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Attorneys for Defendant  
INTERNET CORPORATION FOR ASSIGNED  
NAMES AND NUMBERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DOTCONNECTAFRICA TRUST,

Plaintiff,

v.

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS, *et*  
*al.*,

Defendant.

CASE NO. BC607494

Assigned for all purposes to  
Hon. Howard L. Halm

**SUPPLEMENTAL DECLARATION  
OF AMANDA PUSHINSKY IN  
SUPPORT OF MOTION FOR  
PROTECTIVE ORDER**

**RESERVATION ID: 171103264116**

DATE: December 13, 2017  
TIME: 8:30 a.m.  
DEPT: 53

Complaint Filed: January 20, 2016  
Bench Trial Date: February 28, 2018  
Jury Trial Date: June 20, 2018

I, Amanda Pushinsky, declare:

1. I am an associate of Jones Day, counsel to the Internet Corporation for Assigned Names and Numbers ("ICANN"), the defendant in this action. I am a member in good standing of the State Bar of California and am admitted to practice before the Courts in this State. I have personal knowledge of the matters set forth herein and am competent to testify as to those matters.

2. I make this supplemental declaration in support of ICANN's motion for a protective order ("Motion"), and in response to the deposition notice Plaintiff issued to Mike Silber on October 4, 2017.

3. On November 29, 2017, ICANN completed its production of documents in response to DCA's requests for production of documents issued in this litigation.

4. Attached hereto as **Exhibit A** is a true and correct copy of the Declaration of Christine Willett in Support of ICANN's Opposition to Plaintiff's Motion for Preliminary Injunction, executed on January 19, 2017.

5. Attached hereto as **Exhibit B** is a true and correct copy of the Declaration of Mark McFadden in Support of ICANN's Opposition to Plaintiff's Motion for Preliminary Injunction, executed on December 7, 2016.

6. Attached hereto as **Exhibit C** is a true and correct copy of the relevant portions of the deposition transcript of Neil Duncan Dundas, taken on October 24, 2017.

7. Attached hereto as **Exhibit D** is a true and correct copy of a July 20, 2015 letter from the United Nations Economic Commission for Africa ("UNECA") to Dr. Elham M.A. Ibrahim, Commissioner of Infrastructure and Energy for the Africa Union Commission ("AUC"). It was produced in this case by ICANN as ICANN\_DCA00018774.

8. Attached hereto as **Exhibit E** is a true and correct copy of the 2011 AUC Communiqué on the dotAfrica gTLD. It was introduced as Exhibit 34 at the deposition of Sophia Bekele Eshete.

9. Attached hereto as **Exhibit F** is a true and correct copy of the relevant portions of the deposition transcript of Sophia Bekele Eshete, taken on December 1, 2016.

//

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3  
4 Executed December 6, 2017, in Los Angeles, California.

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6 Amanda Pushinsky  
7 Amanda Pushinsky

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# Exhibit A

# Exhibit A

COPY 1

1 Jeffrey A. LeVee (State Bar No. 125863)  
2 Erin L. Burke (State Bar No. 186660)  
3 Rachel Tessa Gezerseh (State Bar No. 251299)  
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12 Attorneys for Defendant  
13 INTERNET CORPORATION FOR  
14 ASSIGNED NAMES AND NUMBERS

15  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

18 DOTCONNECTAFRICA TRUST,

19 Plaintiff,

20 v.

21 INTERNET CORPORATION FOR  
22 ASSIGNED NAMES AND NUMBERS, *et*  
23 *al.*

24 Defendants.

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JAN 20 2017

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

CASE NO. BC607494

Assigned for all purposes to  
Hon. Howard L. Halm

DECLARATION OF CHRISTINE  
WILLETT IN SUPPORT OF ICANN'S  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION

DATE: February 2, 2017  
TIME: 8:30 a.m.  
DEPT: 53

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DECLARATION OF CHRISTINE WILLETT IN SUPPORT OF  
ICANN'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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1. I am the Vice President for Operations of the Global Domains Division of the Internet Corporation for Assigned Names and Numbers ("ICANN"), a defendant in this action. I have personal knowledge of the matters set forth herein and am competent to testify as to those matters. I make this declaration in support of ICANN's opposition to DotConnectAfrica Trust's ("DCA's" or "Plaintiff's") Motion for a Preliminary Injunction.

3. In the spring of 2012, Plaintiff DCA and defendant ZA Central Registry ("ZACR") each submitted applications to operate the .AFRICA gTLD. In doing so, they, like all new gTLD applicants, expressly accepted and acknowledged the Guidebook, including the release and covenant not to sue ("Covenant") in paragraph 6 of Module 6.

5. The new gTLD application was complex and required considerable detail. A list of the information new gTLD applicants were required to submit with their applications can be found in the Guidebook. Bekele Decl., Ex. 3 at A1-46. Among other things, each applicant was required to submit an extensive, technical explanation of its plans for operating a gTLD registry, and evidence of financial support.

**DECLARATION OF CHRISTINE WILLETT IN SUPPORT OF  
ICANN'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

1 documentation of support or non-objection from at least 60% of the governments in the region.  
2 Bekele Decl. Ex. 3 § 2.2.1.4.2. The Guidebook also provides that a Geographic Names Panel  
3 operated by a third-party vendor retained by ICANN must verify the relevance and authenticity of  
4 an applicant's documentation of support. *Id.* §§ 2.4.2, 2.2.1.4.4. The Geographic Names Panel  
5 evaluates the support letters submitted by the applicants pursuant to the criteria set forth in the  
6 Guidebook. In particular, section 2.2.1.4.3 of the Guidebook requires that letters of support for a  
7 geographic name "clearly express the government's or public authority's support for or non-  
8 objection to the applicant's application and demonstrate the government's or public authority's  
9 understanding of the string being requested and its intended use." It further requires that a letter  
10 of support "should demonstrate the government's or public authority's understanding that the  
11 string is being sought through the gTLD application process and that the applicant is willing to  
12 accept the conditions under which the string will be available, i.e., entry into a registry agreement  
13 with ICANN requiring compliance with consensus policies and payment of fees." The  
14 Geographic Names Panel treats both of these requirements as mandatory for all applicants  
15 (including DCA and ZACR).

16 7. ZACR submitted 41 letters of support with its application, including over thirty  
17 letters from individual African governments, and a 2012 letter from the African Union  
18 Commission ("AUC"). The AUC is the secretariat for the African Union, in which every African  
19 nation except Morocco is a member. DCA submitted six letters of support with its application for  
20 .AFRICA ("Application") – one from the AUC, one from the United Nations Economic  
21 Commission for Africa ("UNECA"), three from individual African countries, and one from the  
22 South African Embassy in Washington, D.C.

23 8. The AUC letter of support that DCA submitted was dated April 27, 2009. A copy  
24 of that letter is attached as Exhibit 6 to the Bekele Declaration. I now understand that, in 2010,  
25 DCA received a letter from the AUC that formally withdrew the AUC's support for DCA's  
26 Application. A copy of that letter is attached as Exhibit 7 to the Bekele Declaration. DCA did not  
27 submit to ICANN with its Application a copy of the AUC's 2010 letter withdrawing its support  
28 for DCA. Although the 2010 AUC letter indicates that ICANN was copied, the "cc" did not



1 identify any specific person at ICANN, and ICANN has no record of receiving the letter.  
2 Inasmuch as the letter was sent two years before ICANN began receiving gTLD applications,  
3 ICANN had no "files" set up for any particular application.

4 9. The letter of support from UNECA that DCA submitted with its application was  
5 dated August 8, 2008. A copy of that letter is attached as Exhibit 8 to the Bekele Declaration. In  
6 September 2015, UNECA wrote in a letter to the AUC that it was a "United Nations entity [that]  
7 is neither a government nor public authority and therefore is not qualified to issue a letter of  
8 support for a prospective applicant," and that its August 2008 letter was "merely an expression of  
9 a view in relation to [DCA's] initiatives and efforts regarding internet governance . . . [and]  
10 cannot be properly considered as a 'letter of support' within the context of ICANN's  
11 requirements and cannot be used as such." A true and correct copy of UNECA's September 2015  
12 letter is attached as Exhibit 9 to the Bekele Declaration.

13 10. On June 5, 2013, at the time when ICANN's Board accepted the Governmental  
14 Advisory Committee's ("GAC's") advice objecting to DCA's Application, DCA had not yet  
15 passed the Geographic Names Panel review. At that time, the Geographic Names Panel had been  
16 in the midst of its review of DCA's Application; it had determined that the support documentation  
17 submitted by DCA, including the letters from the AUC and UNECA, did not meet the criteria set  
18 forth in the Guidebook, and it was therefore planning to send "clarifying questions" to DCA.  
19 Clarifying questions are sent where support documentation does not meet the criteria set forth in  
20 the Guidebook, and they are an accommodation to provide applicants an opportunity to  
21 explain/supplement their documentation. However, as a result of the ICANN Board's acceptance  
22 of the GAC's advice, DCA's Application was removed from processing and the clarifying  
23 questions were not sent at that time.

24 11. By July 31, 2015, following the ICANN Board's adoption of the recommendations  
25 of the Independent Review Panel in *DCA v. ICANN* ("IRP Panel"), DCA's Application was  
26 returned to processing as the Board directed. DCA's Application was returned to precisely the  
27 portion of the review that was pending on the date the Application was removed from  
28 processing—the Geographic Names Panel review. As the Geographic Names Panel had been

1 preparing to do when DCA's Application was removed from processing, the Geographic Names  
2 Panel issued clarifying questions to DCA on September 2, 2015, regarding the documentation  
3 DCA had submitted with its Application. Those clarifying questions are attached as Exhibit 11 to  
4 the Bekele Declaration. DCA was given an opportunity to respond to those clarifying questions.  
5 Instead of supplementing its documentation, DCA wrote to ICANN on September 28, 2015,  
6 taking the position that the documentation that it had submitted with its Application in 2012 was  
7 sufficient.

8 12. On October 13, 2015, ICANN issued the Initial Evaluation Report regarding  
9 DCA's Application. The Initial Evaluation Report noted that the Application had passed all  
10 reviews except for the Geographic Names Panel review. As provided by the Guidebook, the  
11 report stated that DCA would have the opportunity to participate in "Extended Evaluation,"  
12 which offered DCA additional time to provide the requisite documentation of support or non-  
13 objection from African governments. A true and correct copy of the Initial Evaluation Report is  
14 attached hereto as **Exhibit A**.

15 13. As part of Extended Evaluation, the Geographic Names Panel again issued  
16 clarifying questions to DCA on October 30, 2015, identifying the issues with the documented  
17 support submitted by DCA. Those clarifying questions are attached as Exhibit 13 to the Bekele  
18 Declaration. DCA was given until January 28, 2016, to supplement its documentation. The  
19 clarifying questions specified that both the AUC and UNECA letters failed the Guidebook's  
20 fourth criterion. However, rather than supplementing its documentation, DCA submitted a letter  
21 from its counsel and again took the position that the documentation that it had submitted with its  
22 Application in 2012 was sufficient.

