to anonymise the report, or not publish at all. But in this case there may be wider interest. If any of you object I will not publish as it would be difficult to conceal identity of the parties.

Regards

Chris LaHatte

Ombudsman

Blog <https://omblog.icann.org/>

Facebook

<http://www.facebook.com/ICANNOmbudsman>

Webpage <http://www.icann.org/en/help/ombudsman>

#### Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint

# EXHIBIT 4

THE MATTER OF AN INDEPENDENT REVIEW PROCESS  
BEFORE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

_____	)	
DOTCONNECTAFRICA TRUST,	)	
Claimant.	)	
v.	)	ICDR Case No.
INTERNET CORPORATION FOR	)	50 2013 00 1083
ASSIGNED NAMES AND NUMBERS,	)	
Respondent.	)	
_____	)	

HEARING ON THE MERITS  
BEFORE THE PANEL: PRESIDENT BABAK BARIN,  
HONORABLE JUDGE WILLIAM CAHILL, AND  
PROFESSOR CATHERINE KESSEDJIAN  
Friday, May 22, 2015; 9:09 a.m.

Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR,  
CCR, CLR, RSA, LiveDeposition Authorized Reporter  
Job No. 13828

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Hearing on the Merits in the above-styled  
manner, held at the offices of:

Jones Day  
51 Louisiana Avenue Northwest  
Washington, D.C. 20001  
202.879.3939

The proceedings having been reported by  
the Registered Merit Real-Time Court Reporter,  
CINDY L. SEBO, RMR, CRR, RPR, CSR, CLR, RSA, and  
LiveDeposition Authorized Reporter.

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15  
16  
17 ALSO PRESENT:

18 SOPHIA BEKELE ESHETE, On behalf of the Claimant

19 AMY STATHOS, Deputy General Counsel at  
20 ICANN

21 HEATHER DRYDEN, International  
22 Telecommunications Policy and Coordination  
23 Directorate at the Canadian Department of  
24 Industry

25 CHERINE CHALABY, ICANN Board of Directors

1 facts. There are no new facts or  
2 additional facts.

3 So I'd like to know what facts has  
4 been brought to the table that both  
5 Silber and Disspain had not disclosed.

6 What are these facts?

7 ARBITRATOR KESSEDJIAN: What I'm  
8 saying to you is that the conflict of  
9 interest must be analyzed on the  
10 background -- I don't know how to say  
11 that. Should I speak French? -- it's on  
12 the background of the situation at the  
13 certain moment.

14 So you -- you have exactly the  
15 same -- you know, I'm  
16 Catherine Kessedjian. I'm a professor at  
17 the University, plus an arbitrator, plus,  
18 plus, plus. This never changes. This is  
19 always the facts concerning me.

20 But my conflict of interest on Day 1  
21 may be completely different with  
22 Day 10, because between Day 1 and Day 10,  
23 there is a string of events that have  
24 occurred. And, therefore, exactly the  
25 same circumstances which are mine, and in

1           that particular case, it's Disspain and  
2           Silber, looked at through the lens of the  
3           change of circumstances may indeed  
4           trigger a different analysis.

5                     Am I more clear?

6                     THE WITNESS: You are clear.

7                     But in that instance, it did not --  
8           it did not trigger a -- different facts.  
9           But I understand your point.

10                    And as a result, because of the  
11           circumstances, when we had an NGPC  
12           meeting after the 4th of June, we brought  
13           the issue to the NGPC and went through  
14           and explained the circumstances, and  
15           asked each Board member to talk again  
16           about their position and whether they are  
17           conflicted and whether they feel, given  
18           the circumstances that you have  
19           mentioned, they are conflicted. But they  
20           were not.

21                    HONORABLE JUDGE CAHILL: Can I  
22           interrupt a little bit here?

23                    ARBITRATOR KESSEDJIAN: Yes, please.

24                    HONORABLE JUDGE CAHILL: Excuse me,  
25           please.

1           There is a new fact. The ombudsman  
2           says it is clearly apparent from the  
3           records examined that the two Board  
4           members have not participated in any  
5           decision-making about .africa. Indeed,  
6           there's been little discussion; is my  
7           view, it's premature, et cetera.

8           Well, the new fact is, now, these  
9           two Board members are participating in  
10          .africa discussions, decisions, right?

11          THE WITNESS: Correct.

12          HONORABLE JUDGE CAHILL: So I'm  
13          wondering why we didn't go back to the  
14          ombudsman.

15          But there is something -- there is  
16          something new that may change the  
17          analysis, isn't there?

18          THE WITNESS: If they had --

19          HONORABLE JUDGE CAHILL: If the  
20          ombudsman -- now, they're participating  
21          in the decision.

22          THE WITNESS: They are  
23          participating. But as far as the -- the  
24          Subcommittee had determined before -- and  
25          I'll go back to the point that they

1 didn't have any potential or perceived  
2 conflict. The fact that --

3 HONORABLE JUDGE CAHILL: The  
4 Subcommittee or the ombudsman?

5 THE WITNESS: The Board Governance  
6 Committee --

7 HONORABLE JUDGE CAHILL: Okay.

8 THE WITNESS: -- had determined  
9 before that they had no conflict.

10 So -- and especially in their second  
11 set of statement after all the letters  
12 that came from Sophia, and the ombudsman  
13 looked at that.

14 So what happened is when the time of  
15 the discussion came for the NGPC, we  
16 looked at the GAC advice; we looked at  
17 the response that DCA has made; we looked  
18 at the module. And I agree with you, we  
19 did not -- in the 4th of June meeting, we  
20 did not discuss or ask anybody to confirm  
21 whether they're conflicted or not.

22 But subsequent to that, in another  
23 meeting just a few weeks later, we had a  
24 meeting, the NGPC, and the issue was  
25 raised. And we said, The circumstances

1 are that there is the following  
2 happening. Could you please go back and  
3 reexamine the situation and please  
4 confirm whether you are conflicted or  
5 not?

6 So everybody confirmed they were not  
7 conflicted, particularly the two  
8 gentlemen. This was not sufficient.

9 We then -- the NGPC asked the Board  
10 Governance Committee and, through it, the  
11 Subcommittee on Ethics to look into the  
12 situation one more time. They looked at  
13 the situation one more time, and there  
14 was nothing -- there were no new facts  
15 other than they were --

16 HONORABLE JUDGE CAHILL: Now,  
17 they're doing something.

18 THE WITNESS: -- no new facts in  
19 terms of their conflict. There was a  
20 fact that they were there when there was  
21 a vote, but given that they're not  
22 conflicted --

23 HONORABLE JUDGE CAHILL: Okay. I  
24 understand.

25 Excuse me.

1 ARBITRATOR KESSEDJIAN: No, no.  
2 Thank you, Bill. That's very useful.

3 Am I correct that the Governance  
4 Committee has records and minutes and  
5 everything is published, I guess, on the  
6 Internet, on ICANN Internet? Is that  
7 your answer to the Chair's question  
8 earlier?

9 THE WITNESS: I believe the minutes  
10 of the --

11 ARBITRATOR KESSEDJIAN: The  
12 Governance Committee?

13 THE WITNESS: Yeah, yeah.

14 ARBITRATOR KESSEDJIAN: Now, I'm  
15 asking you for the Subcommittee on  
16 Ethics.

17 Are there records, minutes? Are  
18 they public?

19 THE WITNESS: There are records, but  
20 I don't believe they are public.

21 ARBITRATOR KESSEDJIAN: So ICANN  
22 says in its policy of 2012 -- and I'm  
23 just quoting from memory, because I've  
24 read that several times -- that it is its  
25 objective to actually obey by the highest

1 standards of ethics.

