

**DotConnectAfrica Trust vs. Internet
Corp. for Assigned Names and Numbers**

Reporter's Transcript of Proceedings

February 07, 2019

Volume II



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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT NO. 53 HON. ROBERT B. BROADBELT, III, JUDGE

DOTCONNECTAFRICA TRUST,)
)
PLAINTIFF(S),)
)
VS.) CASE NO. BC607494
)
INTERNET CORPORATION FOR ASSIGNED)
NAMES AND NUMBERS, ET AL.,)
)
DEFENDANT(S).)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
THURSDAY, FEBRUARY 7, 2019
VOLUME II

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FEBRUARY 7, 2019

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1 CASE NAME : DOTCONNECTAFRICA TRUST
2 VS. INTERNET CORPORATION
3 FOR ASSIGNED NAMES AND
4 NUMBERS, ET AL.
5 CASE NUMBER: BC607494
6 LOS ANGELES, CALIFORNIA THURSDAY, FEBRUARY 7,
7 2019
8 DEPARTMENT NO. 53 HON. ROBERT B. BROADBELT,
9 III, JUDGE
10 COURT REPORTER: LAURIE MILLER, CSR #6457
11 APPEARANCES: (AS HERETOFORE
12 MENTIONED.)
13 TIME: 11:09 A.M.

14
15 THE COURT: GOOD MORNING, EVERYONE. WE'RE
16 BACK ON THE RECORD IN DOTCONNECTAFRICA TRUST VERSUS
17 INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,
18 CASE BC607494.

19 AND I'LL ASK COUNSEL TO PLEASE STATE THEIR
20 APPEARANCES.

21 MR. BROWN: ETHAN BROWN ON BEHALF OF
22 PLAINTIFF, DOTCONNECTAFRICA TRUST.

23 MS. COLON: SARA COLON ON BEHALF OF
24 PLAINTIFF, DOTCONNECTAFRICA TRUST.

25 MS. YEGAZARIAN: NONA YEGAZARIAN ON BEHALF
26 OF PLAINTIFF.

27 MS. BURKE: ERIN BURKE ON BEHALF OF
28 DEFENDANT, ICANN.

1 MS. PUSHINSKY: AMANDA PUSHINSKY ON BEHALF
2 OF ICANN.

3 MS. OZUROVICH: KELLY OZUROVICH ON BEHALF OF
4 ICANN.

5 MR. LEVEE: JEFF LEVEE ON BEHALF OF ICANN.

6 THE COURT: OKAY. THANK YOU. THE MATTER IS
7 HERE IN COURT ON THE SECOND DAY OF THE COURT TRIAL ON
8 PHASE I OF THE BIFURCATED TRIAL ON THE ISSUE OF
9 DEFENDANT ICANN'S AFFIRMATIVE DEFENSE AND JUDICIAL
10 ESTOPPEL.

11 PLEASE FEEL FREE TO BE SEATED, EVERYONE.

12 THE COURT NOTES IT'S ABOUT 11:10 A.M. WE'RE
13 GETTING A BIT OF A LATE START, WHICH WAS MY FAULT
14 BECAUSE WE HAD SOME MATTERS ON MY LAW AND MOTION
15 CALENDAR THAT TOOK SOME TIME TO RESOLVE THIS MORNING
16 ON HEARINGS, SO I APOLOGIZE FOR THE LATE START TODAY.

17 THE -- WHEN WE ADJOURNED TRIAL YESTERDAY AT
18 THE END OF THE DAY, THE WITNESS ON THE STAND WAS
19 SOPHIA BEKELE, AND MR. LEVEE HAD JUST COMPLETED HIS
20 CROSS -- RATHER, DIRECT EXAMINATION ON BEHALF OF THE
21 DEFENDANT ICANN, AND I BELIEVE MR. BROWN INDICATED HE
22 HAD CROSS-EXAMINATION HE WISHED TO CONDUCT; IS THAT
23 CORRECT?

24 MR. BROWN: IT IS, YOUR HONOR. I THINK
25 THERE WERE A COUPLE OF THINGS WE WANTED TO ADDRESS
26 WITH YOUR HONOR BEFORE WE GET STARTED, IF THIS IS A
27 CONVENIENT TIME.

28 ONE IS THE SCHEDULING, AND THE OTHER WAS THE

1 HANDFUL OF DEPOSITION DESIGNATIONS WE TALKED ABOUT
2 YESTERDAY.

3 THE COURT: OKAY. THANK YOU.

4 WOULD YOU BE ABLE TO GET THE NOTEBOOK FOR ME
5 ON THE COFFEE TABLE?

6 OKAY. THANKS. WHAT DID YOU WANT TO
7 ADDRESS, MR. BROWN?

8 MR. BROWN: I'LL TURN IT OVER MR. LEVEE,
9 ACTUALLY, IN TERMS OF THE SCHEDULING ISSUE BECAUSE IT
10 HAS TO DO WITH HIS WITNESS.

11 MR. LEVEE: YOUR HONOR, IN LIGHT OF OUR
12 START TIME TODAY, YOU HAD MENTIONED YESTERDAY THAT
13 YOU MIGHT HAVE A TIME WHEN YOU NEEDED TO BREAK
14 TOMORROW, SO THE PARTIES HAVE BEEN DISCUSSING
15 PRACTICAL OPTIONS. WE CLEARLY WILL NOT FINISH TODAY,
16 GIVEN THE START, AND WE ALSO SEE YOU HAVE AN
17 IMPRESSIVE CALENDAR TOMORROW MORNING AS WELL AND
18 PERHAPS YOU WOULD FINISH IT BY 10:00. WE DON'T KNOW.
19 IF WE'RE GOING TO HAVE A SHORT DAY TOMORROW, AND
20 DEPENDING ON WHAT THAT MEANS, MR. BROWN AND I HAVE
21 BEEN DISCUSSING THE POSSIBILITY THAT WE WOULD ASK
22 YOUR HONOR TO COMPLETE THE PHASE I OF THE TRIAL ON
23 SOME OTHER DAY. AND WE'VE BEEN DISCUSSING WHAT THOSE
24 OPTIONS ARE.