23 14. Notably, nearly identical clarifying questions were sent to ZACR in 2013 when  
24 ZACR's application for .AFRICA was undergoing Geographic Name Review. True and correct  
25 copies of the clarifying questions issued to ZACR relating to the AUC and UNECA letters are  
26 attached hereto as **Exhibits B and C**. Unlike DCA, ZACR submitted an updated letter from the  
27 AUC endorsing ZACR on July 3, 2013, which provided ZACR with the requisite support of 60%  
28 of the governments of Africa and allowed ZACR to pass Geographic Names Review. A true and

1 correct copy of that letter is attached hereto as **Exhibit D**. Had DCA been able to obtain an  
2 updated, fully satisfactory letter from the AUC, it too would have passed Geographic Names  
3 Review. In that instance, contention resolution would have proceeded in accordance with  
4 Guidebook procedures; and, had the AUC not expressed a preference for one applicant over  
5 another, the contention may have been resolved by way of an auction between the two parties.

6 15. On February 17, 2016, ICANN issued an Extended Evaluation Report stating that  
7 the Geographic Names Panel had determined that DCA had failed to provide the requisite  
8 documentation of support or non-objection from relevant governments, despite the extended  
9 opportunity to do so. A copy of the Extended Evaluation Report is attached as Exhibit 14 to the  
10 Bekele Declaration. As a result, and as provided by the Guidebook, ICANN stopped processing  
11 DCA's Application. (Guidebook at 174 (§ 2.2.1.4.4).)

12 16. On March 3, 2016, ICANN's Board adopted a resolution lifting the stay on the  
13 delegation of .AFRICA. A true and correct copy of the Board's March 3, 2016 resolution is  
14 attached to this declaration hereto as **Exhibit E**.

15 17. As described in the concurrently-filed declaration of Akram Atallah, ICANN's  
16 Bylaws provide for several accountability mechanisms to ensure that ICANN operates in  
17 accordance with its Articles of Incorporation, Bylaws, policies and procedures. For example, an  
18 aggrieved applicant can file a "request for reconsideration," which is a mechanism that asks the  
19 ICANN Board to re-evaluate certain Board or staff actions or inactions that the applicant believes  
20 have harmed it. In addition, an aggrieved applicant can file a "request for independent review," a  
21 unique process set forth in ICANN's Bylaws that asks independent panelists to evaluate whether  
22 an action of ICANN's Board was consistent with ICANN's Articles of Incorporation and Bylaws.  
23 Bekele Decl., Ex. 4 (Bylaws, Art. IV, §§ 2-3). DCA could have filed, but did not file, a  
24 reconsideration request or a request for an independent review process ("IRP") related to the  
25 clarifying questions issued to it, or to the determination that DCA had failed the Geographic  
26 Names Review.

27 18. There is nothing in the Guidebook that prevents an applicant for a new gTLD from  
28 assigning intellectual property rights to a third party. Accordingly, that ZACR intends to assign

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DECLARATION OF CHRISTINE WILLETT IN SUPPORT OF  
ICANN'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

1 certain rights to the AUC upon delegation of .AFRICA does not violate any terms of the  
2 Guidebook. The AUC itself could have applied for .Africa. There is no basis to assert that any  
3 assignment of rights to the AUC was improper.

4 19. Both DCA and ZACR submitted standard (meaning, not community-based)  
5 applications for the .AFRICA gTLD. Even if the applicants intend to operate the .AFRICA  
6 gTLD on behalf of the African community, they are not obligated to submit a "community"  
7 application for the gTLD. A "community" application is a special application available under the  
8 Guidebook that requires an application to meet heightened criteria; and, if a community  
9 application prevails in Community Priority Evaluation, that application is given priority over all  
10 other applications in the contention set. Here, neither DCA nor ZACR submitted, nor were  
11 required to submit, a community application.

12 20. DCA's preliminary injunction papers refer to a "sunrise" period that involves the  
13 period when a registry first begins to operate. The "sunrise" period is not intended to allocate  
14 premium names to the highest bidder. Rather, it is a compulsory protection mechanism  
15 prescribed by ICANN to assist trademark owners in obtaining their corresponding domain names.  
16 These trademark owners are given preference during the initial stages of the domain name launch.

17 21. A "registrar" is an entity that sells domain name subscriptions to consumers. This  
18 is in contrast to a "registry" which is the entity that operates the gTLD. In nearly all situations, it  
19 is permissible for a gTLD registry operator to also act as registrar. ICANN has allowed such  
20 "cross-ownership" of TLDs since 2010. The ICANN Registry Agreement compels registry  
21 operators to deal with all registrars in a fair and equitable manner, and ICANN has compliance  
22 mechanisms in place to monitor cross-ownership. Thus, ZACR cannot provide preferential  
23 treatment or access to its own registrar; instead, ZACR (like any gTLD registry) must treat all of  
24 its registrars equally and on the same terms.

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1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3 Executed this 19<sup>th</sup> day of January 2017, in Los Angeles, California.

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5 \_\_\_\_\_  
6 Christine A. Willett

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# **EXHIBIT A**

**New gTLD Program**  
**Initial Evaluation Report**  
 Report Date: 13 October 2015

Update: This report has been updated as of the date above.

Application ID	1-1165-42560
Applicant Name	AFRICA
Country Code	1005
Applicant Address	DotConnectAfrica Trust

**Overall Initial Evaluation Summary**

<b>Initial Evaluation Result</b>	<b>Eligible for Extended Evaluation</b>
Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application and the responses to Clarification Question(s), the Evaluation Panel(s) determined that there was not sufficient information to award a passing score. Your application is eligible for Extended Evaluation as defined in Section 2.3 of the Applicant Guidebook.	

**Background Screening Summary**

<b>Background Screening</b>	<b>Eligible</b>
Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.	

**Panel Summary**

<b>String Similarity</b>	<b>Pass - Contention</b>
The String Similarity Panel has determined that your applied-for string is visually similar to another applied-for gTLD string, creating a probability of user confusion. Based on this finding and per Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, your application was placed in a string contention set.	
<b>DNS Stability</b>	<b>Pass</b>
The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.	
<b>Geographic Names</b>	<b>Geographic Name - Eligible for Extended Evaluation</b>
The Geographic Names Panel has determined that your application falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. However, the required documentation of support or non-objection was either not provided or did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook. As per Section 2.3.1 of the Applicant Guidebook, your application is eligible for Extended Evaluation.	
<b>Registry Services</b>	<b>Pass</b>
The Registry Services Panel has determined that the proposed registry services do not require further review.	
<b>Technical &amp; Operational Capability</b>	<b>Pass</b>
The Technical & Operational Capability Panel determined that:  Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.	
<b>Question</b>	<b>Score</b>
24: SRS	1
25: EPP	1
26: Whois	1
27: Registration Life Cycle	1
28: Abuse Prevention and Mitigation	1
29: Rights Protection Mechanism	1
30: Security Policy	1
31: Technical Overview of Registry	1
32: Architecture	2

Exhibit A

33: Database Capabilities	2
34: Geographic Diversity	2
35: DNS Service	1
36: IPv6 Reachability	1
37: Data Backup Policies & Procedures	1
38: Data Escrow	1
39: Registry Continuity	2
40: Registry Transition	1
41: Failover Testing	1
42: Monitoring and Fault Escalation	2
43: DNSSEC	1
44: IDNs (Optional)	1
Total	26
Minimum Required Total Score to Pass*	22
<i>*No zero score allowed except on optional Q44</i>	
<b>Financial Capability</b>	
<b>Pass</b>	
The Financial Capability Panel determined that:	
Your application meets the Financial Capability criteria specified in the Applicant Guidebook.	
Question	Score
45: Financial Statements	1
46: Projections Template	1
47: Costs and Capital Expenditures	2
48: Funding and Revenue	1
49: Contingency Planning	2
50: Funding Critical Registry Functions	3
Total	10
Minimum Required Total Score to Pass**	8
<i>**No zero score allowed on any question</i>	

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.



# **EXHIBIT B**



NewgTLDs

## Geographic Names Panel Clarifying Questions

Application ID: 1-1243-09503  
String: AFRICA  
Applicant: UniForum SA/ZACR

### Clarifying Question 1:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

Your application for AFRICA includes a letter from the African Union dated 4 April 2012, subject "Letter of Appointment". The letter is signed by Dr Elham M A Ibrahim, Commissioner Infrastructure and Energy and bears the seal of the African Union Commission. However, the letter does not meet criteria 1, 2, 3 and 4 above.

Please provide an updated letter of support from the Commissioner, Infrastructure and Energy of the African Union, or another signatory duly authorised on behalf of the African Union Commission, that:

1. Clearly expresses the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrates the government's or public authority's understanding of the string being requested
3. Demonstrates the government's or public authority's understanding of the string's intended use
4. Demonstrates the government's or public authority's understanding



## NewgTLDs

that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

For criterion number 4, "the applicant's [willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

This letter of support is due to ICANN by end of the initial evaluation period, August 31, 2013.

# **EXHIBIT C**



NewgTLDs

## Geographic Names Panel Clarifying Questions

Application ID: 1-1243-89583  
String: AFRICA  
Applicant: UniForum SA/ZACR

### Clarifying Question 2:

Question 21b of the AGB states, "If [the application is for] a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities." Section 2.2.1.4.3 (*Documentation Requirements*) of the AGB states that each letter of support or non-objection for a Geographic Name applicant must meet the following criteria:

1. Must clearly express the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrate the government's or public authority's understanding of the string being requested
3. Demonstrate the government's or public authority's understanding of the string's intended use
4. Should demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

Your application for .AFRICA includes a letter from the United Nations Economic Commission for Africa dated 16 September 2011. The letter is signed by Jennifer Kargbo, Deputy Executive Secretary to the Commissioner to the Minister for Infrastructure and Energy of the African Union. However, the letter does not meet criteria 1, 2, 3 and 4 above.

Please provide an updated letter of support from the United Nations Economic Commission for Africa, or another signatory duly authorised on behalf of the United Nations Economic Commission for Africa, that:

1. Clearly expresses the government's or public authority's support for or non-objection to the applicant's application
2. Demonstrates the government's or public authority's understanding of the string being requested
3. Demonstrates the government's or public authority's understanding of the string's intended use

Page 1 of 2

Exhibit C



## NewgTLDs

4. Demonstrates the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available.

For criterion number 4, "the applicant...[willingness] to accept the conditions under which the string will be available" can be satisfied by meeting the requirement of the first part of the criteria: "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process."

This letter of support is due to ICANN by end of the initial evaluation period, August 31, 2013.

# **EXHIBIT D**

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Ref.: CIE/L/20/237.13

Date: 2<sup>nd</sup> July 2013

Mr. Fadl Chehade,  
President and CEO  
Internet Corporation  
For Assigned Names and Numbers (ICANN)

**Redacted**

Email: Chehade@icann.org

Subject: Letter for support for the .Africa (dotAfrica) TLD application, (ID 1-1243-89583) submitted by the UniForum SA (NPC) t/a Registry.Africa.