2 But the work of the Subcommittee on  
3 Ethics, which is basically the only  
4 committee dealing with those issues, are  
5 not public; is that correct?

6 THE WITNESS: Well, I need to -- I  
7 mean, all the discussion --

8 ARBITRATOR KESSEDJIAN: In your --

9 THE WITNESS: -- no, no -- the  
10 reason is all the discussion happens  
11 under client-attorney privilege with  
12 lawyers. So I don't know if I can answer  
13 that question in a satisfactory way for  
14 you.

15 I need to ask --

16 ARBITRATOR KESSEDJIAN: Who's client  
17 attorney --

18 THE WITNESS: We had general counsel  
19 in the meeting as the discussions are  
20 held --

21 ARBITRATOR KESSEDJIAN: You mean of  
22 the Subcommittee?

23 THE WITNESS: Of the Subcommittee,  
24 yeah.

25 PRESIDENT BARIN: I guess --

1 MR. LEVEE: If I could just  
2 explain -- I'm not going to answer  
3 anything for the witness -- I had told  
4 the witness when an issue came up  
5 relating to privilege that he should  
6 identify it.

7 As he just testified, the general  
8 counsel is in these meetings, and that's  
9 the reason that the meeting minutes are  
10 privileged. So I can't just publish them  
11 because they would otherwise be waiving  
12 --

13 ARBITRATOR KESSEDJIAN: Let's go  
14 back to you, Mr. Chalaby, please.

15 You said there are three members in  
16 the Subcommittee on Ethics. So it's  
17 you -- who are the two others?

18 THE WITNESS: They're not  
19 Chris Disspain or Mike Silber.

20 ARBITRATOR KESSEDJIAN: I love  
21 you're aware of certain questions.

22 THE WITNESS: Would you like me --

23 ARBITRATOR KESSEDJIAN: Could you be  
24 positive? Tell us the names.

25 Who are the other members, or at

1 that time?

2 THE WITNESS: Ray Plzak and  
3 Bill Graham.

4 ARBITRATOR KESSEDJIAN: And they  
5 were the same two at the time that we are  
6 discussing here, 2012 to 2013?

7 THE WITNESS: I believe so.

8 ARBITRATOR KESSEDJIAN: Okay. Now,  
9 we just learned from the counsel of ICANN  
10 that the general counsel of ICANN attend  
11 your meetings.

12 What's his function there?

13 PRESIDENT BARIN: I guess the  
14 question is he attends -- the general  
15 counsel attends both the Governance  
16 Committee meetings, correct --

17 THE WITNESS: I'm talking about the  
18 Ethics Committee meeting.

19 PRESIDENT BARIN: -- as well as the  
20 Subcommittee --

21 ARBITRATOR KESSEDJIAN: That was my  
22 question, the Subcommittee.

23 THE WITNESS: Yes.

24 ARBITRATOR KESSEDJIAN: But what was  
25 his function? Why does he attend?

1 THE WITNESS: Well, he brings the  
2 facts to us. So . . .

3 ARBITRATOR KESSEDJIAN: I don't  
4 understand.

5 THE WITNESS: So when there is an  
6 issue of conflict, right --

7 ARBITRATOR KESSEDJIAN: So you're  
8 not doing anything yourself. All the  
9 members of the Subcommittee are just  
10 expecting other people to bring things to  
11 you. You're not proactive?

12 THE WITNESS: No. They put the data  
13 in front of us, and then we are proactive  
14 in terms of discussing, analyzing,  
15 investigating -- in many cases, we  
16 question people.

17 In that instance, we questioned one  
18 of the Board members. We looked at the  
19 cross records. We do.

20 PRESIDENT BARIN: I guess the  
21 question is in terms of the -- the work  
22 that the Subcommittee does, it does this  
23 work in the presence of the general  
24 counsel, correct?

25 THE WITNESS: Yes.



1 ARBITRATOR KESSEDJIAN: Go ahead.

2 PRESIDENT BARIN: Does the general  
3 counsel also get involved in the  
4 discussions that you have in respect to  
5 whether or not there is a conflict?

6 THE WITNESS: No.

7 PRESIDENT BARIN: Does he express  
8 any opinions with respect to --

9 THE WITNESS: No. No.

10 PRESIDENT BARIN: And the facts that  
11 are put before you, do you verify those  
12 facts in any way, other than what is put  
13 before you by the general counsel?

14 THE WITNESS: Well, the only way we  
15 verify them is by asking further  
16 questions of -- of the -- of the  
17 directors who are subject to a conflict.

18 PRESIDENT BARIN: Right.

19 I have one other question for you in  
20 terms of the policy that you use.  
21 Section -- would you show this section to  
22 Mr. Chalaby --

23 MR. LEVEE: Back on conflict policy?

24 PRESIDENT BARIN: Yeah, conflict  
25 policy, Section 1.3.

1 MR. LEVEE: Okay.

2 MS. ZERNIK: Can you give me the  
3 exhibit number --

4 PRESIDENT BARIN: Pardon me?

5 MS. ZERNIK: -- I don't have it.

6 PRESIDENT BARIN: It's C-52 --

7 MS. ZERNIK: Yeah.

8 PRESIDENT BARIN: -- and it's  
9 Section 1.3.

10 ARBITRATOR KESSEDJIAN: Could you  
11 enlarge it a little bit?

12 MR. LEVEE: Yeah, we'll make it  
13 larger.

14 Here you go.

15 PRESIDENT BARIN: Have you seen this  
16 provision before, Mr. Chalaby?

17 THE WITNESS: Yes.

18 PRESIDENT BARIN: Has it ever been  
19 part of any discussions you've had as  
20 part of the -- either the Committee or  
21 the Subcommittee?

22 THE WITNESS: I don't remember. I  
23 can't answer that question.

24 PRESIDENT BARIN: Do you understand  
25 what it says?

1 THE WITNESS: More or less, yes.

2 HONORABLE JUDGE CAHILL: "More or  
3 less." Good question -- good answer.

4 PRESIDENT BARIN: I guess what I  
5 wanted to just sort of get a sense from  
6 you is the section seems to say that the  
7 conflict of interest policy is intended  
8 to supplement but not to replace -- and  
9 now emphasis on "any applicable laws  
10 governing conflict of interest applicable  
11 to ICANN."

12 Do you know what that would be?

13 THE WITNESS: It means what it says,  
14 no?

15 PRESIDENT BARIN: Yes, but --

16 HONORABLE JUDGE CAHILL: That's also  
17 true.

18 PRESIDENT BARIN: -- admittedly, we  
19 have a problem with it, so . . .

20 THE WITNESS: Go ahead.

21 PRESIDENT BARIN: It's a simple  
22 question. If you don't, you don't. I  
23 just wanted to know whether you had been  
24 told or explained what that means; in  
25 other words, the standard against which



1 PRESIDENT BARIN: Okay.

2 ARBITRATOR KESSEDJIAN: Did you say  
3 "global law" or "local law"?

4 THE WITNESS: Local law.

5 ARBITRATOR KESSEDJIAN: Local law?

6 THE WITNESS: Yeah.

7 PRESIDENT BARIN: As part of the  
8 discussions you had as Subcommittee  
9 members, was there ever an issue or an  
10 item that came up that you required, I  
11 guess, advice from the general counsel?

12 THE WITNESS: As part of the  
13 discussion in the meeting, general  
14 counsel is silent, does not interfere  
15 with the discussion.