25 I HAVE ONE OF OUR FORMER EMPLOYEES WHO IS ON
26 MR. BROWN'S WITNESS LIST, WORKS IN SEATTLE,
27 PRIMARILY. HE'S HERE THIS WEEK. HE WILL MAKE
28 HIMSELF AVAILABLE, OF COURSE, TO COME BACK, BUT I

1 WOULD LOVE TO BE ABLE TO TALK TO HIM OVER LUNCH AS TO
2 WHAT HIS OPTIONS ARE. AND THEN WE HAVE ALL THESE
3 LAWYERS AND PEOPLE IN THE ROOM, AND I WILL TALK TO
4 THEM AS WELL, BUT A LOT OF IT IS CONTINGENT ON
5 WHETHER WE HAVE A FULL DAY TOMORROW OR NOT.

6 THE COURT: OKAY. WITH RESPECT TO TOMORROW,
7 WHICH IS FRIDAY, FEBRUARY 8, I ORIGINALLY HAD AN
8 APPOINTMENT IN THE AFTERNOON. I'M GOING TO
9 RESCHEDULE IT SO THAT WE CAN COMPLETE THE TRIAL.

10 MR. LEVEE: THANK YOU, YOUR HONOR.

11 THE COURT: SO WHEN I SAID THAT IT WAS A
12 SHORT -- IT WOULD BE A SHORT DAY, THAT WAS BECAUSE I
13 HAVE AN APPOINTMENT, A LONGSTANDING APPOINTMENT ON
14 FRIDAY AFTERNOON, BUT I WILL RESCHEDULE THAT IN THE
15 INTERESTS OF COMPLETING THIS TRIAL.

16 MR. LEVEE: THEN YOU HAVE SOLVED OUR ISSUE.

17 THE COURT: HOPEFULLY THAT WILL ADDRESS THAT
18 ISSUE. AND I THINK COUNSEL ARE DOING A GOOD JOB IN
19 PRESENTING THE CASE IN AN EFFICIENT MANNER, AND I
20 WOULD EXPECT YOU BE ABLE TO COMPLETE THE TRIAL BY
21 TOMORROW, THEN.

22 MR. LEVEE: WE WILL HAVE NO PROBLEM DOING
23 SO.

24 THE COURT: OKAY.

25 MR. BROWN: YES. I THINK THERE'S NO ISSUE
26 WITH THAT. OUR CONCERN WAS JUST IF WE HAD A NOON
27 STOP TOMORROW OR SOMETHING LIKE THAT, WE MIGHT RUN
28 INTO SOME TROUBLE.

1 THE COURT: I APPRECIATE THAT. I APPRECIATE
2 COUNSEL RAISING THAT ISSUE WITH ME.

3 OKAY. SO THAT TAKES CARES OF THAT ISSUE.

4 MR. BROWN: AND ANOTHER TIME WAS FINE, BUT
5 WE THOUGHT MAYBE NOW IS A GOOD TIME.

6 THE COURT: OKAY. WHAT DID YOU WANT TO
7 ADDRESS?

8 MR. BROWN: I'M GOING TO LET MS. COLON.

9 MS. COLON: YOUR HONOR, JUST A FEW OF THE
10 COURT'S RULINGS DCA DISAGREES WITH, PARTICULARLY IN
11 LIGHT ICANN'S OPENING YESTERDAY AND TESTIMONY THAT
12 THEY SOLICITED FROM MS. BEKELE.

13 THE FIRST DESIGNATION THAT DCA TAKES ISSUE
14 WITH IS FOR STEPHEN CROCKER, DR. STEPHEN CROCKER.

15 THE COURT: ONE MOMENT, PLEASE.

16 MS. COLON: SURE.

17 THE COURT: AND YOU'RE REFERRING TO THE
18 ORDER ON OBJECTIONS TO DCA'S DEPOSITION DESIGNATIONS
19 AND ICANN'S COUNTER-DESIGNATIONS FILED FEBRUARY 6,
20 2019?

21 MS. COLON: YES, YOUR HONOR.

22 THE COURT: OKAY. SORRY. GO AHEAD,
23 MS. COLON.

24 MS. COLON: SURE. SO THE FIRST RULING THAT
25 DCA TAKES ISSUE WITH IS FOR DEPOSITION DESIGNATION AT
26 PAGE 74, LINE 18, THROUGH PAGE 75, LINE 9.

27 DCA RESPECTFULLY REQUESTS THAT AT LEAST PAGE
28 75, LINE 6 THROUGH LINE 9 BE ADMITTED; THAT IS, THE

1 QUESTION (AS READ):

2 "OKAY. SO AT THE TIME, IT WAS
3 THE BOARD'S POSITION THAT THE IRP
4 PANEL'S RULING WAS NOT BINDING ON
5 THE BOARD?"

6 AND THE ANSWER IS: "CORRECT."

7 AS YOUR HONOR HEARD YESTERDAY, THE ISSUE OF
8 WHETHER OR NOT THE IRP RULING WAS BINDING AND WHETHER
9 ICANN TREATED IT AS BINDING IS RELEVANT TO THE
10 QUASI-JUDICIAL ELEMENT OF JUDICIAL ESTOPPEL.

11 THE COURT: OKAY. I'LL CONSIDER IT, BUT
12 THIS IS WHAT I'M GOING TO DO. I'M GOING TO ASK YOU
13 TO IDENTIFY --

14 MS. COLON: OKAY.

15 THE COURT: -- WHAT -- IT SOUNDS LIKE YOU'RE
16 ASKING ME TO RECONSIDER THE RULINGS I MADE ON THE
17 OBJECTIONS TO DCA'S DEPOSITION DESIGNATIONS AND
18 ICANN'S COUNTER DESIGNATIONS IN THE COURT'S FEBRUARY
19 6TH, 2019, ORDER.

20 SO WHAT I'M GOING TO ASK YOU TO DO IS
21 IDENTIFY WHICH PAGE AND LINE NUMBERS OF WHICH
22 DEPOSITION TRANSCRIPTS YOU'RE ASKING ME TO RECONSIDER
23 THAT YOU FEEL -- IT SOUNDS LIKE THESE ARE THE ONES WE
24 THINK WE REALLY NEED --

25 MS. COLON: CORRECT.

26 THE COURT: -- AND THAT ARE RELEVANT AND
27 APPROPRIATE, IN LIGHT OF THE OPENING STATEMENTS GIVEN
28 BY BOTH SIDES.

1 MS. COLON: YES.

2 THE COURT: AND I'M WILLING TO GO BACK AND
3 GIVE THOSE FURTHER CONSIDERATION AND MAKE A RULING ON
4 THOSE AT A LATER TIME.