Dear Mr. President and CEO,

This letter serves to confirm that the African Union Commission (AUC) fully supports and endorses the application for the .Africa (dotAfrica) TLD string (Application ID 1-1243-89583) submitted to ICANN by UniForum SA (NPC) trading as Registry.Africa in the New gTLD Program. Furthermore as the relevant government authority for the purpose of the above application, the AUC hereby confirms that it represents the interests and support of 54 African governments

As you may be aware, the AUC is comprised of various Portfolios, namely Peace and Security; Political Affairs; Infrastructure and Energy; Social Affairs; Trade and Industry; Rural Economy and Agriculture; Human Resources, Science and Technology; and Economic Affairs.

As the Commissioner, I confirm that I have the authority of the African Union Commission and African member states to be writing to you on this matter. The African Union Commission is the Secretariat of the African Union entrusted with executive functions. The AUC represents the African Union and protects its interest under the auspices of the Assembly of the Heads of States and Government.

In terms of the .Africa (dotAfrica) TLD, the AUC operates under a specific mandate from African Member States as outlined in the Abuja Declaration (Third Conference of African Ministers in Charge of Communications and Information Technologies, held in Abuja, Nigeria in August 2010).

In terms of the above ministerial declaration the AUC has been requested to "set up the structure and modalities for the implementation of the dotAfrica project". This has in turn commenced an extensive and on-going governmental engagement process by the AUC concerning the .Africa (dotAfrica) TLD, as is evidenced by, amongst others:

- The individual government letters of support and endorsement for the AUC initiated application process; and

**ARISE!**

**1 AFRICA 2063**  
PROSPERITY & PEACE

Addis Ababa, Ethiopia, P.O. Box 3243, Tel.: (251-11) 5182402 Fax: (251-11) 5182400 Web: [www.au.int](http://www.au.int)

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Exhibit D

ICANN\_AFRICA00000396



- The overwhelming government support and participation in the GAC (Government Advisory Committee) processes concerning Early Warnings and Advice.

The primary objective of the .Africa (dotAfrica) gTLD string is: "to establish a world class domain name registry operation for the .Africa Top Level Domain (TLD) by engaging and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups."

Our collective mission is to establish the .Africa (dotAfrica) TLD as a proud identifier of Africa's online identity fairly reflecting the continent's rich cultural, social and economic diversity and potential. In essence we will strive to develop and position the .Africa (dotAfrica) TLD as the preferred option for individuals and business either based in Africa or with strong associations with the continent and its people.

The .Africa (dotAfrica) TLD represents a unique opportunity for Africa to develop and enhance its domain name and Internet eco-systems and communities by collaborating with each other to:

- Identify, engage and develop African-based specialist skills and resources
- Share knowledge and develop DNS thought-leadership; and
- Implement world class registry standards and contribute towards their continued development.

The AUC has worked closely with the applicant, UniForum SA t/a Registry.Africa), concerning the preparation and lodgment of the TLD application and will continue to do so throughout the launch and regular administration of the .Africa (dotAfrica) TLD.

The AUC supports this application, and in doing so, understands that in the event that the application is successful, UniForum SA (NPC) trading as Registry .Africa will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

The AUC further understands that, in the event of a dispute between the African Union Commission and applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of the AUC.

The AUC understands that the Geographic Names Panel (GNP) engaged by ICANN, will, among others, conduct a due diligence on the authenticity of this documentation. I would request that if any additional information is required during this process, the GNP to contact my office in the first instance.

Thank you for the opportunity to support this application.



Dr. Elham M.A. IBRAHIM (Mrs)  
Commissioner  
Infrastructure and Energy

**ARISE!**

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# **EXHIBIT E**

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03 Mar 2016

## 1. Main Agenda

## a. .AFRICA Update

*Rationale for Resolution 2016.03.03.01*b. Consideration of Re-evaluation of the Vistaprint Limited String  
Confusion Objection Expert Determination*Rationale for Resolutions 2016.03.03.02 – 2016.03.03.04*

## 1. Main Agenda

## a. .AFRICA Update

Whereas, in its 11 April 2013 Beijing Communiqué, the Governmental Advisory Committee (GAC) provided consensus advice pursuant to the Applicant Guidebook that DotConnectAfrica Trust's (DCA)'s application for .AFRICA should not proceed.

Whereas, on 4 June 2013, the New gTLD Program Committee (NGPC) adopted the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué," which included acceptance of the GAC's advice related to DCA's application for .AFRICA. (See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en#1.a>)

Whereas, staff informed DCA of and published the "Incomplete" Initial Evaluation result and halted evaluation of DCA's application for .AFRICA on 3 July 2013 based on the NGPC resolution of 4 June 2013.

Whereas, on 25 November 2013, DCA initiated an Independent Review Process (IRP) regarding the 4 June 2013 resolution, but did not at that time seek to stay ICANN from moving forward the ZA Central Registry NPC trading as Registry.Africa's (ZACR) application.

Whereas, on 24 March 2014, ZACR executed a Registry Agreement (RA) for .AFRICA.

## Exhibit E

□ Help

Whereas, on 13 May 2014 ICANN halted further progress with respect to ZACR's RA for .AFRICA following the IRP Panel's interim declaration that ICANN should stop proceeding with ZACR's application for .AFRICA during the pendency of the IRP that DCA had initiated.

Whereas, on 9 July 2015, the IRP Panel issued its Final Declaration and recommended that ICANN continue to refrain from delegating the .AFRICA gTLD in order to permit DCA's application to proceed through the remainder of the new gTLD application process. (See <https://www.icann.org/en/system/files/files/final-declaration-2-redacted-09jul15-en.pdf> [PDF, 1.04 MB])

Whereas, on 16 July 2015, the Board directed the President and CEO, or his designee(s), to continue to refrain from delegating the .AFRICA gTLD and to take all steps necessary to resume the evaluation of DCA's application for .AFRICA in accordance with the established process(es). (See <https://www.icann.org/resources/board-material/resolutions-2015-07-16-en#1.a>)

Whereas, on 1 September 2015, evaluation of DCA's application for .AFRICA resumed.

Whereas, on 13 October 2015, the Initial Evaluation report based on the Geographic Names Panel's review of DCA's application was posted and indicated that DCA's application did not pass Initial Evaluation, but that DCA was therefore eligible for Extended Evaluation; DCA chose to proceed through Extended Evaluation.

Whereas, on 17 February 2016, an Extended Evaluation report was posted and indicated that the resumed evaluation of DCA's application for .AFRICA had concluded, and that DCA had failed to submit information and documentation sufficient to meet the criteria described in AGB Section 2.2.1.4.3, rendering it ineligible for further review or evaluation.

Resolved (2016.03.03.01), the Board authorizes the President and CEO, or his designee(s), to proceed with the delegation of .AFRICA to be operated by ZACR pursuant to the Registry Agreement that ZACR has entered with ICANN.

### *Rationale for Resolution 2016.03.03.01*

Two applicants, DotConnectAfrica Trust (DCA) and ZA Central Registry trading as Registry.Africa (ZACR), applied to become the operator for the .AFRICA generic top-level domain (gTLD) in furtherance of ICANN's New gTLD Program. In its 11 April 2013 Beijing Communiqué, ICANN's Governmental Advisory Committee (GAC) provided consensus advice pursuant to the New gTLD Program's Applicant Guidebook (Guidebook) that DCA's application to operate .AFRICA should not proceed. The Board accepted that GAC advice, evaluation of DCA's application was halted, and ICANN proceeded to execute a Registry Agreement with the other applicant that applied to operate .AFRICA.

### Exhibit E

DCA challenged the GAC advice that DCA's application should not proceed, and the Board's acceptance of that advice, through the Independent Review Process (IRP). The IRP is one of the accountability mechanisms set out in ICANN's Bylaws. First, only after ICANN signed a registry agreement to operate .AFRICA with the other .AFRICA applicant, did DCA obtain interim relief from an IRP panel recommending that ICANN not proceed further with .AFRICA pending conclusion of the IRP. ICANN adopted that recommendation. Second, DCA prevailed in the IRP and the IRP Panel recommended that ICANN resume evaluation of DCA's application and continue to refrain from delegating .AFRICA to the party with which ICANN already had executed a Registry Agreement to operate the .AFRICA gTLD.

On 16 July 2015 the Board passed the following resolution:

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.

(See <https://www.icann.org/resources/board-material/resolutions-2015-07-16-en#1.a.>)

When the Board passed the above resolution, the only remaining evaluation process for DCA's application for .AFRICA during the Initial Evaluation (IE) period was the Geographic Names Panel review, as DCA had successfully completed the other stages of IE. Accordingly, at staff's request, in August 2015, the Geographic Names Panel resumed its evaluation of DCA's application to operate .AFRICA. The Geographic Names Panel determined that .AFRICA is a geographic name as defined in Guidebook Section 2.2.1.4, but that the DCA's application to operate .AFRICA has not sufficiently met the requisite criteria of possessing evidence of support or non-opposition from 60% of the relevant public authorities in the geographic region of Africa, as described in AGB Section 2.2.1.4.3.

Per the Guidebook, having failed to pass IE, DCA was eligible and chose to proceed to Extended Evaluation (EE), which provided DCA with an additional 90 days to obtain the requisite documentation needed to pass the Geographic Names Panel review. On 17 February 2016, EE results were posted showing that DCA again did not satisfy the necessary criteria to pass the Geographic Names Panel review, rendering, DCA's application ineligible for any further review.

## Exhibit E

Now that both IE and EE have been completed for DCA's application to operate .AFRICA, and both have resulted in DCA not passing the Geographic Names Panel review, ICANN is prepared to move forward toward delegation of .AFRICA and with the party that has signed a Registry Agreement to operate .AFRICA. The party that has signed the Registry Agreement to operate .AFRICA is eager to move forward so that members of the African community can begin utilizing this gTLD. Further, as there are no remaining avenues available to DCA to proceed in the New gTLD Program, there is no reason within defined Guidebook processes to delay any further.

Accordingly, the Board today is authorizing the President and CEO or his designee(s), to resume delegating the .AFRICA gTLD, and all that entails, which it has previously directed ICANN to refrain from doing.

Taking this action is beneficial to ICANN and the overall Internet community, as it will allow delegation of the .AFRICA gTLD into the authoritative root zone. There likely will be a positive fiscal impact by taking this action in that there will be another operational gTLD. This action will not have a direct impact on the security, stability and resiliency of the domain name system.

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

**b. Consideration of Re-evaluation of the Vistaprint Limited String Confusion Objection Expert Determination**

Whereas, on 9 October 2015, an Independent Review Process (IRP) Panel issued its Final Declaration in the IRP filed by Vistaprint Limited (Vistaprint) against ICANN wherein the Panel declared ICANN to be the prevailing party and that the Board's actions did not violate the Articles of Incorporation (Articles), Bylaws, or Applicant Guidebook (Guidebook).