16 PRESIDENT BARIN: No. I guess my  
17 question was: Assume for a moment you're  
18 having a meeting and some facts are  
19 presented to you. You look at those  
20 facts, and then a question comes up that  
21 you, as Subcommittee members, do not know  
22 the answer or do not know how to  
23 approach. Perhaps it's a legal question.  
24 Perhaps it has legal issues involved in  
25 it.

1           Would you then ask the general  
2           counsel to -- to advise you on those  
3           questions?

4           THE WITNESS: I don't know if I can  
5           answer that question.

6           MR. LEVEE: Yes, you can.

7           THE WITNESS: The answer is that I'm  
8           trying to remember if there's -- because  
9           the material presented to us is detailed  
10          enough. And then we ask -- we interview  
11          the -- the Board of Directors and we find  
12          out more and more, and we dig and dig and  
13          find out more facts.

14          If there's a question for  
15          clarification rather than opinion,  
16          whether this person's conflicted or not,  
17          we probably would ask. But we will not  
18          ask general counsel his opinion whether  
19          that person's conflicted or not, just  
20          clarification on that particular  
21          relationship or this information, is this  
22          correct, is this not correct.

23          PRESIDENT BARIN: Okay.

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- - -  
EXAMINATION ON BEHALF OF THE PANEL  
BY HONORABLE JUDGE CAHILL  
- - -

HONORABLE JUDGE CAHILL: They've asked all my questions except for a couple.

I'm looking at the ombudsman's reasoning, and he says, There's, of course, an important distinction between actual bias and apparent basis; but underlying this is a need for some action by the members.

Okay. This goes to my other question that there is now action by the members.

What was done to -- from what I read from your declaration, what you've said is that you determined there were no actual conflicts of interest.

What did you do to see if there was any apparent conflicts of interest?

That's always the harder part where I come from.

And so what analysis was done?

1           THE WITNESS: When the Committee  
2           went back, analyzed the relationship that  
3           Mr. Silber and Mr. Disspain had, in terms  
4           of the work and the professional  
5           relationship, and evaluated whether there  
6           is a potential to it .

7           So as I explained, for example, with  
8           Mr. Silber, he's the CEO of auDA. AuDA  
9           has a relationship with AusRegistry in  
10          terms of they license them to run their  
11          operation.

12          They did the consulting work for  
13          UniForum SA in the past, way before the  
14          applications were -- were announced or  
15          applied for. And we investigated the  
16          story and identified that it was so  
17          attenuated that they couldn't possibly  
18          constitute an apparent or a potential --

19          HONORABLE JUDGE CAHILL: It was a  
20          long -- I -- I -- me reading the  
21          briefs --

22          THE WITNESS: I believe so -- sorry?

23          HONORABLE JUDGE CAHILL: -- me  
24          reading the briefs, I understand that the  
25          company that Mr. Silber is treasurer of,

1 their conduct [verbatim] was administered  
2 by UniForum.

3 Does that make sense to you?

4 THE WITNESS: Yes.

5 HONORABLE JUDGE CAHILL: Yeah. If  
6 it's still happening at the time of the  
7 conflict, then if UniForum is  
8 administering the contract, is it  
9 possible that Mr. -- Mike Silber could  
10 have some impact if he votes against  
11 UniForum?

12 THE WITNESS: Not in that instance.

13 And I'll explain why.

14 HONORABLE JUDGE CAHILL: Okay.

15 THE WITNESS: He's a nonexecutive  
16 member of the Board of ZADNA. Like many  
17 what is called "country code  
18 administrators," they don't have the  
19 facility themselves to run the computers  
20 and the administer thing, so they  
21 outsource this to other organizations.

22 There are other organizations that  
23 specialize in that and provide that  
24 service to many others.

25 So ZADNA has licensed, or given

1 arm's-length contract, to UniForum SA to  
2 do this administration. It just happened  
3 that -- and first of all, it just  
4 happened that the UniForum SA applied for  
5 .africa.

6 That application in no way would  
7 benefit Mr. Disspain at all. And we felt  
8 that because of the arm's-length  
9 relationship, right, that -- that there  
10 was no perception of conflict or a  
11 potential one.

12 So that's our analysis. We went  
13 into this -- a lot of depth and -- and  
14 understood that because of this  
15 arm's-length relationship and because  
16 there's no financial interest at all,  
17 there was no real link between Mr. Silber  
18 and the .africa application.

19 So we reached that conclusion  
20 ourselves.

21 HONORABLE JUDGE CAHILL: Okay. And  
22 on the -- on -- in your declaration, you  
23 say, Some weeks after June 4, 2013, you  
24 learned about another potential  
25 conflict -- or complaint of potential

1 conflict of interest.

2 What did you understand that  
3 complaint to be? Was it or specific or  
4 was it general?

5 THE WITNESS: Excuse me. Which  
6 paragraph?

7 HONORABLE JUDGE CAHILL: I'm looking  
8 at Paragraph 7 --

9 THE WITNESS: Yes, Paragraph 7.

10 HONORABLE JUDGE CAHILL: -- and the  
11 first sentence, Potential conflict of  
12 interest was again raised.

13 Maybe you answered it before, but I  
14 wasn't sure.

15 What -- what was the exact conflict  
16 of interest that was raised?

17 THE WITNESS: I did mention that  
18 while -- when we were -- and ICANN had a  
19 meeting in Durban, South Africa. In the  
20 opening speech, a member -- because we  
21 were hosted by the African community, a  
22 man thanked two members of the Board.  
23 And those two members, one of them was  
24 Mr. Disspain, and the other one was  
25 another Board member, George Sadowsky.

1 HONORABLE JUDGE CAHILL: Okay.

2 THE WITNESS: That Board member  
3 thought that he also mentioned  
4 Mike Silber, but he did not mention  
5 Mike Silber.

6 All right?

7 HONORABLE JUDGE CAHILL: Got that.

8 THE WITNESS: So that Board member  
9 came to me and went to general counsel  
10 and said, Look, I heard -- everybody  
11 heard it in the opening speech. I am  
12 concerned that maybe we ought to look  
13 into this again. And the thing we did is  
14 we looked into this again.

15 HONORABLE JUDGE CAHILL: Okay. The  
16 first time you got the ombudsman  
17 involved.

18 What was the reason you didn't get  
19 the ombudsman involved in the second  
20 conflict?

21 THE WITNESS: Because there were no  
22 suspected -- no new -- other than the  
23 voting, no new data relating to those two  
24 individuals. But we wanted to make sure  
25 to go back and check this.

1 HONORABLE JUDGE CAHILL: Now, we  
2 have two different individuals, though,  
3 you're checking on. You're not checking  
4 on Mr. Silber anymore, because he wasn't  
5 mentioned in the speech --

6 THE WITNESS: No, but we -- we took  
7 extra caution, and we checked him as  
8 well. We checked the two that were  
9 mentioned in the opening speech as well  
10 as Mr. Silber again.

11 HONORABLE JUDGE CAHILL: Okay.

12 That's all I have right now.

13 (Pause.)

14 - - -

15 EXAMINATION (CONTINUED) ON BEHALF OF THE BOARD  
16 BY ARBITRATOR KESSEDJIAN

17 - - -

18 ARBITRATOR KESSEDJIAN: I don't  
19 understand why you have a written  
20 statement -- and perhaps Mr. LeVee is  
21 going to tell me that I'm wrong -- but  
22 why in your recent -- in your written  
23 statement you don't mention the date when  
24 you reopened the issue after Durban?

25 I don't see anything in your written

1 statement about that.