5 MS. COLON: OKAY. SO I SHOULD JUST GIVE
6 YOUR HONOR THE LINE NUMBERS NOW?

7 THE COURT: THAT'S CORRECT.

8 MS. COLON: OKAY.

9 THE COURT: WHAT PAGE AND LINE NUMBERS ARE
10 YOU ASKING ME TO RECONSIDER AS FAR AS OBJECTIONS THAT
11 I SUSTAINED?

12 MS. COLON: SURE. SO THE SECOND WOULD BE --

13 THE COURT: WHAT'S THE FIRST ONE? IS IT
14 THE --

15 MS. COLON: -- 74.

16 THE COURT: SORRY TO INTERRUPT YOU. JUST TO
17 BE CLEAR, THE DEPOSITION TRANSCRIPT OF
18 DR. STEPHEN CROCKER, JANUARY 12, 2018. AND THE FIRST
19 REQUEST BY PLAINTIFF IS TO BE ABLE READ PAGE 75,
20 LINES 6 THROUGH 9; IS THAT CORRECT?

21 MS. COLON: CORRECT, YOUR HONOR.

22 THE COURT: OKAY. ANY OTHERS?

23 MS. COLON: YES. ON THE NEXT PAGE, DCA
24 REQUESTED LINES 77 -- EXCUSE ME. PAGE 77, LINE 17,
25 THROUGH PAGE 78, LINE 6. DCA ASKS THAT THE COURT
26 RECONSIDER THAT REQUEST. I TAKE IT YOUR HONOR
27 DOESN'T WANT ARGUMENT ON THAT POINT?

28 THE COURT: NOT AT THIS POINT.

1 MS. COLON: AND THE NEXT DESIGNATION THE DCA
2 WOULD LIKE THE COURT TO RECONSIDER IS IN THE
3 DEPOSITION OF MIKE SILBER DATED MAY 29, 2018. AND
4 THAT WOULD BE PAGE 23, LINE 4 THROUGH 20.

5 IT'S A SOMEWHAT MINOR ISSUE, ACTUALLY. WE
6 ONLY WOULD REQUEST PAGE 23, LINE 4 THROUGH 10.

7 AND WITHIN THE DESIGNATION AT 115, LINE 2
8 THROUGH 118, LINE 4.

9 THE COURT: I'M SORRY. SO THIS IS THE
10 SILBER DEPOSITION?

11 MS. COLON: CORRECT, YOUR HONOR.

12 THE COURT: STARTING AT PAGE 115, LINE 2?

13 MS. COLON: YES. 115, LINE 2, THROUGH 118,
14 LINE 4. DCA SPECIFICALLY WOULD REQUEST WITHIN THAT
15 DESIGNATION, PAGE 117, LINE 14 THROUGH 117, LINE 22.

16 AND THEN A FEW DESIGNATIONS DOWN, DCA WOULD
17 REQUEST THAT THE COURT RECONSIDER THE RULING ON
18 DESIGNATIONS AT PAGE 144, LINE 21, TO PAGE 145, LINE
19 8. AND THAT WOULD BE ALL OF THEM.

20 THE COURT: OKAY. I'LL GIVE ALL OF THOSE
21 FURTHER CONSIDERATION.

22 MS. COLON: THANK YOU.

23 THE COURT: AND, ESSENTIALLY, WHAT'S THE
24 REASON FOR YOUR ASKING THE COURT TO RECONSIDER THOSE
25 RULINGS ON THOSE OBJECTIONS?

26 MS. COLON: BASICALLY, WHAT ALL OF THEM HAVE
27 IN COMMON IS THAT THEY ARE RELEVANT TO ELEMENTS OF
28 JUDICIAL ESTOPPEL.

1 THE COURT: AND WHAT IS THE RELEVANCY? WHAT
2 ISSUE IS IN DISPUTE?

3 MS. COLON: SURE. SO IN THE CROCKER
4 DEPOSITION, THE DESIGNATION STARTING AT PAGE 77 THAT
5 I REFERENCED, SHOWS THAT ICANN DIDN'T BELIEVE THAT
6 THE IRP WAS A JUDICIAL PROCESS.

7 THE DESIGNATION IN SILBER'S DEPOSITION AT
8 PAGE 23, LINE 4 TO 10, IS JUST A MINOR ISSUE SHOWING
9 THAT HE WAS A MEMBER OF THE NEW GTLD PROGRAM
10 COMMITTEE.

11 THE DESIGNATION AT 117, LINE 14 TO 117, LINE
12 22, ARE RELATED TO WHETHER OR NOT ICANN FOLLOWED THE
13 IRP RULING, WHICH IS AN ISSUE THAT THEY RAISED IN
14 THEIR OPENING.

15 AND THE DESIGNATIONS AT LINE -- PAGE 144,
16 LINE 21, THROUGH 145, LINE 8 RELATE TO THE DIFFERENCE
17 BETWEEN THE CLAIMS DURING THE IRP AND THE CLAIMS AT
18 ISSUE HERE, WHICH ICANN RAISED DURING ITS QUESTIONING
19 OF MS. BEKELE YESTERDAY. THAT TESTIMONY IS MIKE
20 SILBER STATING THAT THE GAC ADVICE WAS THE ONLY ISSUE
21 THAT THE IRP RULED ON.

22 AND I THINK THAT IS IT, YOUR HONOR.

23 THE COURT: OKAY. LET ME ASK, DOES ICANN
24 WISH TO RESPOND TO ANY OF THOSE? DO YOU OPPOSE THE
25 REQUEST TO -- FOR THE COURT TO ALLOW THOSE DEPOSITION
26 EXCERPTS FROM THE CROCKER DEPOSITION AND SILBER
27 DEPOSITION BE READ INTO THE RECORD AND ADMITTED?

28 MS. OZUROVICH: YES, YOUR HONOR.

1 ICANN --

2 THE COURT: COULD YOU STATE YOUR NAME AGAIN?

3 MS. OZUROVICH: KELLY OZUROVICH.

4 THE COURT: THANK YOU. GO AHEAD.

5 MS. OZUROVICH: ICANN MAINTAINS ITS
6 OBJECTIONS TO EACH OF THE PASSAGES FOR THE REASONS
7 SET FORTH IN ICANN'S OBJECTIONS AND COUNTER-
8 DESIGNATIONS, AND WE'RE HAPPY TO ARGUE THOSE POINTS
9 WHENEVER THE COURT IS READY, WHETHER NOW OR AT A
10 SUBSEQUENT TIME.