Whereas, Vistaprint specifically challenged the String Confusion Objection (SCO) Expert Determination (Expert Determination) in which the Panel found that Vistaprint's applications for .WEBS were confusingly similar to Web.com's application for .WEB (Vistaprint SCO).

Whereas, while the IRP Panel found that ICANN did not discriminate against Vistaprint in not directing a re-evaluation of the Expert Determination, the Panel recommended that the Board exercise its judgment on the question of whether it is appropriate to establish an additional review mechanism to re-evaluate the Vistaprint SCO.

Whereas, in Resolutions 2014.10.12.NG02-2015.10.12.NG03, the New gTLD Program Committee (NGPC) exercised its discretion to address a certain limited number of perceived inconsistent and unreasonable SCO expert determinations that were identified as not being in the best interest of the New gTLD Program and the Internet community (SCO Final Review Mechanism).

Whereas, the NGPC has already considered the Vistaprint SCO Expert Determination, among other expert determinations, in evaluating whether to

**Exhibit E**

expand the scope of the SCO Final Review Mechanism and determined that those other expert determinations, including the Vistaprint SCO Expert Determination, did not warrant re-evaluation.

Whereas, pursuant to the recommendations of the IRP Panel in the Final Declaration, the Board has again evaluated whether an additional review mechanism is appropriate to re-evaluate the Vistaprint SCO and resulting Expert Determination.

Resolved (2016.03.03.02), the Board concludes that the Vistaprint SCO Expert Determination is not sufficiently "inconsistent" or "unreasonable" such that the underlying objection proceedings resulting in the Expert Determination warrants re-evaluation.

Resolved (2016.03.03.03), the Board finds, as it has previously found, that ICANN's Bylaws concerning core values and non-discriminatory treatment and the particular circumstances and developments noted in Final Declaration do not support re-evaluation of the objection proceedings leading to the Vistaprint SCO Expert Determination.

Resolved (2016.03.03.04), the Board directs the President and CEO, or his designee(s), to move forward with processing of the .WEB/WEBS contention set.

#### *Rationale for Resolutions 2016.03.03.02 – 2016.03.03.04*

The Board is taking action today to address the recommendation of the Independent Review Process (IRP) Panel (Panel) set forth in its Final Declaration in the IRP filed by Vistaprint Limited (Vistaprint). Specifically, the IRP Panel recommended that the Board exercise its judgment on the question of whether an additional review is appropriate to re-evaluate the Vistaprint String Confusion Objection (SCO) leading to the "Vistaprint SCO Expert Determination."

#### **I. Background**

##### **A. VistaprintSCO Expert Determination**

The background on the Vistaprint SCO Expert Determination is discussed in detail in the Reference Materials and IRP Final Declaration, which is attached as Attachment A to the Reference Materials. The Reference Materials are incorporated by reference into this resolution and rationale as though fully set forth here.

##### **B. VistaprintIRP**

Vistaprint filed an IRP request challenging ICANN's acceptance of the Vistaprint SCO Expert Determination. In doing so, among other things, Vistaprint challenged procedures, implementation of procedures, and ICANN's purported failure to correct the allegedly improperly issued Expert Determination.

#### **Exhibit E**

On 9 October 2015, a three-member IRP Panel issued its Final Declaration. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN Bylaws, the Board adopted the findings of the Panel. (See Resolutions 2015.10.22.17 – 2015.10.22.18, available at <https://www.icann.org/resources/board-material/resolutions-2015-10-22-en#2.d>; see also, IRP Final Declaration, available at <https://www.icann.org/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf> [PDF, 920 KB].)

In the Final Declaration, the Panel found, among other things, that it did not have the authority to require ICANN to reject the Expert Determination and to allow Vistaprint's applications to proceed on their merits, or in the alternative, to require a three-member re-evaluation of the Vistaprint SCO objections. However, the Panel did recommend that

the Board exercise its judgment on the questions of whether an additional review mechanism is appropriate to re-evaluate the [expert] determination in the Vistaprint SCO, in view of ICANN's Bylaws concerning core values and non-discriminatory treatment, and based on the particular circumstances and developments noted in this Declaration, including (i) the Vistaprint SCO determination involving Vistaprint's .WEBS applications; (ii) the Board's (and NGPC's) resolutions on singular and plural gTLDs, and (iii) the Board's decisions to delegate numerous other singular/plural versions of the same gTLD strings.

(Final Declaration at ¶ 196, available at <https://www.icann.org/en/system/files/files/vistaprint-v-icann-final-declaration-09oct15-en.pdf> [PDF, 920 KB].) The Board acknowledged and accepted this recommendation in Resolution 2015.10.22.18. (See <https://www.icann.org/resources/board-material/resolutions-2015-10-22-en#2.d>.)

### C. Confusing Similarity

#### 1. The Generic Names Supporting Organization's (GNSO) Recommendation on confusing similarity.

In August 2007, the GNSO issued a set of recommendations (approved by the ICANN Board in June 2008) regarding the introduction of new generic top-level domains (gTLDs). The policy recommendations did not include a specific recommendation regarding singular and plural versions of the same string. Instead, the GNSO included a

### Exhibit E



recommendation (Recommendation 2) that new gTLD strings must not be confusingly similar to an existing top-level domain or a reserved name. (See GNSO Final Report: Introduction of New Generic Top-Level Domains, <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parla-08aug07.htm>.)

2. The issue of confusing similarity was agreed as part of the Applicant Guidebook and is addressed in the evaluation processes.

As discussed in detail in Reference Materials document related to this paper, and which is incorporated by reference as though fully set forth here, the issue of confusing similarity is addressed in two manners in the evaluation processes – through the String Similarity Review (SSR) process and through the String Confusion Objection process. The objective of this preliminary review was to prevent user confusion and loss of confidence in the DNS resulting from delegation of similar strings. (See *Module 2.2.1.1*, available at <https://newgtlds.icann.org/en/applicants/agb/evaluation-procedures-04jun12-en.pdf> [PDF, 916 KB], and *Module 3.2.1*, available at <https://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 260 KB].) The SSR Panel did not find any plural version of a word to be visually similar to the singular version of that same word, or vice versa. (<http://newgtlds.icann.org/en/program-status/application-results/similarity-contention-01mar13-en.pdf> [PDF, 168 KB]; <http://newgtlds.icann.org/en/announcements-and-media/announcement-01mar13-en>.)

3. The Board previously addressed the issue of confusing similarity as it relates to singular and plural versions of the same string in response to Governmental Advisory Committee (GAC) advice.

On 25 June 2013, the Board, through the New gTLD Program Committee (NGPC), considered the issue of singular and plural versions of the same strings being in the root in response to the GAC's advice from the Beijing Communiqué. (<https://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> [PDF, 156 KB].) The NGPC determined that no changes are needed to the existing mechanisms in the Guidebook to address the GAC advice relating to singular and plural versions of the same string. (See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d>.) As noted in the Rationale for Resolution 2013.06.25.NG07,

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the NGPC considered several significant factors as part of its deliberations, including the following factors: (i) whether the SSR evaluation process would be undermined if it were to exert its own non-expert opinion and override the determination of the expert panel; (ii) whether taking an action to make program changes would cause a ripple effect and re-open the decisions of all expert panels; (iii) the existing nature of strings in the DNS and any positive and negative impacts resulting therefrom; (iv) whether there were alternative methods to address potential user confusion if singular and plural versions of the same string are allowed to proceed; (v) the SCO process as set forth in Module 3 of the Guidebook. (See [https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en - 2.d.](https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en-2.d))

The NGPC determined that the mechanisms established by the Guidebook (SSR and SCO) should be unchanged and should remain as the mechanisms used to address whether or not the likelihood potential user confusion may result from singular and plural versions of the same strings.

#### D. SCO Final Review Mechanism

As discussed in full in the Reference Materials and incorporated herein by reference, the SCO Final Review Mechanism was established by the NGPC on 12 October 2014, after consultation with the community, to address a very limited set of perceived inconsistent and unreasonable SCO expert determinations. (See [https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b)) The SCO Final Review Mechanism was not a procedure to address the likelihood of confusion of singular and plural versions of the same string in the root. Rather, it was a mechanism crafted to address two SCO expert determinations (.CAM/.COM and .SHOPPING/.通販 expert determinations) that had conflicting expert determinations about the same strings issued by different expert panels, thus rendering their results to be so seemingly inconsistent and unreasonable as to warrant re-evaluation. (NGPC Resolution 2014.10.12.NG03, available at [https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b)) The NGPC also identified the SCO Expert Determinations for .CAR/.CARS as not in the best interest of the New gTLD Program and the Internet community, which also resulted in opposite determinations by different expert panels on objections to the exact same strings. Because the .CAR/.CARS contention set resolved prior to the approval of the SCO Final Review Mechanism, it was not part of the final review. (See *id.*)

As part of its deliberations, the NGPC considered and

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determined that it was not appropriate to expand the scope of the proposed SCO Final Review Mechanism to include other expert determinations such as other SCO expert determinations relating to singular and plural versions of the same string, including the Vistaprint SCO Expert Determination. With respect to its consideration of whether all SCO expert determinations relating to singular and plurals of the same string should be re-evaluated, the NGPC noted that it had previously addressed the singular/plurals issue in Resolutions 2013.06.25.NG07, and had determined "that no changes [were] needed to the existing mechanisms in the Applicant Guidebook . . . ." (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.>)

## II. Analysis

### A. Confusing Similarity as it Relates to Singular/Plurals of the Same String Has Already Been Addressed By The Board.

As discussed above, the NGPC first considered the issue of singular and plural versions of same strings in the root in June 2013 in consideration of the GAC's advice from the Beijing Communiqué regarding singular and plural versions of the same strings. Then, the NGPC determined that no changes were needed to the existing mechanisms in the Guidebook to address the issue.

(<https://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> [PDF, 156 KB].) As part of its evaluation, the NGPC considered applicant responses to the GAC advice. The NGPC noted that most were against changing the existing policy, indicating that this topic was agreed as part of the Guidebook and is addressed in the evaluation processes. (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d.>) The NGPC also considered existing string similarity in the DNS at the second level and any positive and negative impacts resulting therefrom. At the time, no new gTLD had been delegated, and therefore, there was no evidence of singular and plurals of the same string in the DNS at the top level. To date, seventeen singular/plural pairs have been delegated. The Board is not aware of any evidence of any impact (positive or negative) from having singular and plurals of the same string in the DNS. As such, the evidence of the existence of singular and plural versions of the same string, while it did not exist in June 2015, should not impact the NGPC's previous consideration of this matter.