2 So you are telling us now orally  
3 that you reopened the issue, but -- I  
4 don't know. To me, it's very unclear.  
5 So if you want to clarify anything, I  
6 would be grateful.

7 THE WITNESS: Yes, I'm happy to  
8 clarify.

9 I don't know why the date is not  
10 there. I'm sorry. The date perhaps  
11 should have been there.

12 But the dates are as follows: It's  
13 4th of June, the NGPC met for the advice,  
14 right; then July the 17th -- sorry --  
15 July the 15th in Durban, the Board met --

16 MR. ALI: Excuse me. If I may  
17 interrupt. I'm sorry, Mr. Chalaby.

18 Mr. President, just for our  
19 information, Mr. Chalaby is looking at  
20 some notes, and he seems to have a  
21 document there. If we can --

22 PRESIDENT BARIN: I was going to ask

23 --

24 THE WITNESS: No problem. It's just  
25 a timeline, the same as you showed this

1 morning, but in my own work. If you want  
2 it, you can put it as an exhibit --

3 HONORABLE JUDGE CAHILL: We don't  
4 need it right now. You can see it at a  
5 break.

6 MR. ALI: I will take a copy later.

7 HONORABLE JUDGE CAHILL: Just make  
8 it available to him at a break.

9 THE WITNESS: Definitely. I was  
10 just going -- I've reconstructed this  
11 from all the documentation here  
12 (indicating), basically, that --

13 HONORABLE JUDGE CAHILL: Okay.

14 THE WITNESS: -- that's all.

15 So if -- let me read from it, and  
16 then you can -- so June the 4th, the NGPC  
17 meeting met and accepted the GAC advice;  
18 June the 14th, the letter from  
19 Sophia Bekele came regarding the NGPC  
20 decision; June the 19th, DCA submits a  
21 reconsideration request; July 15th, in  
22 Durban, the Board member in Durban raised  
23 questions re: the opening remark, which I  
24 mentioned to you; July 15th to July the  
25 17th, the NGPC meeting met, we discussed

1 what happened then, and we asked every  
2 Board member to confirm again, which they  
3 did, the conflict of interest; then in  
4 September 25, the Ethics and Conflicts  
5 Subcommittee met regarding  
6 reinvestigating what was said in -- in --  
7 in Durban.

8 And not only we investigated that  
9 Mr. Disspain was thanked, but we also  
10 investigated Mike Silber, who was not  
11 thanked in the opening speech.

12 And then the Subcommittee made a  
13 recommendation to the Board Governance  
14 Committee, and the Board Governance  
15 Committee so asked the NGPC on behalf of  
16 the Board to ratify it.

17 My apology that it was not in  
18 the -- I -- I did it in the last couple  
19 days, frankly.

20 PRESIDENT BARIN: Is that the only  
21 document that you have that you've been  
22 referring to?

23 THE WITNESS: Yeah. I've been  
24 referring to my declaration. And I've  
25 not referred to, although I have it here,

1 is the ICANN Response to DCA Memorial on  
2 the Merits. I have no other documents.

3 PRESIDENT BARIN: That's the only  
4 other document?

5 HONORABLE JUDGE CAHILL: That's the  
6 only new document. We'll get it at a  
7 break. That's fine.

8 PRESIDENT BARIN: So no more  
9 questions at this stage from the Panel.

10 Thank you, Mr. Chalaby.

11 I would suggest, but I'm open to  
12 whichever way you wish to proceed, that  
13 Mr. Ali start, and then you can finish  
14 up. It perhaps makes more sense.

15 So, Mr. Ali, I would ask you to --  
16 if you would, to ensure that we remain  
17 within the confines of what you had  
18 agreed to as counsel and also the  
19 procedural orders that you ask questions  
20 that came out as a result of the  
21 questions that the Panel asks.

22 MR. ALI: Without the benefit of a  
23 LiveNote, I will strain my memory as best  
24 I can to ensure that I stay --

25 PRESIDENT BARIN: If I see that

1 CERTIFICATE OF  
2 CERTIFIED REGISTERED MERIT REAL-TIME COURT REPORTER

3 I, CINDY L. SEBO, Registered Merit Reporter,  
4 Certified Real-Time Reporter, Registered  
5 Professional Reporter, Certified Shorthand Reporter,  
6 Certified Court Reporter, Certified LiveNote  
7 Reporter, Real-Time Systems Administrator and  
8 LiveDeposition Authorized Reporter, do hereby  
9 certify that the foregoing transcript is a true and  
10 correct record of the Hearing on the Merits, that I  
11 am neither counsel for, related to, nor am employed  
12 by any of the parties to the action; and further,  
13 that I am not a relative or employee of any attorney  
14 or counsel employed by the parties thereto, nor  
15 financially or otherwise interested in the outcome  
16 of the action.

17 The witnesses being duly sworn by the  
18 President of the proceedings, BABAK BARIN, to tell  
19 the truth, the whole truth, and nothing but the  
20 truth.

21 Signed this 1st day of June 2015.

22  
23  
24  
25

---

CINDY L. SEBO, RMR, CRR, RPR, CSR,  
CCR, CLR, RSA, LiveDeposition  
Authorized Reporter

1           MR. LEVEE: I was envisioning  
2 something different.

3           HONORABLE JUDGE CAHILL: Yeah, me,  
4 too.

5           I do a lot of arbitrations, and  
6 these are as good a lawyers as they get.  
7 So whatever -- sorry. Don't tell them  
8 that I said that.

9           PRESIDENT BARIN: In terms of house  
10 cleaning -- and we'll get to that --  
11 we'll get to that, too --

12          HONORABLE JUDGE CAHILL: Housekeeping  
13 .

14          PRESIDENT BARIN: -- housekeeping --  
15 there's one other -- one last item  
16 that -- Mr. LeVee, the Panel would like  
17 to request from ICANN, and, that is, we  
18 understood yesterday that there are  
19 recordings of Board meetings of ICANN  
20 that are kept.

21          Now, whether they're available or  
22 not is a question that I put to you.

23          To the extent that the recordings  
24 are available, the Panel would appreciate  
25 getting the recording that relates to the

1 Board meeting of June 4, 2013, that's  
2 Exhibit R-1, and the main agenda for  
3 which was the Consideration of  
4 Nonsafeguard Advice in GAC's Beijing  
5 Communiqué and Rationale for Resolution  
6 of 2013/06/04. So if that's available.

7 MR. LEVEE: I will respond in the  
8 same time that I respond to the Panel's  
9 request for the other document relating  
10 to the Ethics Panel that we discussed  
11 yesterday.

12 PRESIDENT BARIN: Okay.

13 And, of course, you'll have a  
14 chance, Mr. Ali, to comment.

15 I note that there was a  
16 transcription of this proceeding. So  
17 what I suggest is that you will get a --  
18 a copy of that transcription, probably.  
19 And if counsel can sort of accord on the  
20 final text that gets to us.

21 Then you can have a look at it in  
22 the period that you do, but as long as we  
23 get a copy that we don't have to then be  
24 concerned as to whether there are any  
25 comments on it or not --

1 MR. ALI: Of course.

2 MR. LEVEE: That's fine.

3 PRESIDENT BARIN: -- in terms of the  
4 transcript.

5 MR. LEVEE: Yes.

6 And, yesterday, we discussed that we  
7 will not plan on closing briefs.

8 I just wanted to confirm that that  
9 remains the Panel's preference.

10 PRESIDENT BARIN: Well, to be  
11 perfectly candid, I don't think the Panel  
12 had any preference in particular, but --  
13 but I don't think one is necessary,  
14 unless -- if you want to put one in,  
15 we're not going to say no.