11 BUT TO THE EXTENT THAT THE COURT IS GOING TO
12 RECONSIDER ITS RULING, WE WOULD ALSO ASK THE COURT
13 RECONSIDER ITS RULING ON ICANN'S OBJECTIONS AND
14 COUNTER DESIGNATIONS UNDER THE RULES OF COMPLETENESS.

15 THE COURT: OKAY. I UNDERSTAND. OKAY.
16 THANK YOU VERY MUCH, MS. OZUROVICH.

17 SO I'LL GIVE PLAINTIFF'S REQUEST THAT THE
18 COURT RECONSIDER ITS RULINGS ON THE OBJECTIONS TO
19 THOSE DEPOSITION EXCERPTS FURTHER CONSIDERATION AND
20 ADDRESS THAT AT A LATER TIME.

21 MS. COLON: THANK YOU, YOUR HONOR.

22 THE COURT: OKAY. THANK YOU, EVERYONE.

23 ALL RIGHT. ARE WE READY TO CONTINUE WITH
24 THE TESTIMONY OF MS. BEKELE?

25 MR. BROWN: YES, YOUR HONOR, WE ARE.

26 THE COURT: OKAY. THANK YOU. SO I'M GOING
27 TO ASK MS. BEKELE TO COME BACK TO THE WITNESS STAND.
28 AND I AM GOING TO ASK YOU, MS. BEKELE, TO BE SWORN

1 AGAIN BY THE CLERK. SO IF YOU COULD STAND AND RAISE
2 YOUR RIGHT HAND.

3 THE WITNESS: YES.

4 THE CLERK: GOOD MORNING.

5 DO YOU SOLEMNLY STATE THAT THE TESTIMONY
6 YOU'RE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
7 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
8 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

9 THE WITNESS: YES.

10 THE CLERK: THANK YOU, MA'AM. PLEASE BE
11 SEATED.

12 THE COURT: ONE MOMENT, PLEASE. THE COURT
13 NOTES IT'S ABOUT 11:25 A.M., AND MR. BROWN, YOU MAY
14 BEGIN YOUR CROSS-EXAMINATION OF THE WITNESS WHEN
15 YOU'RE READY.

16 MR. BROWN: OKAY. THANK YOU, YOUR HONOR.

17

18 SOPHIA BEKELE,
19 RECALLED AS A WITNESS BY THE DEFENSE,
20 WAS SWORN AND TESTIFIED AS FOLLOWS:

21

22 CROSS-EXAMINATION

23 BY MR. BROWN:

24 Q WE'RE GOING TO START WITH JUST SOME
25 BACKGROUND QUESTIONS JUST TO FILL IN SOME OF THE GAPS
26 FROM YESTERDAY.

27 I THINK YOU TESTIFIED THAT YOU HAD LIVED IN
28 ETHIOPIA UNTIL THE AGE OF 16. WHAT LANGUAGE DID YOU

1 **PRIMARILY SPEAK DURING THOSE 16 FORMATIVE YEARS IN**
2 **ETHIOPIA?**

3 A MULTIPLE LANGUAGES. AMHARIC IS THE OFFICIAL
4 LANGUAGE OF THE COUNTRY.

5 Q **THANK YOU. IS ENGLISH YOUR FIRST LANGUAGE?**

6 A NO.

7 Q **AND YOU SPOKE SOME ABOUT YOUR EDUCATION WITH**
8 **MR. LEVEE. I WANT TO CLARIFY A FEW THINGS. DO YOU**
9 **HAVE ANY LEGAL TRAINING?**

10 A NO.

11 Q **DOES DCA EMPLOY ANYONE WHO HAS LEGAL**
12 **TRAINING?**

13 A NO.

14 Q **TO WHAT EXTENT HAVE YOU BEEN INVOLVED IN**
15 **LITIGATION IN THE UNITED STATES?**

16 A NONE. THIS IS MY FIRST TIME.

17 Q **AND WHERE DO YOU CURRENTLY WORK?**

18 A I WORK AT DCA.

19 Q **OKAY. AND WHERE IS DCA LOCATED?**

20 A IT'S LOCATED IN AFRICA, MAURITIUS
21 HEADQUARTERS, AND SOME OPERATIONS IN KENYA.

22 Q **AND I KNOW YOU WENT TO COLLEGE IN THE UNITED**
23 **STATES. SINCE THEN, CAN YOU DESCRIBE FOR THE COURT**
24 **GENERALLY WHERE YOU LIVED AND SPENT YOUR TIME?**

25 A I GRADUATED FROM SAN FRANCISCO STATE
26 UNIVERSITY, AND I WORKED IN CORPORATE AMERICA,
27 VARIOUS ENTITIES, WHICH WAS MENTIONED YESTERDAY.

28 AND I LIVED IN AMERICA ALL THAT TIME, AND

1 THEN WHEN I STARTED BY ENTREPRENEURSHIP, I MOVED TO
2 AFRICA. I MAINTAINED MY SPACE HERE, BUT I STILL
3 WORKED FULL-TIME IN AFRICA.

4 Q AND WHEN YOU SAY YOU STARTED YOUR
5 ENTREPRENEURSHIP, APPROXIMATELY WHEN WAS THAT?

6 A THAT WAS CBS INTERNATIONAL. I THINK IT WAS
7 MENTIONED YESTERDAY. 1998 OR 2000.

8 Q SO SINCE 1998, YOUR PRIMARY RESIDENCE HAS
9 BEEN IN AFRICA, AM I UNDERSTANDING IT RIGHT?

10 A NO. SINCE THEN -- YES, YOU COULD SAY THAT.

11 Q WHAT IS YOUR ROLE AT DCA?

12 A I AM THE CEO AND FOUNDER.

13 Q AND WHAT'S THE PURPOSE OF DCA?

14 A PURPOSE OF DCA, IT WAS CREATED TO EDUCATE
15 THE AFRICAN PUBLIC WITH INTERNET -- HOW WOULD YOU
16 SAY? INTERNET TOOLS, POLICIES, GOVERNMENTS AND SO
17 FORTH, AS WELL AS GIVE ACCESS AND TRAINING TO THE
18 AFRICAN PUBLIC.

19 AT THE SAME TIME WHEN I CAME UP WITH THE
20 .AFRICA WHEN I WAS AT ICANN, IT WAS TO APPLY FOR THE
21 .AFRICA DOMAIN NAME.