As the NGPC acknowledged in Resolution 2013.06.25.NG07, the existing mechanisms (SSR and SCO) in the Guidebook to address the issue of potential consumer confusion resulting from allowing singular and plural versions of the same string are adequate. (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d.>) These mechanisms are intended to address the issue of confusing

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similarity at the outset of the application process. A decision to send the Vistaprint SCO Expert Determination back for re-evaluation because there is now evidence of singular and plural versions of the same string in the DNS would effectively strip away the objective function of the evaluation processes that have been set in place, which in the case of a SCO is to evaluate the likelihood of confusion at the outset of the application process, not some time after there has been evidence of delegation of singular and plural versions of the same string. (See Guidebook, Module 3.5.1.) To do so would be to treat Vistaprint differently and arguably more favorably than other applicants, which could be argued to be contradictory to ICANN's Bylaws.

**B. The SCO Final Review Mechanism Does Not Apply to the Vistaprint Expert Determination.**

The Board notes that Vistaprint argued in the IRP that the Vistaprint SCO Expert Determination is as equally unreasonable as the .CAM/.COM, .通販/.SHOP, .CARS/CAR Expert Determinations and therefore should be sent back for re-evaluation pursuant to the Final Review Mechanism. (See Final Declaration, ¶¶ 93, 94.) However, the Vistaprint SCO Expert Determination is plainly distinguishable from the .CAM/.COM, .通販/.SHOP, .CARS/CAR expert determinations, and therefore, the reasons warranting re-evaluation as determined by the NGPC in those decisions do not apply to the Vistaprint Expert Determination.

The .CAM/.COM, .通販/.SHOP, .CARS/CAR Expert Determinations were ripe for re-evaluation because those expert determinations involved *multiple conflicting SCO determinations issued by different experts on the same strings*, thus rendering their results to be so seemingly inconsistent and unreasonable as to warrant re-evaluation. Moreover, the NGPC discussion of the .CARS/CAR expert determinations in the scope of the SCO Final Review Mechanism was not based on the singular/plural issue, but rather, due to conflicting SCO expert determinations (two expert determinations finding .CARS/CAR not to be confusingly similar and one finding .CARS/CAR to be confusingly similar. (See Charleston Road Registry, Inc. v. Koko Castle, LLC SCO expert determination at <http://newgtlds.icann.org/sites/default/files/drsp/25sep13/determination-1-1-1377-8759-en.pdf> [PDF, 196 KB] (finding no likelihood of confusion between .CARS/CAR); Charleston Road Registry, Inc. v. Uniregistry, Corp. SCO expert determination at <http://newgtlds.icann.org/sites/default/files/drsp/25oct13/determination-1-1-845-37810-en.pdf> [PDF, 7.08 MB] (finding no likelihood of confusion between .CARS/CAR); and Charleston Road Registry, Inc. v. DERCars, LLC SCO expert determination at <http://newgtlds.icann.org/sites/default/files/drsp/14oct13/determination-1-1-909-45636-en.pdf> [PDF, 2.09 MB] (finding likelihood of confusion between .CARS/CAR).)

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Here, none of the factors significant to the NGPC's decision to send the CAM/.COM, 通販/.SHOP, expert determinations back for re-evaluation exist for the Vistaprint Expert Determination. The Vistaprint SCO proceedings resulted in one Expert Determination, in favor of Web.com on both objections. There were no other conflicting SCO expert determinations on the same strings issued by different expert panels ending in a different result. One expert panel had all of the arguments in front of it and considered both objections in concert, and made a conscious and fully informed decision in reaching the same decision on both objections. In this regard, Vistaprint already had the same benefit of consideration of the evidence submitted in both objection proceedings by one expert panel that the CAM/.COM, 通販/.SHOP objections received on re-evaluation. Thus, a re-evaluation of the objections leading to the VistaprintSCO Expert Determination is not warranted because it would only achieve what has already been achieved by having the same expert panel review all of the relevant proceedings in the first instance. Further, as discussed above, the NGPC has already considered the VistaprintSCO Expert Determination as part of its deliberations on the scope of the SCO Final Review Mechanism, and determined that the objection proceedings leading to the Expert Determination did not warrant re-evaluation. Thus, while Vistaprint may substantively disagree with the Expert Determination, there is no evidence that it is "inconsistent" or "unreasonable" such that it warrants re-evaluation.

The Board's evaluation is guided by the criteria applied by the NGPC in reaching its determination on the scope of the Final Review Mechanism, the NGPC's consideration and determination on the existence of singular and plurals of the same word as TLD as set forth in Resolution 2013.06.25.NG07, the GNSO Final Report Introduction of New Generic Top-Level Domains, the Applicant Guidebook, including the mechanisms therein to address potential consumer confusion, the circumstances and developments noted in the Final Declaration, and the core values set forth in Article I, Section 2 of the Bylaws. Applying these factors, for the reasons stated below, the Board concludes that a re-evaluation of the objection proceedings leading to the VistaprintSCO Expert Determination is not appropriate because the Expert Determination is not "inconsistent" or "unreasonable" as previously defined by the NGPC or in any other way to warrant re-evaluation.

The Board considered the following criteria, among others, employed by the NGPC in adopting Resolutions 2014.10.12.NG02 – 2014.10.12.NG03:

- Whether it was appropriate to change the Guidebook at this time to implement a review mechanism.
- Whether there was a reasonable basis for certain

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perceived inconsistent expert determinations to exist, and particularly why the identified expert determinations should be sent back to the ICDR while other expert determinations should not.

- Whether it was appropriate to expand the scope of the proposed review mechanism to include other expert determinations such as other SCO expert determinations relating to singular and plural versions of the same string, including the VistaprintSCO Expert Determination.
- Community correspondence on this issue in addition to comments from the community expressed at the ICANN meetings.

(See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en>. In addition, the Board also reviewed and took into consideration the NGPC's action on the existence of singular and plurals of the same string as a TLD in Resolution 2013.06.25.NG07.

As part of this decision, the Board considered and balanced the eleven core values set forth in Article I, Section 2 of the Bylaws. Article I, Section 2 of the Bylaws states that "situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values." (Bylaws, Art. I, § 2, <https://www.icann.org/resources/pages/governance/bylaws-en/#I.>) Among the eleven core values, the Board finds that value numbers 1, 4, 7, 8, 9, and 10 to be most relevant to the circumstances at hand. Applying these values, the Board concludes that re-evaluation of the objection proceedings leading to the Vistaprint SCO Expert Determination is not warranted.

This action will have no direct financial impact on the organization and no direct impact on the security, stability or resiliency of the domain name system. This is an Organizational Administrative Function that does not require public comment.

Published on 3 March 2016

## Exhibit E



Who We Are	Contact Us	Accountability & Transparency	Governance	Help
Get Started	Offices	Accountability Mechanisms	Documents	Dispute Resolution
Learning	Global Support	Independent Review Process	Agreements	Domain Name Dispute Resolution
Participate	Security Team	Request for Reconsideration	Specific Reviews	Name Collision
Groups	PGP Keys	Ombudsman	Annual Report	Registrar Problems
Board	Certificate Authority		Financials	WHOIS
President's Corner	Registry Liaison		Document Disclosure	
Staff	Specific Reviews		Planning	
Careers	Organizational Reviews		KPI Dashboard	
Newsletter	Request a Speaker		RFPs	
Development and Public Responsibility	For Journalists		Litigation	
			Correspondence	

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 CHRISTINE WILLETT 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  
11 forth below.  
12 ☐ by placing the document(s) listed above in a sealed Federal Express envelope and  
13 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery  
14 Service agent for delivery.  
15 ☐ by personally delivering the document(s) listed above to the person(s) at the  
16 address(es) set forth below.  
17 ☒ by transmitting via e-mail or electronic transmission the document(s) listed above  
18 to the person(s) at the e-mail address(es) set forth below.

16 Ethan J. Brown  
17 ethan@bnslawgroup.com  
18 Sara C. Colón  
19 sara@bnslawgroup.com  
20 Rowennakete "Kete" Barnes  
21 kete@bnsklaw.com  
22 BROWN NERI & SMITH LLP  
23 11766 Wilshire Boulevard, Suite 1670  
24 Los Angeles, California 90025  
25 Telephone: (310) 593-9890

David W. Kesselman, Esq.  
Kesselman Brantly Stockinger LLP  
1230 Rosecrans Ave, Suite 690  
Manhattan Beach, CA 90266  
(310) 307-4556  
(310) 307-4570 fax  
[dkesselman@kbslaw.com](mailto:dkesselman@kbslaw.com)

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 Diane Sanchez

27 NAI-1501037652v2

28 Proof of Service



# Exhibit B

## Exhibit B

1 Jeffrey A. LeVee (State Bar No. 125863)  
Erin L. Burke (State Bar No. 186660)  
2 Rachel Tessa Gezerseh (State Bar No. 251299)  
Amanda Pushinsky (State Bar No. 267950)  
3 JONES DAY  
555 South Flower Street  
4 Fiftieth Floor  
Los Angeles, CA 90071.2300  
5 Telephone: +1.213.489.3939  
Facsimile: +1.213.243.2539  
6 Email: jlevec@JonesDay.com

7 Attorneys for Defendant  
8 INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**  
12

13 DOTCONNECTAFRICA TRUST,

14 Plaintiff,

15 v.

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

18 Defendants.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CASE NO. BC607494**

Assigned for all purposes to  
Hon. Howard L. Halm

**DECLARATION OF MARK  
MCFADDEN IN SUPPORT OF  
ICANN'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

DATE: December 22, 2016  
TIME: 8:30 a.m.  
DEPT: 53

1                                   **DECLARATION OF MARK MCFADDEN**

2           I, Mark McFadden, declare the following:

3           1.       I am the Principal IP and DNS Specialist at InterConnect Communications  
4 ("ICC"), and I have held this position since 2011. I am currently based in and reside in the  
5 United Kingdom. I make this declaration in support of ICANN's opposition to the motion for  
6 preliminary injunction that DotConnectAfrica Trust ("DCA") has filed in this Court. I have  
7 personal knowledge of the matters set forth herein and am competent to testify thereto if called as  
8 a witness.

9                   **ICC's Role In ICANN's New gTLD Program**

10          2.       In 2011, ICANN and the ICC entered into a contract pursuant to which the ICC  
11 agreed to provide certain services to ICANN in conjunction with ICANN's New gTLD Program.  
12 The contract was amended at various times, including in March 2012. As relevant to this  
13 litigation, the ICC agreed in the contract to be one of the two Geographic Names Evaluation  
14 Panels pursuant to Module 2 of the Applicant Guidebook ("Guidebook") that ICANN had  
15 adopted for the New gTLD Program. ICANN also engaged the Economist Intelligence Unit  
16 ("EIU") to perform Geographic Names Evaluation services.

17          3.       The Geographic Names Evaluation Panels were tasked with reviewing all applied-  
18 for gTLD strings to determine whether each string is a geographic name. In addition, the  
19 Geographic Names Evaluation Panels were responsible for verifying the relevance and  
20 authenticity of all supporting documentation that each applicant submitted pursuant to the  
21 requirements of Section 2.2.1.4 and Section 2.3.1 of the Guidebook. Ultimately, ICANN  
22 received over 1,900 applications, and the ICC and EIU conducted a geographic names review for  
23 each of the strings, with the ICC conducting roughly one-third of the reviews, and the EIU  
24 conducting the other two-thirds. The ICC and EIU adopted the same protocols and standards for  
25 conducting the geographic names review, which were published on ICANN's website.