16 MR. LEVEE: The parties did not  
17 believe that additional briefing was  
18 necessary.

19 HONORABLE JUDGE CAHILL: Thank you.

20 PRESIDENT BARIN: But to follow  
21 that, what we will do, though, is --  
22 because we will have an important job now  
23 going forward deliberating on this -- and  
24 it will take us as long as it'll take  
25 us -- if we do need information,

# EXHIBIT 5

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION  
Independent Review Panel**

**CASE #50 2013 001083**

---

**FINAL DECLARATION**

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**In the matter of an Independent Review Process (IRP) pursuant to the Internet Corporation For Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures* (ICDR Rules) and the *Supplementary Procedures for ICANN Independent Review Process* of the International Centre for Dispute Resolution (ICDR),**

**Between: DotConnectAfrica Trust;  
("Claimant" or "DCA Trust")**

Represented by Mr. Arif H. Ali, Ms. Meredith Craven, Ms. Erin Yates and Mr. Ricardo Ampudia of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 20005, U.S.A.

**And**

**Internet Corporation for Assigned Names and Numbers (ICANN);  
("Respondent" or "ICANN")**

Represented by Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

Claimant and Respondent will together be referred to as "Parties".

**IRP Panel**

**Prof. Catherine Kessedjian  
Hon. William J. Cahill (Ret.)  
Babak Barin, *President***

1. Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

Answer: Yes.

2. Can the IRP Panel recommend a course of action for the Board to follow as a consequence of any declaration that the Board acted or failed to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook (AGB)?

Answer: Yes.

3. Who is the prevailing party in this IRP?

Answer: DCA Trust

4. Who is responsible for bearing the costs of this IRP and the cost of the IRP Provider?

Answer: ICANN, in full.

### **Summary of Panel's Decision**

For reasons explained in more detail below, and 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.

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.

Finally, DCA Trust is the prevailing party in this IRP and ICANN is responsible for bearing, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of 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 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.

#### IV. ANALYSIS OF THE ISSUES AND REASONS FOR THE PANEL'S DECISION

##### 1) Did the Board act or fail to act in a manner inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook?

62. Before answering this question, the Panel considers it necessary to quickly examine and address the issue of "standard of review" as referred to by ICANN in its 3 December 2014 Response to DCA's Memorial on the Merits or the "law applicable to these proceedings" as pleaded by DCA Trust in its 3 November 2014 Memorial on the Merits.

63. According to DCA Trust:

30. The version of ICANN's Articles of Incorporation and its Bylaws in effect at the time DCA filed its Request for IRP applies to these proceedings. [Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (21 November 1998) and Bylaws of the Internet Corporation for Assigned Names and Numbers (11 April 2013)]. ICANN's agreement with the U.S. Department of Commerce, National Telecommunications & Information Administration ("NTIA"), the "Affirmation of Commitments," is also instructive, as it explains ICANN's obligations in light of its role as regulator of the Domain Name System ("DNS"). The standard of review is a *de novo* "independent review" of whether the actions of the Board violated the Bylaws, with focus on whether the Board acted without conflict of interest, with due diligence and care, and exercised independent judgment in the best interests of ICANN and its many stakeholders. (Underlining added).

31. All of the obligations enumerated in these documents are to be carried out *first* in conformity with "relevant principles of international law" and *second* in conformity with local law. As explained by Dr. Jack Goldsmith in his Expert Report submitted in *ICM v. ICANN*, the reference to "principles of international law" in ICANN's Articles of Incorporation should be understood to include both customary international law and general principles of law.

64. In response, ICANN submits that:

11. The IRP is a unique process available under ICANN's Bylaws for persons or entities that claim to have been materially and adversely affected by a decision or action of the ICANN Board, but only to the extent that Board action was inconsistent with ICANN's Bylaws or Articles. This IRP Panel is tasked with providing its opinion as to whether the challenged Board actions violated ICANN's Bylaws or Articles. ICANN's Bylaws specifically identify the deferential standard of review that the IRP Panel must apply when evaluating the actions of the ICANN Board, focusing on:

or the proper terminology, what was -- what was the point?

**THE WITNESS:**

A. I didn't say there was no difference. The issue is that there isn't GAC agreement about what are the -- the rights, if you will, of -- of entities like the AUC. And there might be in some limited circumstances, but it's also an extremely sensitive issue. And so not all countries have a shared view about what those -- those entities, like the AUC, should be able to do.

Q. So not all countries share the same view as to what entities, such as the AUC, should be able to do. Is that what you said? I'm sorry. I didn't --

A. Right, because that would only get clarified if there is a circumstance where that link is forced. In our business, we talk about creative ambiguity. We leave things unclear so we don't have conflict.

103. As explained by ICANN in its Closing Presentation at the hearing, ICANN's witness, Ms. Heather Dryden also asserted that the GAC Advice was meaningless until the Board acted upon it. This last point is also clear from examining Article 1, Principle 2 and 5 of ICANN GAC's Operating Principles. Principle 2 states that "the GAC is not a decision making body" and Principle 5 states that "the GAC shall have no legal authority to act for ICANN".

**MR. ALI:**

Q. I would like to know what it is that you, as the GAC Chair, understand to be the consequences of the actions that the GAC will take --

**HONORABLE JUDGE CAHILL:**

The GAC will take?

**MR. ALI:**

Q. -- the GAC will take -- the consequences of the actions taken by the GAC, such as consensus advice?

**HONORABLE JUDGE CAHILL:**

There you go.

**THE WITNESS:**

That isn't my concern as the Chair. It's really for the Board to interpret the outputs coming from the GAC.

104. Ms. Dryden also stated that the GAC made its decision without providing any rationale and primarily based on politics and not on potential violations of national laws and sensitivities.

**ARBITRATOR KESSEDJIAN:**

So, basically, you're telling us that the GAC takes a decision to object to an applicant, and no reasons, no rationale, no discussion of the concepts that are in the rules?

**THE WITNESS:**

I'm telling you the GAC did not provide a rationale. And that was not a requirement for issuing a GAC --

**HONORABLE JUDGE CAHILL:**

But you also want to check to see if the countries are following the right -- following the rules, if there are reasons for rejecting this or it falls within the three things that my colleague's talking about.

**THE WITNESS:**

The practice among governments is that governments can express their view, whatever it may be. And so there's a deference to that.

That's certainly the case here as well.

105. ICANN was bound by its Bylaws to conduct adequate diligence to ensure that it was applying its procedures fairly. Section 1 of Article III of ICANN's Bylaws, require it and its constituent bodies to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness. The Board must also as per Article IV, Section 3, Paragraph 4 exercise due diligence and care in having a reasonable amount of facts in front of it.

106. In this case, on 4 June 2013, the NGPC accepted the GAC Objection Advice to stop processing DCA Trust's application. On 1 August 2013, the BGC recommended to the NGPC that it deny DCA Trust's Request for Reconsideration of the NGPC's 4 June 2013 decision, and on 13 August 2013, the NGPC accepted the BGC's recommendation (i.e., the NGPC declined to reconsider its own decision) without any further consideration.

107. In this case, ICANN through the BGC was bound to conduct a meaningful review of the NGPC's decision. According to ICANN's Bylaws, Article IV, Section 2, the Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The [BGC] shall have the authority to, among other things, conduct whatever factual investigation is deemed appropriate, and request additional written submissions from the affected party, or from others.