22 Q AND I THINK WE COVERED THAT YESTERDAY, BUT
23 CAN YOU JUST TELL US WHAT THE .AFRICA DOMAIN NAME IS?

24 A IT IS A GEOGRAPHIC DOMAIN NAME THAT WAS
25 ISSUED AS PART OF THE 1,930 OTHER DOMAIN NAMES UNDER
26 THE GOVERNANCE OF ICANN. IT IS TO BE UTILIZED BY THE
27 AFRICAN PUBLIC AS WE CAMPAIGNED FOR IT FOR THE
28 IDENTITY, BUT IT'S REALLY THE RIGHT SIDE OF THE DOT.

1 LIKE .ASIA OR .LATINAMERICA AND SO FORTH.

2 **Q YOU TESTIFIED YESTERDAY THAT YOU APPLIED FOR**
3 **.AFRICA IN 2012. WHEN DID YOU START THE PROCESS OF**
4 **PREPARING THE APPLICATION FOR .AFRICA?**

5 A MAYBE ABOUT FIVE YEARS BEFORE THAT.

6 **Q AND DURING THAT FIVE-YEAR PERIOD BETWEEN**
7 **WHEN YOU STARTED AND APPLIED, WHAT WERE YOU DOING?**

8 A PRETTY MUCH RUNNING AND SETTING UP DCA,
9 PREPARING FOR THE APPLICATION. ATTENDING ICANN
10 MEETINGS, UNDERSTANDING THE POLICY PROCESS AND
11 PARTICIPATING IN THE GUIDEBOOK DEVELOPMENT.

12 **Q AND WHAT DO YOU HAVE TO DO TO APPLY FOR A**
13 **GTLD?**

14 A IT'S A VERY EXTRANEIOUS PROCESS. THERE'S A
15 300-PAGE DOCUMENT, WHICH IS LIKE AN RFP, REQUEST FOR
16 PEOPLE TO PARTICIPATE, AND IT REQUIRES TECHNICAL
17 CAPABILITY, FINANCIAL CAPABILITY AND OPERATIONAL
18 CAPABILITY TO DEMONSTRATE THAT FOR ANYONE TO RUN A
19 REGISTRY.

20 BEING A PAN-AFRICAN, GTLD, AND A GEOGRAPHIC
21 ONE, YOU WOULD NEED ENDORSEMENTS FROM GOVERNMENTS,
22 INDIVIDUAL GOVERNMENTS, AS FAR AS I KNOW, ACCORDING
23 TO THE GUIDEBOOK. YEAH.

24 **Q AND ONCE YOUR APPLICATION WAS SUBMITTED TO**
25 **ICANN, CAN YOU JUST TELL US GENERALLY WHAT HAPPENED**
26 **WITH IT?**

27 A WELL, ICANN ADOPTED A LOTTERY SYSTEM IN
28 ORDER TO BE ABLE TO GOVERN THE APPLICATION PROCESS,

1 WHICH MEANS PEOPLE WHO ARE -- WHO HAVE APPLIED LIKE,
2 FOR EXAMPLE, IF SOMEONE IS NUMBER ONE, THEY SHOULD BE
3 EVALUATED. THE INITIAL EVALUATION WILL BE REPORTED
4 ACCORDING TO THE LOTTERY SYSTEM. SO, SEQUENTIALLY,
5 OUR LOTTERY SYSTEM WAS LIKE 1,000, AND OUR
6 COMPETITOR'S WAS, LIKE, 350 OR SOMETHING LIKE THAT.
7 I CAN'T BE ACCURATE. I CAN'T BE QUOTED ON THAT, BUT
8 THERE'S, LIKE, A HUGE DIFFERENCE.

9 SO BASICALLY THE ICANN PROCESSED THE INITIAL
10 EVALUATION, WHICH INCLUDES THE FINANCIAL, THE
11 OPERATIONS, AS WELL AS THE TECHNICAL, AND REPORTED
12 ACCORDINGLY. THAT'S THE BEGINNING.

13 AND THEN IF YOU ARE A GEOGRAPHIC-NAME
14 APPLICANT, THAT WILL BE VALIDATED INITIALLY WITH THE
15 FIRST -- THAT WOULD BE THE FIRST THING THEY WILL
16 VALIDATE TO MAKE SURE THAT THERE'S NO STRING CONFLICT
17 AND SO FORTH WITH THE APPLICATION.

18 Q ARE THERE ANY PORTIONS OF THE APPLICATION
19 PROCESS THAT YOU WERE TOLD THAT THE DCA HAD PASSED?

20 A WE WAITED. OURS -- YES. THEY TOLD US THE
21 FINANCIAL AND TECHNICAL PART AND THE OPERATIONAL
22 PART.

23 Q AND AT SOME POINT DID YOU LEARN THAT ICANN
24 HAD TAKEN NEGATIVE ACTION WITH REGARD TO YOUR
25 APPLICATION?

26 A WELL, THAT WAS DURING THE TIME OF THE GAC
27 ADVICE. THERE WAS A GAC OBJECTION ADVICE
28 ORCHESTRATED BY GAC AND SUBMITTED TO THE BOARD FOR

1 ACCEPTANCE AS A RECOMMENDATION, AND THE BOARD
2 ACCEPTED IT AND THEN INSTRUCTED THE ICANN TO STOP
3 EVALUATING OUR APPLICATION.

4 Q AND ONCE THAT HAPPENED -- THERE WAS SOME
5 DISCUSSION YESTERDAY ABOUT SOME MECHANISMS WITHIN
6 ICANN THAT ONE MIGHT INVOKE TO SEEK TO OVERTURN A
7 DECISION.

8 DID YOU INVOKE ANY OF THOSE EFFORTS WITHIN
9 ICANN?

10 A YEAH. SO THE APPLICATION, THE GUIDEBOOK IS
11 VERY CLEAR IN THE PROCESS OF ACCOUNTABILITY, HOW TO
12 DO THAT. ONE WAS THE BOARD RECONSIDERATION. SO WE
13 WROTE, YOU KNOW, A 25-PAGE DOCUMENT, I THINK,
14 INFORMING THE BOARD WHEN WE GOT THE GAC ADVICE SAYING
15 THIS IS IN VIOLATION OF THE BYLAWS, IN VIOLATION OF
16 THE GUIDEBOOK AND SO FORTH, AND POINTED OUT ALL THE
17 DEFICIENCIES THAT OCCURRED AND ASKED THEM FOR
18 RECONSIDERATION.