26          4.       In order to obtain a gTLD that constituted the name of a geographic region,  
27 pursuant to Section 2.2.1.4.2 of the Guidebook, an applicant was required to have the support of  
28 sixty (60) percent of the governments in that region. ICANN received many gTLD applications

1 that constituted geographic regions or geographic names, and the ICC and EIU were tasked with  
2 determining if the applications had the requisite support.

3 **DCA and ZACR's Applications for .AFRICA**

4 5. ICANN received two applications for the string .AFRICA, one submitted by DCA  
5 and the other submitted by the entity now known as ZACR.<sup>1</sup> The ICC was designated by ICANN  
6 as the Geographic Names Evaluation Panel to evaluate the .AFRICA applications. Because there  
7 are 54 countries in Africa, any application for .AFRICA required the support of at least 33  
8 countries in Africa, or the support of an organization that represented at least 33 countries in  
9 Africa. Each of the two applicants for .AFRICA submitted various purported letters of support  
10 from various countries in Africa as well as from the African Union Commission ("AUC"), and  
11 DCA also submitted a purported letter of support from the United Nations Economic Commission  
12 for Africa ("UNECA"). (ZACR did not submit a letter from UNECA.) However, the ICC  
13 determined in October 2012 that nearly all of the letters of support for both applications were  
14 insufficient – including the two AUC letters and the UNECA letter submitted by DCA – because  
15 they did not include the specific language that was required in the Guidebook (discussed below).

16 6. ICANN initially took the position that letters of support from the AUC and  
17 UNECA should not even count toward the 60 percent requirement. The ICC conducted further  
18 research on the AUC and UNECA, and we expressed our view to ICANN in March 2013 that  
19 both the AUC and UNECA were qualified to speak on behalf of the countries they represented  
20 and, thus, verified letters of support from those entities should count toward the 60 percent  
21 requirement. Following our recommendation, ICANN agreed that verified letters of support from  
22 the AUC and UNECA should count toward the 60 percent requirement, but only if those letters  
23 contained the language required in the Guidebook.

24 7. Accompanying its application, DCA submitted a letter of support from the AUC  
25 dated August 27, 2009. Accompanying its application, ZACR submitted a letter of support from  
26 the AUC dated April 4, 2012.<sup>2</sup> I am now aware that the AUC also wrote a letter to DCA in April

27 <sup>1</sup> DCA's original application actually was for the string .DOTAFRICA, but ICANN allowed DCA  
28 to change the application to .AFRICA.

<sup>2</sup> The AUC submitted additional letters of support for ZACR on July 3, 2013, and September 29,

1 2010 purporting to withdraw its August 2009 endorsement of DCA. My understanding is that  
2 DCA did not submit the actual April 2010 letter to ICANN with its gTLD application, and this  
3 letter was not brought to my attention until recently. The ICC was not aware of the AUC's  
4 purported withdrawal letter and did not consider the letter in its evaluation of DCA's application.

5 8. Pursuant to section 2.2.1.4.3 of the Guidebook, a government may withdraw its  
6 support for a gTLD application at any time in the application process. The procedure required by  
7 ICANN and adopted by the ICC was to disregard any letter of support that was subsequently  
8 withdrawn, and no longer accept the letter as part of an applicant's required 60 percent support.<sup>3</sup>  
9 If the ICC had been aware of the purported withdrawal of the AUC's letter to DCA, even if the  
10 August 2009 letter had contained language sufficient under the Guidebook (which it did not), the  
11 ICC would have issued clarifying questions to DCA explaining that DCA no longer had the  
12 support from the AUC, and requiring DCA to submit an updated letter.

13 9. Unaware of the AUC's withdrawal letter to DCA, the ICC followed a documented  
14 evaluation process with respect to DCA and ZACR's letters of support whereby each letter was  
15 evaluated for required criteria pursuant to the Guidebook. In particular, section 2.2.1.4.3 of the  
16 Guidebook required that letters of support for a geographic name "clearly express the  
17 government's or public authority's support for or non-objection to the applicant's application and  
18 demonstrate the government's or public authority's understanding of the string being requested  
19 and its intended use." It further required that a letter of support "demonstrate the government's or  
20 public authority's understanding that the string is being sought through the gTLD application  
21 process and that the applicant is willing to accept the conditions under which the string will be  
22 available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus  
23 policies and payment of fees." The ICC determined in early 2013 that none of the letters of  
24 support submitted by DCA or ZACR from the AUC or UNECA contained language that was

25 (continued...)

26 2015.

27 <sup>3</sup> The ICC has encountered other situations where letters of support have been withdrawn, and in  
28 each instance, the ICC removed the letter as documentation of support and issued clarifying questions to  
the applicant asking the applicant to provide additional documentation of support.

1 sufficient under this section of the Guidebook.

2 10. Specifically, Section 2.2.1.4.3 had very specific requirements for each of the  
3 letters of support. Those requirements were part of the policy making process that developed the  
4 Guidebook over a course of several years, and they were there to ensure that any letter of support  
5 was legitimate, authoritative, and demonstrated that the governmental entity understood precisely  
6 what it was supporting. DCA's letters from the AUC and UNECA failed to show that the  
7 governmental entities understood the process of the new gTLD program, and they also failed to  
8 show the governmental entity's understanding that the applicant (DCA) would have to abide by  
9 ICANN consensus policy and be responsible for any related fees. Indeed, in our judgment, the  
10 letters that DCA submitted from the AUC and UNECA were not even close to conforming to the  
11 very specific requirements in the AGB; indeed, the two letters were drafted before the  
12 requirements in the Guidebook were even available to applicants.

13 11. The ICC adhered to an ICANN policy whereby the ICC was not permitted to  
14 contact any governmental authority that had submitted a letter of support for an applicant.  
15 Rather, the required procedure for a noncompliant letter was to direct "clarifying questions" to the  
16 applicant so that the applicant could contact the governmental authority to obtain an updated  
17 letter. Accordingly, the ICC determined that it needed to send clarifying questions to both DCA  
18 and ZACR (because the letter that ZACR submitted from the AUC was also deficient under the  
19 Guidebook). However, just as the ICC was planning to send clarifying questions to DCA in the  
20 Spring of 2013, ICANN's Board voted to stop processing DCA's application following receipt by  
21 the Board of consensus advice from ICANN's Governmental Advisory Committee (the "GAC")  
22 recommending that DCA's application should not proceed. As a result, on June 7, 2013, ICANN  
23 advised the ICC to discontinue work on DCA's application.

24 **ZACR's Revised AUC Letter**

25 12. The ICC did send clarifying questions to ZACR, and following that, the AUC  
26 submitted a revised endorsement letter for ZACR on July 3, 2013. The ICC determined that the  
27 revised letter satisfied all required criteria in the Guidebook. Thus, the ICC concluded that ZACR  
28 had passed the Geographic Names Review by obtaining the requisite 60 percent support. The

1 ICC did not rely on any of the other letters of support that ZACR submitted with its application in  
2 2012.

3 **DCA's Post-IRP Application**

4 13. I understand that DCA challenged, via an "Independent Review Procedure" under  
5 ICANN's Bylaws, the decision of the ICANN Board to accept the GAC's consensus advice that  
6 DCA's application should not proceed. After the IRP issued its declaration in DCA's favor in  
7 July 2015, ICANN directed the ICC to resume processing DCA's application in order to  
8 determine if DCA's application could pass the Geographic Names review, which is exactly where  
9 DCA's application had been prior to the time the Board voted in 2013 to accept the GAC's  
10 advice. In September 2015, the ICC sent DCA the clarifying questions we had determined in  
11 2013 to be necessary before discontinuing work on DCA's application. The questions explained  
12 that both the AUC and UNECA letters submitted in support of DCA's application did not comply  
13 with section 2.2.1.4.3 of the Guidebook, and we requested updated letters of support.

14 14. I am now aware that UNECA wrote a letter dated July 20, 2015 in which UNECA  
15 stated that it is neither a government nor a public authority and therefore is not qualified to issue a  
16 letter of support under the Guidebook. This letter also was not brought to my attention until very  
17 recently. The ICC did not consider this letter in its evaluation of DCA's application; however, as  
18 noted above, the ICC already had determined that the original UNECA letter from 2008 – written  
19 four years before DCA submitted its application and before ICANN had even posted the first  
20 draft of the Guidebook – did not contain the information required by the Guidebook, and we  
21 required DCA to provide an updated letter.

22 15. In response to the clarifying questions that the ICC sent to DCA in September  
23 2015, DCA took the position that its original documentation of support submitted with its  
24 application in 2012 was sufficient, and DCA provided no additional or updated letters of support.  
25 Because DCA's existing letters of support were noncompliant, the ICC concluded that DCA had  
26 not passed Geographic Names Review. DCA elected to participate in "Extended Evaluation,"  
27 which entailed sending clarifying questions again to give DCA additional time to provide the  
28 requisite documentation of support. The ICC sent DCA the extended evaluation clarifying

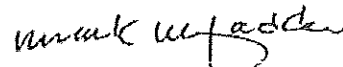


1 questions on October 30, 2015. In response, DCA again took the position that its original  
2 application was sufficient and that it did not need to submit any additional letters of support.  
3 Thus, the ICC determined that DCA had failed to provide the requisite documentation of support  
4 or non-objection for the .AFRICA gTLD.

5 16. The ICC treated all gTLD applications equally, including DCA and ZACR's  
6 applications for .AFRICA. Both applications initially had letters of support from the AUC and/or  
7 UNECA. The ICC recommended that both of those entities be viewed as authorized to provide  
8 an official endorsement on behalf of the countries in Africa that each represented, and ICANN  
9 ultimately agreed. The ICC then evaluated each letter for required criteria pursuant to the  
10 Guidebook, and determined that all three of the initial letters (two from the AUC and one from  
11 UNECA) were not sufficient under the terms of the Guidebook. The ICC conducted its  
12 evaluation not knowing whether the AUC or UNECA still endorsed any application and not  
13 knowing the views of AUC or UNECA as to whether they were authorized to speak for the  
14 countries on the African continent that they purported to represent. ZACR was able to provide an  
15 updated letter of support compliant with the Guidebook, and it passed the Geographic Names  
16 Review; DCA did not provide updated letters of support compliant with the Guidebook, and as a  
17 result, DCA's application failed the Geographic Names Review.

18 I declare under penalty of perjury under the laws of the United States and the State of  
19 California that the foregoing is true and correct.

20 Executed this 7<sup>th</sup> day of December 2016, in Chelmsford, United Kingdom.

21 

22 Mark McFadden  
23  
24  
25  
26  
27  
28

# Exhibit C

# Exhibit C

1 [PROCEEDINGS ON 24 OCTOBER 2017]

2 [09:21] MR BROWN: Good morning. I take it you  
3 understand you're still under oath.