108. Finally, the NGPC was not bound by – nor was it required to give deference to – the decision of the BGC.

109. The above, combined with the fact that DCA Trust was never given any notice or an opportunity in Beijing or elsewhere to make its position known or defend its own interests before the GAC reached consensus on the GAC Objection Advice, and that the Board of ICANN did not take any steps to address this issue, leads this Panel to conclude that both the actions and inactions of the Board with respect to the application of DCA Trust relating to the .AFRICA gTLD were not procedures designed to insure the fairness required by Article III, Sec. 1 above, and are therefore inconsistent with the Articles of Incorporation and Bylaws of ICANN.

110. The following excerpt of exchanges between the Panel and one of ICANN's witnesses, Ms. Heather Dryden, the then Chair of the GAC, provides a useful background for the decisions reached in this IRP:

**PRESIDENT BARIN:**

But be specific in this case. Is that what happened in the .AFRICA case?

**THE WITNESS:**

The decision was very quick, and --

**PRESIDENT BARIN:**

But what about the consultations prior? In other words, were -- were you privy to --

**THE WITNESS:**

No. If -- if colleagues are talking among themselves, then that's not something that the GAC, as a whole, is -- is tracking or -- or involved in. It's really those interested countries that are.

**PRESIDENT BARIN:**

Understood. But I assume -- I also heard you say, as the Chair, you never want to be surprised with something that comes up. So you are aware of -- or you were aware of exactly what was happening?

**THE WITNESS:**

No. No. You do want to have a good sense of where the problems are, what's going to come unresolved back to the full GAC meeting, but that's -- that's the extent of it.

144. After reading the Parties' written submissions concerning the issue of costs and their allocation, and deliberation, the Panel is unanimous in deciding that DCA Trust is the prevailing party in this IRP and ICANN shall bear, pursuant to Article IV, Section 3, paragraph 18 of the Bylaws, Article 11 of 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.

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

146. For the avoidance of any doubt therefore, the Panel concludes that ICANN shall be responsible for paying the following costs and expenses:

- 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.

147. The above amounts are easily quantifiable and the Parties are invited to cooperate with one another and the ICDR to deal with this part of this Final Declaration.

## **V. DECLARATION OF THE PANEL**

148. Based on the foregoing, after having carefully reviewed the Parties' written submissions, listened to the testimony of the three witnesses, 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 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 totaling US\$4,600 and the Panelists' compensation and expenses totaling US\$403,467.08 shall be born entirely by ICANN, therefore, ICANN shall reimburse DCA Trust the sum of US\$198,046.04

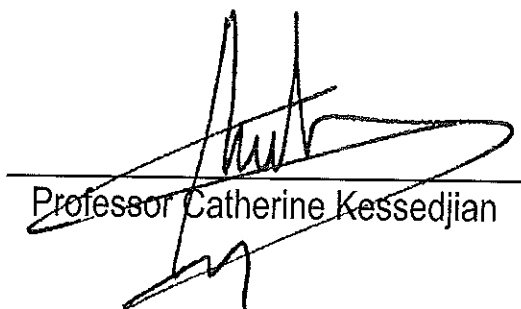
151. As per the last sentence of Article IV, Section 3, paragraph 18 of the Bylaws, DCA Trust and ICANN shall each bear their own expenses. The Parties shall also each bear their own legal representation fees.

The Panel finally would like to take this opportunity to fondly remember its collaboration with the Hon. Richard C. Neal (Ret. and now Deceased) and to congratulate both Parties' legal teams for their hard work, civility and responsiveness during the entire proceedings. The Panel was extremely impressed with the quality of the written work presented to it and oral advocacy skills of the Parties' legal representatives.


**This Final Declaration has sixty-three (63) pages.**

**Date: Thursday, 9 July 2015.**

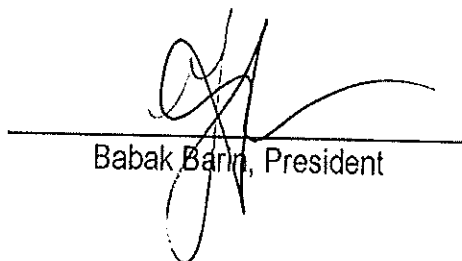
**Place of the IRP, Los Angeles, California.**



Professor Catherine Kessedjian



Hon. William J. Cahill (Ret.)



Babak Barri, President

# EXHIBIT 6

---

MARRAKECH – GAC Meeting with the ICANN Board  
Wednesday, March 09, 2016 – 08:30 to 10:00 WET  
ICANN55 | Marrakech, Morocco

STEVE CROCKER:

Good morning, everybody. One of the real pleasures of being in an environment like ICANN, which brings people from various disciplines and traditions, is learning new vocabulary. So sometime ago I was ushered into the vocabulary of diplomacy, which was explained to me there were only two kinds of meetings -- successes and great successes. And I think we have definitely moved into the region of great successes or maybe even better. So let me congratulate everyone on the really hard and conscientious work that you all have done on the accountability proposal and the truly great success announced last night. I think the entire community and, certainly, on behalf of the Board, we express super appreciation. This is a big step forward. So is there anything left that we have to talk about today?

[ Applause ]

---

*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

---

THOMAS SCHNEIDER: Thank you. I have a lot of requests from the floor from GAC members. So, if the Board comes in, as Mike wants that, please raise your hands as well. Thank you. Mike, please.

MIKE SILBER: Thank you, Chair.

Thank you for the intervention, Namibia. It's greatly appreciated. I think you have the commitment from ICANN, the Board, and the staff to not let the litigation issues intervene. And we will pursue the finalization of this issue with diligence and all appropriate measures to ensure that the interests of all parties are protected.

THOMAS SCHNEIDER: African Union Commission, is your intervention also on this issue or something else?

AFRICAN UNION COMMISSION: Always on this issue.

THOMAS SCHNEIDER: Okay. Thank you. You have the floor.

---

voices of these distinguished colleagues so that this delegation is carried out as soon as possible.

And I have three concerns: First of all, I see an overall issue generated or stemming from .AFRICA, particularly in terms of applicable legislation. That is, we are facing a situation -- a specific situation. And we should be mindful of the fact that this is specific to Africa. Then we have the IRP. Well, this is a process in which we would have liked to be present to avoid certain situations. It is important to bring this to the attention of the Board. Africa became a case study. And the entire ICANN structure and the entire ICANN ecosystem should take this on board to avoid the repetition of similar situations in the future.

Further, before I conclude, I would like to thank everyone who contributed to the progress of this situation.

First of all, the ICANN board who made a brave decision some days ago. Then the team that is working very hard together with us to resolve these issues.

So my deepest appreciation and my deepest appreciation to the legal team and to everyone who spoke on our behalf regarding .AFRICA.

Special thanks to Mr. Cherine Chalaby, who was very brave in remaining as the chair of the new gTLD committee and who took

---

into consideration not only ICANN's interests but also Africa's interests.

Special thanks to Mike who supported us in the .AFRICA issue.

And special thanks to Africa -- sorry -- to Fadi. Fadi, please listen to me. I'm addressing you. Fadi, I thank you so much for everything. There are two important things in our lives. We write history in life. But we also make history. We make history. You made history. You have been making history since -- from Dakar to Marrakech going through Singapore, Beijing, everywhere. You took Africa's strategy on board and took it to a level that today enables Africa to engage in the discussion of so many topics. As an African citizen, you made this possible. Thank you so much. And all the best.

THOMAS SCHNEIDER: I believe that Cherine would like to take the floor. Cherine, go ahead, please.