19 Q WAS THAT SUCCESSFUL?

20 A NO.

21 Q WHAT DID YOU DO NEXT?

22 A THE NEXT WAS AFTER RECONSIDERATION, YOU GO
23 TO ANOTHER -- BOARD MEMBERS WHO ARE ACTUALLY MADE UP
24 OF THE SAME BOARD MEMBERS. THEY ARE CALLED BGC. I
25 DON'T KNOW IF YOU CAN HELP ME REMEMBER WHAT THE
26 MONIKER IS -- BOARD GOVERNANCE COMMITTEE. SO THEY
27 ARE A SUBGROUP OF THE BOARD WHO ACTUALLY LOOK AT THE
28 RECONSIDERATION AND SEE IF IT'S LEGITIMATE OR NOT AND

1 THEN THEY ALSO DENIED OUR REQUEST.

2 Q AND THEN WHAT DID YOU DO NEXT?

3 A AND THEN THERE IS -- ACTUALLY, I SHOULD STEP
4 BACK. IT'S NGCP; IT'S NOT BGC. SO THE FIRST IS
5 RECONSIDERATION TO THE GENERAL BOARD, AND THEN THE
6 SECOND ONE NGCP, WHICH IS THE NEW GTLD. THEY DECIDED
7 ON REJECTING THE BOARD -- THE GAC ADVICE. THEY
8 ACCEPTED IT; I'M SORRY. THEY ACCEPTED THAT GAC
9 ADVICE AND REJECTED OUR RECONSIDERATION. AND THEN IT
10 GOES TO A THIRD GROUP AGAIN CALLED BGC, BOARD
11 GOVERNANCE COMMITTEE, WHICH ARE ALSO MADE UP OF THE
12 NGCP, SO THEY EVALUATED OUR RECONSIDERATION AND ALSO
13 REJECTED IT.

14 Q OKAY. IS THERE A PROCESS CALLED THE CEP
15 THAT YOU'RE AWARE OF?

16 A CEP IS THE NEXT ONE THAT YOU DEAL WITH.
17 THAT HAPPENS WITH THE STAFF AND INTERNATIONAL COUNSEL
18 OF ICANN PARTICIPANTS INTO IT, AND WE AIRED THE SAME
19 GRIEVANCES THERE AND TOLD THEM YOU HAVE BROKEN THE
20 BYLAWS BY ACCEPTING THE GAC ADVICE, AND THEY TOLD US,
21 WELL, C'EST LA VIE; GO TO THE IRP IF YOU LIKE. SO WE
22 DID.

23 Q WHAT DID YOU DO NEXT?

24 A WE DID GO TO IRP.

25 Q AND WHEN DID YOU FILE THE IRP?

26 A WHEN?

27 Q WHEN.

28 A OH, 20- -- I CAN'T BE QUOTED. 2013.

1 Q I DON'T THINK THIS IS REALLY A DISPUTE.
2 DOES OCTOBER 24TH, 2013, RING A BELL?

3 A OKAY.

4 Q OKAY. AND HOW LONG DID THE IRP PROCESS
5 LAST?

6 A IT LASTED FROM 18 TO 20 MONTHS, I THINK.

7 Q AND DID YOU HAVE A LAWYER DURING THAT
8 PROCESS?

9 A YEAH. WE EMPLOYED A LAWYER.

10 Q AND WHO DID YOU HIRE?

11 A WE HIRED AN IRP LAWYER, MR. ARIF ALI. I
12 FOUND HIM THROUGH THE PROCESS BECAUSE HE HAS DONE AN
13 IRP -- WHAT IS IT CALLED? AN IRP LITIGATION WITH
14 ICANN WITH THE ICM PROJECT, WHICH WAS MENTIONED
15 YESTERDAY, AND HE'S WON THE BATTLE, SO I SAID HE MUST
16 BE THE RIGHT PERSON, AND I WENT TO HIM.

17 Q AND WHAT DID YOU ASK MR. ARIF (SIC) TO DO
18 FOR YOU?

19 A I ASKED HIM TO LOOK AT ALL THE GRIEVANCES I
20 PUT IN FRONT OF THE BOARD, THE GAC, AS WELL AS ALL
21 OUR RESPONSES. AND THEY TOOK ACCOUNT OF EVERYTHING,
22 AND THEN THEY DID THEIR JOB IN TERMS OF UNDERSTANDING
23 THE BYLAWS OF THE ICANN AND THE IRP PROCESS.

24 SO THEY LOOKED AT THE GAC ADVICE AND WHAT
25 HAPPENED.

26 Q OKAY. I WANT TO SHOW YOU AN EXHIBIT. THIS
27 IS EXHIBIT 2. A PORTION OF IT IS IN YOUR BOOK. A
28 PORTION OF IT IS. ACTUALLY, YOU CAN LOOK IN

1 **EXHIBIT 2, BUT NOT THE WHOLE THING.**

2 A THE ICANN APPLICANT GUIDEBOOK.

3 Q **AND HOW, GENERALLY, WAS THAT GUIDEBOOK**
4 **CREATED, IF YOU KNOW?**

5 A IT WAS CREATED BY ICANN. IT WENT THROUGH
6 VERSIONS AND VERSIONS OF REVISIONS THROUGHOUT, MAYBE
7 FIVE TO SEVEN, EIGHT YEARS UNTIL THE FINAL
8 PUBLICATION WAS RELEASED. IT WAS A COMMUNITY EFFORT
9 AND PARTICIPATION IN TERMS OF -- BECAUSE ICANN HAS A
10 LOT OF CONSTITUENCIES, LIKE MR. LEVEE SAID YESTERDAY,
11 ALL CONSTITUENCIES, KINDS THAT DELIBERATE, BASED ON
12 THE VERSIONS PRODUCED BY ICANN, SO IT'S SUPPOSED TO
13 BE HOLISTIC APPROACH OF, YOU KNOW, MAKING THE WHOLE
14 PROCESS TRANSPARENT, ACCOUNTABLE AND SO FORTH.
15 EVERYTHING IS INCLUDED AFTER EACH RELEASE. YEAH.