4 MR DUNDAS: Yes.

5 MR BROWN: We talked a little bit  
6 yesterday about the independent objector and I think you'd  
7 indicated to me that the independent objector reached out  
8 to you at some point, to ZACR to see if you thought there  
9 is any basis for an objection. Did you respond to that?

10 MR DUNDAS: I believe we did, yes.

11 MR BROWN: Did you take a position with  
12 the independent objector as to whether it was appropriate  
13 to make an objection relating to Africa?

14 MR DUNDAS: I can't recall the exact  
15 details but there is a written response, if I had sight of  
16 -

17 MR BROWN: Okay. Is it the case of the  
18 independent objector ultimately decided not to make an  
19 objection in the matter?

20 MR DUNDAS: I believe that's so, yes.

21 MR BROWN: Let me mark the next exhibit  
22 as exhibit 20.

23 MR KESSELMAN: Isn't this exhibit 21?

24 MR BROWN: 21, I'm sorry, you're right.

25 MR KESSELMAN: No, no problem.

1 have been a board member at some stage.

2 MR BROWN: Did you know that DCA filed  
3 this statement of a conflict of interest against Mr Silber  
4 relating to the DCA?

5 MR DUNDAS: I'm aware of that. I've seen  
6 it in the court documents.

7 MR BROWN: Did you ever talk to Mr Silber  
8 about that?

9 MR DUNDAS: No.

10 MR BROWN: Do you know if Mr Silber was  
11 ever a director of Uniforum?

12 MR DUNDAS: He was never a director of  
13 Uniforum.

14 MR BROWN: Okay, no further questions.  
15 We'll come back after lunch, an hour.

16 MR DUNDAS: Okay, thank you.

17 [INQUIRY ADJOURNED]

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .

# Exhibit D

# Exhibit D



United Nations  
Economic Commission for Africa

Date: 20 July 2015  
Ref: OES/15/09/0157)

Dear Dr. Ibrahim

**Re: Request for Support to Dot Africa Project**

I am writing in connection with the request made to the Executive Secretary, Dr. Lopes for his support to the African Union's (AU) efforts in getting the regional identifier top level domain "dotAfrica" delegated to ZA Central Registry ("ZACR"), the entity we understand is authorized by the AU to apply for and administer the DotAfrica top level domain.

I understand from your letter that in addition to ZACR, another competing entity, DotConnectAfrica ("DCA") has submitted an application to obtain the same delegation as ZACR, and that DCA is purporting to use a letter of support obtained from ECA in 2008 as an endorsement from ECA for its application.

We also note that in September 2011, ECA wrote to you in response to a letter you sent regarding the setting up of the structure and modalities for the implementation of the DotAfrica project and in that letter, ECA reaffirmed its continued commitment and support to the AU in the management of Internet-based resources in Africa.

As you are aware, one of ICANN's requirement for the application for delegation for geographic Top Level Domain ("gTLD") as detailed in ICANN's 2012 Applicant Guidebook, is a minimum of 60% support from *relevant governments or public authorities*, with no more than one government objection from any country from the region.

ECA as United Nations entity is neither a government nor a public authority and therefore is not qualified to issue a letter of support for a prospective applicant in support of their application. In addition, ECA does not have a mandate to represent the views or convey the support or otherwise of African governments in matters relating to application for delegation of the gTLD.

Dr. Elham M.A. Ibrahim  
Commissioner  
Infrastructure and Energy  
African Union  
Addis Ababa

P.O. Box 5201, Addis Ababa, Ethiopia. Tel: (251-11) 551 72 00 Fax: (251-11) 551 4416

ICANN\_DCA00018774





United Nations  
Economic Commission for Africa

In this regard, the August 2008 letter referenced above is merely expressions of a view in relation to the entity's initiatives and efforts regarding internet governance, including efforts to obtain gTLD for Africa. It is ECA's position that the August 2008 letter to Ms Bekele cannot be properly considered as a "letter of support or endorsement;" within the context of ICANN's requirements and cannot be used as such.

I hope this clarifies ECA's position on the matter. Please feel free to contact me if you need any further clarification on tel: 0115443378 or [sbaffoe-bonnie@uneeca.org](mailto:sbaffoe-bonnie@uneeca.org)

Yours sincerely,

Sandra Baffoe-Bonnie  
Secretary of the Commission and Legal Advisor

Cc: Ms Sophia Bekele, DotConnectAfrica

P.O. Box 2001, Addis Ababa, Ethiopia Tel: (251-11) 551 72 60 Fax: (251-11) 551 4410

ICANN\_DCA00018775

# Exhibit E

# Exhibit E

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

## COMMUNIQUE

### dotAfrica gTLD



The African Union Commission (AUC) has been entrusted by its member states to carry out the process of applying to the Internet Corporation for Assigned Names and Numbers (ICANN) for the dotAfrica gTLD in terms of the New Generic Top Level Domain (gTLD) programme. dotAfrica is set to be a distinctive pan-African identification for regional online operations when it is opened up for registration.

The AU Commission, through its Information Society division (ISD), embarked on identifying the best open and transparent approach, which led to the formation of the dotAfrica Taskforce comprising respected African experts.

The Task Force and the assigned consultants provided the needed support to the AU Commission to launch the dotAfrica tender process to select a competent Registry Operator. Accordingly, the AU Commission selected UniForum SA (the ZA Central Registry Operator or ZACR), to administer and operate dotAfrica gTLD on behalf of the African community. The endorsement of the ZACR is the only formal endorsement provided by the African Union and its member's states with regard to dotAfrica.

The endorsement follows the evaluation of proposals submitted in December 2011, which attracted local and international registries interested in managing dotAfrica gTLD. The evaluation was conducted by a team of experts selected by the African Union.

Shortly after its appointment, the ZACR, in consultation with Internet Community representatives from all over Africa, at a meeting held in Johannesburg, established a Steering Committee to exercise moral and ethical oversight over the dotAfrica project. Representatives of the broader African Internet community are currently participating in the project through the Steering Committee and which comprises African Internet experts, Country Code managers, Registrars and others volunteering for a better Internet for Africa.

On the margins of the ICANN-43 meeting in San Jose, Costa Rica, March 2012, the AU Commission and ZACR have also formally concluded the dotAfrica Agreement to regulate the relation between the AUC and the ZACR for the application and operation of dotAfrica, which is to be administered in a inclusive and professional manner and in accordance with the project proposal submitted by ZACR during the tender process.

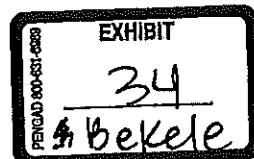
dotAfrica will be among the new generic Top Level Domains (gTLDs) that are likely to be approved by ICANN in 2013, and as such the African and global communities are eagerly anticipating the official launch of the dotAfrica gTLD.

The AU's officially endorsed Registry Operator (ZACR), together with the Steering Committee members, continues to receive African support and encouragement from all corners of the continent and from a wide range of stakeholder groups. The ZACR is currently finalising the detailed ICANN application process and is relying on its extensive experience and established resources as an African Registry Operator to complete this important task.

The deadline for the close of applications is 12 April 2012.

For more information please visit

[www.AfricaInOneSpace.org](http://www.AfricaInOneSpace.org) [www.facebook.com/africandomain](http://www.facebook.com/africandomain) [www.twitter.com/africandomain](http://www.twitter.com/africandomain)



### About UniForum SA (ZACRI)

UniForum SA, trading as the ZA Central Registry, was established as a non-profit organisation in 1988 by a group of end users, developers, and vendors who cooperated to form a professional association that would promote and exchange information on open systems.

It was assigned the responsibility of administering the CO.ZA domain name space in 1995 because it was seen as not only having the technical skills and resources to do so, but also committed to neutrality and unity of purpose.

At startup, the co.za zone contained in the region of 400 entries. Today, with over 750000 domains, amounting to over 95 % of the total registrations in the .ZA ccTLD, co.za ranks as a medium to large zone and within the top 30 registries world-wide in terms of size.

Over the years UniForum SA has played active role in the African Internet Industry including, but not limited to, the following:

- Establishing the alternate dispute resolution process for adjudicating domain name related disputes in the co.za domain.
- Translating the CO.ZA registry web site into all 11 official languages of South Africa as far back as 2001.
- Cooperating with a range of other industry bodies to drive the growth of the South African Internet, joining the South African Internet Service Providers Association (ISPA) in 1996 and having since worked with them on a range of web and social responsibility projects.
- Sponsoring and participating in the ISPA "Train the Teachers" initiative.
- Addressing and sponsoring learner education, educator development and the provision of IT infrastructure and curriculum development through the Mindset Computer Science Curriculum project, COZA Cares School of the Month project and ISPA Teacher Training initiatives.
- Participating in important debates, including contributing towards legislative and regulatory aspects that may effect the Internet.
- Providing regular DNS training to the South African Internet community at large.
- Transitioning the CO.ZA system into a world class EPP registry.
- Collaborating with South African Domain Name Authority (ZADNA) in transitioning into the ZA Central Registry in order to administer all open second level domains including .org.za, .net.za, and .web.za.

In summary, UniForum SA has served as a non-profit organisation that exists for the good of the South African and African Internet. We are proud to have remained loyal to the basic premise that surplus funds raised beyond covering operating expenses are ploughed back into the greater Internet community.

Although our role and the way forward might be changing, our principles and ideals have remained constant for more than 17 years and will endure into the future.

For more information:

[www.registry.net.za](http://www.registry.net.za)

[http://www.uniforum.org.za/cares/coza\\_cares.html](http://www.uniforum.org.za/cares/coza_cares.html)

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, Ethiopia

P. O. Box 3243

Telephone: 5517 700

Fax: 5517844

Website: [www.Africa-union.org](http://www.Africa-union.org)

## COMMUNIQUE

### The Africa Union Commission Clarification on Dot Africa

**Addis Ababa, 12 May 2011-** It has come to the attention of the African Union Commission that an organization calling itself DCA is claiming that it has the support of the Commission to bid for the Dot Africa strings.

The African Union Commission would like to bring the following clarifications on the matter of the bid for authority and mandate over the use of dot Africa domain name.

The AU Commission was at some point approached by an organization now known as DCA seeking endorsement and support for in its bid to use of the domain name. The Commission, while appreciating all individual initiatives presented the matter to Member States, for guidance. The Member States meeting within the framework of the Conference of African Union Ministers in Charge of Communications and Information Technologies decided to allow competition from any African organization or entity that would be interested in bidding for the domain name on behalf of and for the use of the African organizations and citizens at large. This decision was endorsed by the Assembly of Heads of State and Government in 2010 and again reiterated in 2011.

The AU Commission would like to hereby categorically state that it is not supporting any one individual or organization in this bid.

The African Union position is that the bid in question should lead to the selection of a firm to represent the interests of Africa on the domain name space, in fulfillment of the decisions and declarations of the AU Policy Organs. These decisions charge the Commission with the responsibility to "Establish Dot Africa as a continental Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet agencies". The Heads of State and Government also requested the Commission to "Set up the structure and modalities for the Implementation of the Dot Africa project."