CHERINE CHALABY: Thank you for the kind words to myself and my colleagues on the board. And I reassure you that the Board is doing everything possible to accelerate the process and do it in a fair and consistent manner. So thank you very much.

# EXHIBIT 7

[English \(/translations\)](#) [العربية \(/ar\)](#) [Español \(/es\)](#)

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& ACCOUNTABILITY \(/STEWARDSHIP-ACCOUNTABILITY\)](#)

[LANGUAGE PREFERENCE \(/TRANSLATIONS\)](#)

## Resources

# Summary of ICANN (Internet Corporation for Assigned Names and Numbers) Officers and Board Members Statements of Interest

4 February 2014

## Officers

▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

▶ [Accountability \(/resources/accountability\)](#)

▶ [Governance \(/resources/pages/governance-2012-02-25-en\)](#)

1. Akram Atallah – President, Generic Domains Division – Nothing identified.
2. Susanna Bennett – Chief Operating Officer – Nothing identified.
3. Xavier Calvez – Chief Financial Officer – Nothing identified.
4. Fadi Chehadé – President and Chief Executive Officer – Nothing identified.
5. John Jeffrey – General Counsel and Secretary – Nothing identified.

- ▶ Groups  
(/resources/pages/groups-2012-02-06-en)
6. David Olive – Vice President, Policy Development Support – Nothing identified.

## Board Members

### Business

(/resources/pages/business)

### Civil Society

(/resources/pages/civil-society-2016-05-24-en)

- ▶ Complaints Office  
(/resources/pages/complaints-office-2017-04-26-en)

- ▶ Contractual Compliance  
(/resources/pages/compliance-2012-02-25-en)

- ▶ Registrars  
(/resources/pages/registrars-0d-2012-02-25-en)

- ▶ Registry Operators  
(/resources/pages/registries-46-2012-02-25-en)

- ▶ Domain Name (Domain Name) Registrants  
(/resources/pages/domain-name-registrants-2017-06-20-en)

### GDD Metrics

(/resources/pages/metrics-gdd-2015-01-30-en)

- ▶ Identifier Systems Security (Security – Security, Stability and Resiliency (SSR)),

1. **Sébastien Bachollet** – Mr. Bachollet is a member of the Board of the International Foundation for Online Responsibility (IFFOR), which is the sponsoring organization responsible for policy setting for the .XXX sTLD and may be seeking to provide services to other new gTLDs; he has a consulting contract with Items International, which had a contract with ICANN (Internet Corporation for Assigned Names and Numbers) for the ccNSO (Country Code Names Supporting Organization) (2010) and the ASO (Address Supporting Organization) (2011) reviews. Items International is also providing consulting services for one new gTLD (generic Top Level Domain) applicant. Mr. Bachollet will not be involved in the new gTLD (generic Top Level Domain) projects initiated by either IFFOR or Items International. For Items International he is in charge of open-data and information systems projects. Mr. Bachollet is also a member of the AFNIC (Association Franaise pour le Nommage Internet en Cooperation) Board.

2. **Cherine Chalaby** – Nothing identified.

3. **Fadi Chehadé** – Outside of his role as President and CEO, nothing identified.

4. **Steve Crocker** – Dr. Crocker is the CEO and Director of Shinkuro, Inc. Shinkuro has had a contract with DHS for approximately \$1 million for development of policies and procedures for adoption of DNSSEC (DNS Security Extensions); such policies may or may not align with ICANN (Internet Corporation for Assigned Names and Numbers)'s objectives in this area. Shinkuro also has a contract with the U.S. Postal Service (USPS) to provide services; this work may involve advice related to USPS's use of .POST and/or possibly future gTLDs, but will not relate to application processes or other interactions with ICANN (Internet Corporation for Assigned Names and Numbers).

5. **Chris Disspain** – Director and CEO of .au Domain Administration Limited, the .au ccTLD (Country Code Top Level Domain) manager; .au has sponsorship agreement with ICANN (Internet Corporation for Assigned Names and Numbers) under which .au pays ICANN (Internet Corporation for Assigned Names and Numbers) a yearly amount based on the amount of names under management. Former Officer of ICANN (Internet Corporation for Assigned Names and Numbers), Paul Levins, is a Director

- Stability (Security, Stability and Resiliency) and Resiliency (Security Stability & Resiliency (SSR)) (OCTO IS-SSR) (/resources/pages/octo-ssr-2016-10-10-en)
- ▶ ccTLDs (/resources/pages/cctlds-21-2012-02-25-en)
- ▶ Internationalized Domain Names (/resources/pages/idn-2012-02-25-en)
- Universal Acceptance Initiative (/resources/pages/universal-acceptance-2012-02-25-en)
- ▶ Policy (/resources/pages/policy-01-2012-02-25-en)
- ▶ Public Comment (/public-comments)
- Root Zone (Root Zone) KSK Rollover (/resources/pages/ksk-rollover-2016-05-06-en)
- ▶ Technical Functions (/resources/pages/technical-functions-2015-10-15-en)
- of .au Domain Administration Limited. .au Domain Administration Limited licenses AusRegistry Pty Ltd to run the registry for the second level names in .au. Under the Registry License agreement, AusRegistry pays fees to auDA; companies affiliated with AusRegistry are affiliated with new gTLD (generic Top Level Domain) applications.
6. **Heather Dryden** – Ex Officio, non-voting Board Director, representing Industry Canada for the Operator of dot-CA.
  7. **Bill Graham** – Holds a consulting contract with the Internet Society. The subject matter of that contract is unrelated to the mandate of ICANN (Internet Corporation for Assigned Names and Numbers). He is also a Senior Fellow at the Centre for International Governance.
  8. **Wolfgang Kleinwächter** – Is Executive Director of a summer school program on Internet Governance that has sponsors, some of which have included, or currently include, ICANN (Internet Corporation for Assigned Names and Numbers) current or potential contracted parties, all of which were sponsors before Mr. Kleinwächter was named to the ICANN (Internet Corporation for Assigned Names and Numbers) Board.
  9. **Bruno Lanvin** – Nothing identified.
  10. **Erika Mann** – Heads up the Facebook, Inc.'s policy office in Brussels.
  11. **Olga Madruga-Forti** – Nothing identified.
  12. **Ram Mohan** – Executive Vice President and Officer of Afilias, which is a contracted party with ICANN (Internet Corporation for Assigned Names and Numbers) and which is under contract for services to registry operators that are under contract to ICANN (Internet Corporation for Assigned Names and Numbers). Mr. Mohan is also the president of the Philadelphia chapter of the Internet Society. His sister-in-law is owner and CEO of an ICANN (Internet Corporation for Assigned Names and Numbers) accredited registrar. Afilias is a minority shareholder in ICM Registry, Inc., that operates the .XXX TLD (Top Level Domain). Afilias has regular business transactions with Melborne IT (Bruce Tonkin's employer and an ICANN (Internet Corporation for Assigned Names and Numbers) accredited registrar). Afilias is involved in some way in numerous new gTLD (generic Top Level Domain) applications. Mr. Mohan's wife is employed by a new gTLD (generic Top Level Domain) applicant, but she is not involved in the applications or in other matter relating to the applications or to ICANN (Internet Corporation for Assigned Names and Numbers).