16 Q **OH, I DON'T THINK THIS ONE IS IN DISPUTE,**
17 **BUT I WOULD LIKE TO MOVE THIS ONE INTO EVIDENCE.**

18 THE COURT: ANY OBJECTION?

19 MR. LEVEE: NO, YOUR HONOR.

20 THE COURT: OKAY. EXHIBIT 2 IS RECEIVED
21 INTO EVIDENCE. THANK YOU.

22

23 (JOINT EXHIBIT NO. 2 WAS RECEIVED IN EVIDENCE.)

24

25 Q **BY MR. BROWN: AND I THINK YOU TESTIFIED**
26 **YESTERDAY THAT YOU HAD SOME INVOLVEMENT WITH REGARD**
27 **TO THE GUIDEBOOK. CAN YOU TELL THE COURT WHAT YOUR**
28 **INVOLVEMENT WAS WITH THE GUIDEBOOK AND ITS VARIOUS**

1 **DRAFTS?**

2 A OKAY. WHEN I WAS APPOINTED TO BE A POLICY
3 ADVISOR OF ICANN IN 2005, ICANN WAS IN THE PROCESS OF
4 DELIBERATING TO LIBERALIZE THE INTERNET NAME SPACE,
5 AND SO THE GTLD GUIDEBOOK WAS AN EARLY STAGE OF
6 DEVELOPMENT, AND SO IT WAS PART OF MY JOB AS POLICY
7 ADVISOR TO LOOK THROUGH AND DELIBERATE AND RECOMMEND
8 TO THE BOARD AND SO FORTH WHAT SHOULD BE IN THERE OR
9 NOT. AND ALSO LOOK AT PUBLIC COMMENTS AND RESPOND TO
10 THEM AND SO FORTH.

11 **Q WITHOUT REFERRING YOU TO A SPECIFIC NUMBER,**
12 **DO YOU HAVE A GENERAL IDEA HOW BIG THE GUIDEBOOK IS?**

13 A ABOUT 300 PAGES OR MORE.

14 **Q AND WE'VE TALKED ABOUT WHAT'S CALLED**
15 **MODULE 6, AND A PORTION OF MODULE 6 IS UP ON THE**
16 **BOARD HERE IN THE JURY GALLEY.**

17 DID YOU HAVE ANY INVOLVEMENT WITH REGARD TO
18 **THE CREATION OF MODULE 6 OF THE APPLICANT GUIDEBOOK?**

19 A NO.

20 **Q DO YOU HAVE A GENERAL UNDERSTANDING OF HOW**
21 **MODULE 6 CAME INTO BEING?**

22 A I THINK IT CAME TOWARDS THE LAST VERSION OF
23 THE ICANN GUIDEBOOK. I SUPPOSE IT'S ICANN FIGURING
24 OUT, TRYING TO PROTECT ITSELF FROM ANY LAWSUITS AFTER
25 IT RECEIVED MORE THAN 500 -- I THINK THE ANTICIPATED
26 APPLICANTS WAS ABOUT 500 INITIALLY, AND WHEN THEY
27 REACHED ABOUT 1,900 OR SO MORE, ICANN CAME UP WITH A
28 WAY TO PROTECT ITSELF, AND THIS WAS SORT OF SUBMITTED

1 AT THE LAST MINUTE.

2 Q SO DID THE -- YOU REFER TO THE COMMUNITY.
3 DID THE COMMUNITY HAVE ANY REACTION TO MODULE 6?

4 A YEAH. WHEN THAT WAS PLACED IN THERE, IT WAS
5 VERY CONTROVERSIAL.

6 Q OKAY. AND WE TALKED YESTERDAY ABOUT THE
7 ENTITY CALLED THE GAC. WHAT IS THE GAC?

8 A WELL, THE GAC -- IT WENT TO THE GAC.

9 Q LET ME JUST STOP YOU THERE. I JUST WANT TO
10 REMIND THE COURT WHAT THE GAC IS.

11 A WHAT THE GAC IS. THE GAC IS --

12 THE COURT: WHAT ARE THE LETTERS?

13 THE WITNESS: GAC IS GOVERNMENTAL ADVISORY
14 COMMITTEE.

15 THE COURT: THANK YOU.

16 THE WITNESS: AND IT'S MADE UP OF MEMBERS OF
17 GOVERNMENT GLOBALLY, NOT VERY INCLUSIVE OF ALL
18 GOVERNMENTS, BUT IT IS A LARGER GOVERNMENT ENTITY.

19 Q BY MR. BROWN: AND DID THE GAC SAY ANYTHING
20 ABOUT MODULE 6?

21 A YEAH. VERY UPSET WITH IT, AND THERE WAS A
22 CONSENSUS THAT IT SHOULD NOT BE -- IT WAS
23 UNCONSCIONABLE IS THE RIGHT TERM, AND SHOULD NOT
24 PROCEED.

25 Q HOW DID MODULE 6 ULTIMATELY BECOME PART OF
26 THE GUIDEBOOK, IF YOU KNOW?

27 A AS I SAID BEFORE, IT WAS ICANN -- I PRESUME
28 OUT OF ICANN'S LEGAL DEPARTMENT.

1 MR. LEVEE: YOUR HONOR, MAY I ASSERT A
2 HEARSAY OBJECTION AND FOUNDATION OBJECTION. THE
3 WITNESS HASN'T INDICATED THAT SHE WAS PART OF THE
4 DECISION-MAKING PROCESS ON WHAT WENT INTO THE
5 GUIDEBOOK'S FINAL VERSION AND, IN FACT, HASN'T
6 INDICATED THAT SHE HAS PERSONAL KNOWLEDGE OF THE
7 GAC'S.

8 THE COURT: I'LL SUSTAIN THE OBJECTION BASED
9 ON LACK OF FOUNDATION AS TO ANY ANSWERS. AND AS I
10 SAID BEFORE, IT WAS ICANN, I PRESUME OUT OF ICANN'S
11 LEGAL DEPARTMENT WOULD BE STRICKEN.

12 MR. BROWN: FAIR ENOUGH.

13 Q BY MR. BROWN: NOTWITHSTANDING THE
14 CONTROVERSY IN THE COMMUNITY AND THE GAC ADVICE, DID
15 MODULE 6 ULTIMATELY BECOME PART OF THE GUIDEBOOK?