The Commission is currently pursuing an open and transparent procedure to guarantee the selection of a registry to act on behalf of the African community. Parties interested in managing the Dot Africa registry are advised to apply to the AUC Call for Expression of Interest (EoI) which will be the sole mechanism for selecting and endorsing prospective companies, groups or individuals, prior to the launch of the ICANN new gTLD program. All relevant information and forms will be made available at ([www.africa-union.org](http://www.africa-union.org)).

The deadline for submission of applications is set for June 3<sup>rd</sup> 2011.

The African Union Commission will release the names of the winners through appropriate channels

The African Union Commission takes this opportunity to again to assure the people and governments of Africa of its commitment to a transparent and accountable process in the selection of the winning candidate to act for and on behalf of the continent on the matter of dot Africa.

# Exhibit F

# Exhibit F



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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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)  
DOTCONNECTAFRICA TRUST, )  
)  
Plaintiff, )  
)  
vs. ) No. BC607494  
)  
INTERNET CORPORATION FOR )  
ASSIGNED NAMES AND NUMBERS )  
and DOES 1 through 50, )  
inclusive, )  
)  
Defendants. )  
-----

\*\*\*CONTAINS HIGHLY CONFIDENTIAL  
ATTORNEYS' EYES ONLY SECTION\*\*\*

VIDEOTAPED DEPOSITION OF PERSON MOST QUALIFIED OF  
DOTCONNECTAFRICA TRUST  
SOPHIA BEKELE ESHETE  
Los Angeles, California  
Thursday, December 1, 2016  
Volume I

Reported by:  
Melissa M. Villagran, RPR, CLR  
CSR No. 12543  
Job No. 2479429  
PAGES 1 - 290

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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INTERNET CORPORATION FOR )  
ASSIGNED NAMES AND NUMBERS )  
and DOES 1 through 50, )  
inclusive, )  
)  
Defendants. )  

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)

Videotaped deposition of PERSON MOST QUALIFIED OF  
DOTCONNECTAFRICA TRUST, SOPHIA BEKELE ESHETE, Volume I,  
taken on behalf of Defendants, at 555 Flower Street, Los  
Angeles, California, beginning at 9:42 and ending at  
4:47 p.m. on Thursday, December 1, 2016, before Melissa  
M. Villagran, RPR, CLR, Certified Shorthand Reporter  
No. 12543.

1 APPEARANCES:

2  
3 For Plaintiff:

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11  
12 For Defendants:

13 JONES DAY

14 BY: JEFFREY A. LeVEE

15 AMANDA PUSHINSKY

16 Attorneys at Law

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18 Los Angeles, California 90071

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1 APPEARANCES (continued):

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3 For Intervener ZACR:

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5 BY: DAVID W. KESSELMAN

6 Attorney at Law

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8 Manhattan Beach, California 90266

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10 dkesselman@kbslw.com

11

12 Videographer:

13 Julian Shine

14

15 Also Present:

16 John O. Jeffrey, Attorney at Law

17 ICANN, General Counsel

18

19

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21

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Page 4

1 Los Angeles, California, Thursday, December 1, 2016

2 9:42

3  
4 THE VIDEOGRAPHER: We are on the record at

5 9:42 a.m. on December 1st, 2016. This is the 09:42:17

6 video-recorded deposition of the person most

7 qualified for DotConnectAfrica Trust. My name is

8 Julian Shine, here with court reporter Melissa

9 Villagran. We are here with Veritext Legal

10 Solutions at the request of counsel for defendants. 09:42:34

11 This deposition is being held at 555 South

12 Flower Street in Los Angeles, California.

13 Caption of this case is DotConnectAfrica

14 Trust versus Internet Corporation For Assigned Names

15 and Numbers and does 1 through 50, inclusive, case 09:42:51

16 number BC 607494.

17 Please note that audio and video recording

18 will take place unless all parties agree to go off

19 the record. Microphones are sensitive and may pick

20 up whispers, private conversations, and cellular 09:42:57

21 interference.

22 I am not authorized to administer an oath. I

23 am not related to any party in this action, nor am I

24 financially interested in the outcome in any way.

25 If there are any objections to proceeding, 09:43:19

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1 Q Okay.

2 A We have been in continuous dialog with AUC.

3 Q And you wanted them to clarify they were  
4 supporting DCA and ZACR, correct?

5 A We didn't ask about -- we're continuously 10:24:53  
6 explaining the ICANN process, that they can support  
7 two applications. It just feels like we are not  
8 sure exactly why they are doing what they are doing.  
9 So we are engaged in them to clarify the process  
10 continuously. 10:25:13

11 Q Okay. Well, you were concerned, weren't you,  
12 that they had decided to issue a communiqué saying  
13 they were endorsing something other than DCA's  
14 application?

15 A Actually, we were also concerned the fact 10:25:24  
16 that they issued a community by the time that ZACR  
17 has applied. We have expressed a concern that the  
18 application that ZACR was not a community  
19 application based on the endorsement that they were  
20 given by the AUC. So . . . 10:25:44

21 Q What was the nature of that concern that it  
22 was or was not a community-based application?

23 A Well, if the African Union puts out an RFP  
24 for organizations to come and apply on behalf of  
25 African community, you would think that whoever is 10:26:00

Page 47

1 the vendor would honor that and apply on behalf of  
2 that, right?

3 Q I don't understand. The vendor would apply  
4 on behalf of what?

5 A On behalf of the African community, they 10:26:13  
6 would apply a community application, not a standard  
7 application.

8 Q But ZACR's application was not designated as  
9 a community application?

10 A They didn't. They should have. 10:26:24

11 Q You are saying they should have?

12 A According to the endorsement that was granted  
13 to them by the African Union.

14 Q Where -- is it a piece of paper I haven't  
15 shown you that says that? 10:26:40

16 A It's right here. You read it earlier.

17 Q Which exhibit are you referring to?

18 A The .Africa communiqué.

19 Q Okay. And what does it say there that causes  
20 you to believe that the application by ZACR should 10:26:51  
21 have been a community application?

22 A So, accordingly, the AU Commission selected  
23 UniForum Central Registry to administer and operate  
24 .Africa on behalf of the African community.

25 Q Okay. And so you interpret that sentence as 10:28:06

1 meaning that the application itself was supposed to  
2 be a be a so-called community application?

3 A Well, it's an entire process of RFP that you  
4 state earlier.

5 Q Yes. 10:28:15

6 A So the entire process of issuing the RFP  
7 document, if you look at it closely, involved that  
8 the African Union actually required a consortium of  
9 organizations to apply on behalf of African  
10 community. 10:28:32

11 So, accordingly, they also published the  
12 endorsement document to -- in support of their own  
13 RFP.

14 Q Okay.

15 A So it's -- like you said, it's an entire 10:28:46  
16 process, not just one single sentence --

17 Q Okay. So your -- just to be clear, your  
18 understanding was the whole RFP process pursuant to  
19 which the AUC selected ZACR, that process was  
20 intended for the winner, which turned out to be 10:29:03  
21 ZACR, to file a, quote/unquote, community  
22 application with ICANN?

23 A Right.

24 Q Okay. And your understanding is that the  
25 paperwork associated with that process so specified 10:29:15



1 A Right.

2 Q I'm asking if they had applied that way and  
3 they had been accepted, do you have any  
4 understanding as to whether their application would  
5 have, under the guidebook, received priority over a 10:31:35  
6 standard application that you submitted?

7 MR. BROWN: Calls for a legal conclusion.

8 Go ahead.

9 THE DEPONENT: It's supposed -- the community  
10 priority is supposed to have higher priority than 10:31:47  
11 standard.

12 BY MR. LE VEE:

13 Q Okay.

14 A But first of all, the evaluators have to  
15 accept if that application would fallen under 10:31:57  
16 community or the standard. So . . .

17 Q So I'm agreeing with you. The -- the  
18 evaluators do have to make a decision.

19 A Right.

20 Q And we'll never know -- 10:32:08

21 A Yes.

22 Q -- what they would have done because ZACR  
23 submitted a --

24 A Not did.

25 Q -- submitted a standard, not a community 10:32:14

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1 sufficient enough to satisfy the clarification  
2 questions that ICANN has asked.

3 Q Okay. And when ICANN told you in 2015 that  
4 the UNECA -- I'm sorry. Drop it. Strike again.

5 When ICANN told you in 2015 that the AUC 02:09:27  
6 letter was insufficient under the guidebook, did you  
7 contact the AUC to try to get a new letter?

8 A No.

9 Q And you instead took the position that the  
10 letter you had submitted in 2012 was sufficient, 02:09:42  
11 correct?

12 Did you know that ICANN had rejected the  
13 letter that the AUC had originally given to ZACR in  
14 2012?

15 A Yes. 02:09:56

16 Q Okay. When did you learn that?

17 A That they rejected it?

18 Q Yes.

19 A Because they authored another letter for  
20 them. 02:10:07

21 Q I know they did. But when did you learn that  
22 it had been rejected?

23 A I don't know if they rejected. When you  
24 writing an updated letter, obviously the other one  
25 is not sufficient. It's not about rejection. 02:10:13

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I, SOPHIA BEKELE ESHETE, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

\_\_\_\_\_  
SOPHIA BEKELE ESHETE  
VOLUME I

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, Registered  
3 Professional Reporter, Certified Live Note Reporter,  
4 do hereby certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth;  
7 that any witnesses in the foregoing proceedings,  
8 prior to testifying, were duly sworn; that a record  
9 of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; that the foregoing transcript is a true  
12 record of the testimony given.

13 Further, that if the foregoing pertains to  
14 the original transcript of a deposition in a Federal  
15 Case, before completion of the proceedings, review  
16 of the transcript [ ] was [ ] was not requested.  
17 I further certify I am neither financially  
18 interested in the action nor a relative or employee  
19 of any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date  
21 subscribed my name.

22 Dated: 12/5/2016  
23  
24



25 MELISSA M. VILLAGRAN

**PROOF OF SERVICE**

I, Deborah Futrowsky, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On December 6, 2017, I served a copy of the within document(s):

**SUPPLEMENTAL DECLARATION OF AMANDA PUSHINSKY IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- ☒ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below as noted.
- ☒ 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.

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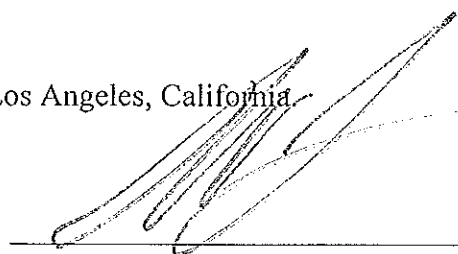
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***VIA EMAIL ONLY***

***VIA PERSONAL SERVICE and VIA  
EMAIL***

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 6, 2017, at Los Angeles, California

  
\_\_\_\_\_  
Deborah Futrowsky

NAI-1502739558v1