- ▶ [Contact \(/contact\)](#)
  - ▶ [Help \(/resources/pages/help-2012-02-03-en\)](#)
13. **Gonzalo Navarro** – Chief of Staff, Chilean National Institute of Industrial Property.
  14. **Ray Plzak** – Nothing identified.
  15. **George Sadowsky** – Nothing identified.
  16. **Mike Silber** – Member of the Management Committee and Treasurer of the Internet Service Providers' Association (ISPA) South Africa. He is also, a Director and Treasurer of the .za Domain Name (Domain Name) Authority, the ccTLD (Country Code Top Level Domain) administrator for .za. The .za Domain Name (Domain Name) Authority has concluded an arms-length operating agreement with Uniforum t/a the .za Central Registry for Uniforum to operate the .za registry. Under the agreement, Uniforum will collect and pay transaction fees to .za Domain Name (Domain Name) Authority. Uniforum is acting as the registry service provider for various new gTLD (generic Top Level Domain) applicants.
  17. **Jonee Soininen** – He owns a nominal amount of shares of a gTLD (generic Top Level Domain) applicant.
  18. **Bruce Tonkin** – Chief Technology Officer of Melbourne IT, which has contract with ICANN (Internet Corporation for Assigned Names and Numbers) as accredited registrar on the same terms as all other registrars. Melbourne IT is an accredited registrar for: (i) .au Domain Administration Limited of which Chris Disspain is the CEO and former ICANN (Internet Corporation for Assigned Names and Numbers) officer Paul Levins is a Board member; (ii) .fr operated by AFNIC (Association Franaise pour le Nommage Internet en Cooperation) on which Sébastien Bachollet serves as a Board member; and (iii) .info, where Afilias, the employer of Ram Mohan, is the gTLD (generic Top Level Domain) operator. Melbourne IT may also be a registrar for new gTLDs operated by the employer of ICANN (Internet Corporation for Assigned Names and Numbers)'s former Chief Financial Officer, Kevin Wilson.
  19. **Kuo-Wei Wu** – CEO – National Information Infrastructure Enterprise Promotion Association (NIEEPA)– Internet Policy Research. His daughter works for Progressive Insurance, which applied for two new gTLDs. Out of an abundance of caution, Progressive established an ethical wall keeping Kuo-Wei Wu's daughter from any involvement or discussions related to the new gTLD (generic Top Level Domain) applications.
  20. **Suzanne Woolf** – Employer, Internet Systems Consortium (ISC), for which she is a key employee, provides products and services related to its BIND (Berkeley Internet Name Domain) software product to Afilias, and ICANN

(Internet Corporation for Assigned Names and Numbers) has contracted with ISC re: BIND (Berkeley Internet Name Domain) software used in the DNS (Domain Name System) infrastructure. Outside her salary, she has no direct financial interest in these contracts. ISC does business with many DNS (Domain Name System) related entities.

ISC is currently actively pursuing partnerships and capabilities to become a back-end registry service provider, but does not currently provide such services.

Suzanne is Secretariat Director for OARC (DNS (Domain Name System)-OARC, the Operations, Analysis, and Research Center for the DNS (Domain Name System)); Shinkuro is a beneficial member of OARC. ICANN (Internet Corporation for Assigned Names and Numbers) has contracted with OARC to (i) study L-Root capabilities; and (ii) to collect and analyze DNS (Domain Name System) data related to DNSSEC (DNS Security Extensions) rollout in 2010.



[You Tube](http://www.youtube.com/icannorg)

(<http://www.youtube.com/icannorg>)



[Twitter](https://www.twitter.com/icannorg)

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[Facebook](http://www.facebook.com/icannorg)

(<http://www.facebook.com/icannorg>)



[RSS Feeds \(/en/news/rss\)](/en/news/rss)



[Community Wiki](https://community.icann.org)  
(<https://community.icann.org>)



[ICANN Blog \(/news/blog\)](/news/blog)

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Who We Are	Contact Us	Accountability & Transparency	Governance	Help
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<a href="#">Learning</a> (/en/about/learning)	<a href="#">Global Support</a> (/resources/pages/customer-support-2015-06-22-en)	<a href="#">Mechanisms</a> (/en/news/in-focus/accountability/mechanisms)	<a href="#">Agreements</a> (/en/about/agreements)	
<a href="#">Participate</a> (/en/about/participate)	<a href="#">Security Team</a> (/about/staff/security)	<a href="#">Independent Review Process</a> (/resources/pages/irp-2012-02-25-en)	<a href="#">Specific Reviews</a> (/resources/reviews/aoc)	<a href="#">Domain Name Dispute Resolution</a> (/en/help/dndr)
<a href="#">Groups</a> (https://www.icann.org/resources/pages/groups-2012-02-06-en)	<a href="#">PGP Keys</a> (/en/contact/pgp-keys)	<a href="#">Request for Reconsideration</a> (/groups/board/governance/2012-02-25-en)	<a href="#">Annual Report</a> (/about/annual-report)	<a href="#">Name Collision</a> (/en/help/name-collision)
<a href="#">Board of Directors</a> (/resources/pages/board-2014-03-19-en)	<a href="#">Certificate Authority</a> (/contact/certificate-authority)	<a href="#">Ombudsman</a> (/help/ombudsman)	<a href="#">Financials</a> (/en/about/financials)	<a href="#">Registrar Problems</a> (/en/news/announcements/announcements-mar07-en.htm)
<a href="#">President's Corner</a> (/presidents-corner)	<a href="#">Registry Liaison</a> (/resources/pages/contact-2012-02-25-en)	<a href="#">Empowered Community (/ec)</a>	<a href="#">Planning</a> (/en/about/planning)	<a href="#">WHOIS</a> (http://whois.icann.org/)
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<a href="#">Public Responsibility</a> (https://www.icann.org/ugrd)	<a href="#">Complaints Office</a> (https://www.icann.org/complaints-office)		<a href="#">Correspondence</a> (/en/news/correspondence)	
	<a href="#">Request a Speaker</a> (http://forms.icann.org/en/contact/speakers)			
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# EXHIBIT 8

# .zadna

## BOARD OF DIRECTORS

Section 62(2) of the ECT Act requires the Minister of Communications to appoint a selection or nomination panel, and then issue a public call for nominations to the Board of Directors. The nomination panel interviews the short-listed nominees and recommends appointments to the Minister. The Minister then chooses to accept all the recommended appointments or to refer some back to the panel for further consideration.

The current Board of Directors was selected in terms of the ECT Act in August 2007 from over 120 applications made to the nomination committee.

### The current Directors are:

- Dr. Hasmukh Gajjar – Chairperson
- Ms. Presta Bhagattjee – Deputy Chairperson
- Mr. Nhlankhla Mabaso
- Mr. Lucky Masiela
- Ms. Nirvani Dhevcharran
- Dr. William Rowland
- Dr. Duncan Martin
- Mr. Anthony Brooks
- Mr. Mike Silber

The current Directors can be seen [here](#)

Whois Services of .za Domains  
 Select.za

## Whats New

- 15 September 2009: Media 24 wins a dispute. Recently, Media 24 won a dispute to have finmedia24.co.za transferred in its favour. [read more...](#)
- 16 September 2009: Hackett.co.za is transferred. Hackett Ltd of the UK recently won a dispute to have hackett.co.za transferred in its favour. [read more...](#)
- 15 September 2009: .za DNA has finalised policy and procedures for the deletion of dormant domains. [read more...](#)
- 31 August 2009: Transfer of seido.co.za is refused. Recently, an SAIPL adjudicator made decision refusing the transfer of seido.co.za from the current registrant. [read more...](#)

# EXHIBIT 9

Mike Silber	Ant Brooks	Lucky Mashela	Duncan Martin	Nhlanihla Mabaso
Dr. William Rev (and	Preeta Bhagatjee	Dr. Hasmukh Gajjar	Nirvanj Dhevcharan	

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