16 A YES.

17 Q OKAY. AND WHEN YOU WERE DOING YOUR
18 APPLICATION FOR .AFRICA, DID YOU FOCUS ON MODULE 6 IN
19 ANY WAY?

20 A NO. NOT REALLY.

21 Q AND WHY WAS MODULE 6 NOT IMPORTANT TO YOUR
22 WORK ON YOUR APPLICATION?

23 A WELL, WITHIN THE GUIDEBOOK, WE WERE TOLD
24 THAT THERE WAS THE ICANN -- I MEAN THE IRP PROCESS,
25 AND WE FELT THAT THAT'S GOOD ENOUGH TO HOLD ANY KIND
26 OF IRREGULAR ACTIONS BY BOARD OR STAFF OR --
27 ACCOUNTABLE.

28 Q OKAY.

1 A SO THERE WAS NO NEED TO REALLY FOCUS ON THIS
2 ONE. AND SINCE IT CAME AT THE LAST MINUTE, PEOPLE
3 WERE PROBABLY -- WHO HAD DONE A LOT OF INVESTMENTS IN
4 PUTTING THE APPLICATION PROCESS TOGETHER ANYWAY.

5 Q WHEN IT CAME TIME TO FILE THE IRP, DID YOU
6 HAVE OCCASION TO REVIEW MODULE 6 AT THAT POINT IN
7 TIME?

8 A NOT REALLY. OUR LAWYERS DID.

9 Q OKAY. AND DID YOU -- AT THE TIME THAT --
10 LET ME TAKE A STEP BACK.

11 YOU LOOKED AT SOME DOCUMENTS THAT CONTAINED
12 SOME STATEMENTS ABOUT THE IMPORT OF MODULE 6. I WANT
13 TO TAKE A LOOK AT SOME OF THOSE TODAY.

14 LET ME SHOW YOU THE FIRST ONE THAT YOU WERE
15 SHOWN YESTERDAY, WHICH IS EXHIBIT 50 (INDICATING).

16 AND COULD YOU REMIND -- I THINK EXHIBIT 50
17 HAS ALREADY BEEN ADMITTED. COULD YOU REMIND THE
18 COURT WHAT EXHIBIT 50 IS?

19 A THIS IS A LETTER I WROTE TO THE CONGRESS.

20 Q OKAY. AND AT THE TIME YOU WROTE THAT LETTER
21 TO CONGRESS, DID YOU HAVE A LAWYER?

22 A NO.

23 Q DID YOU HAVE ANY UNDERSTANDING, OR WHAT WAS
24 YOUR UNDERSTANDING AS TO WHAT MODULE 6 DID AT THE
25 TIME YOU WROTE THE LETTER TO CONGRESS IN FEBRUARY OF
26 2013?

27 A I JUST UNDERSTOOD THAT IF THE IRP WAS NOT
28 BINDING, THEN THERE WAS NO WAY TO SUE ICANN.

1 Q OKAY. AND HOW DID YOU GAIN THE
2 UNDERSTANDING THAT THERE WAS NO WAY TO SUE ICANN?

3 A WELL, THE MODULE 6 SAYS IT. IT'S IN THE
4 GUIDEBOOK. IT'S ALWAYS DISCUSSED IN THE VARIOUS
5 MEETINGS WE ATTEND IN ICANN, AND IT'S PART OF THE
6 GNSO COUNSEL, WHICH IS GENERIC NAMES COUNSEL THAT I
7 WAS PARTICIPATING IN. THE BOARD KNOWS ABOUT IT.
8 IT'S THE SUBJECT OF THE PUBLIC FORUM DISCUSSIONS
9 DURING ICANN.

10 Q PRIOR TO FEBRUARY 2013 DID YOU HAVE AN
11 UNDERSTANDING AS TO WHAT ICANN'S POSITION WAS IN
12 TERMS OF WHAT MODULE 6 MEANT AND WHAT THE EFFECT OF
13 IT WAS?

14 A PRIOR TO?

15 Q PRIOR TO WRITING THIS LETTER THAT WE'RE
16 LOOKING AT, EXHIBIT 50.

17 A OH.

18 Q DID YOU HAVE AN UNDERSTANDING AS TO WHAT
19 ICANN'S POSITION WAS AS TO THE IMPACT OF MODULE 6?

20 A NO.

21 Q HAD YOU EVER HEARD ANYBODY FROM ICANN SAYING
22 THAT MODULE 6 PREVENTED ANY LAWSUITS AGAINST ICANN?

23 A YES.

24 Q AND --

25 A IT'S A MAINSTREAM THOUGHT.

26 Q NOW, DID YOU AT ANY TIME PRIOR TO WRITING
27 THIS LETTER, DID YOU HAVE -- DID ANY -- DID YOU EVER
28 EMPLOY ANY LAWYER TO TELL YOU WHAT THE PROPER

1 INTERPRETATION OF MODULE 6 WAS?

2 A NO.

3 Q AND DID YOU EVER HAVE A LAWYER EXPLAIN TO
4 YOU WHETHER OR NOT THEY BELIEVED MODULE 6 WAS
5 ENFORCEABLE?

6 A NO.

7 Q AND AS OF THE TIME THAT YOU WROTE THE LETTER
8 IN FEBRUARY OF 2013, HAD YOU SEEN OR BEEN AWARE OF
9 ANY COURT RULING DETERMINING WHETHER MODULE 6 WAS
10 ENFORCEABLE OR WHAT ITS MEANING WAS?

11 A NO.

12 Q AS OF THE TIME THAT YOU WROTE THIS LETTER IN
13 FEBRUARY OF 2013, HAD YOU DONE ANY INDEPENDENT
14 ANALYSIS TO DETERMINE WHETHER MODULE 6 WAS
15 ENFORCEABLE OR WHAT IT MEANT?

16 A WOULD YOU SAY THAT AGAIN? I'M SORRY.

17 Q SURE. DID YOU UNDERTAKE ANY KIND OF
18 INDEPENDENT ANALYSIS OF WHAT MODULE 6 MEANT AND
19 WHETHER IT WAS ENFORCEABLE AS OF THE TIME THAT YOU
20 WROTE THE LETTER TO CONGRESS?

21 A NO.

22 Q IN FEBRUARY OF 2013?

23 A NO.

24 Q NOW, YOU'VE SEEN SOME OTHER -- YOU'VE SEEN
25 SOME OTHER STATEMENTS THAT MR. ALI WROTE ON DCA'S
26 BEHALF TALKING ABOUT MODULE 6?

27 A YES.

28 Q IS THAT FAIR TO SAY?

1 A YESTERDAY.

2 Q YOU SAW SOME OF THOSE YESTERDAY.

3 PRIOR TO THE TIME THAT THE IRP ISSUED ITS
4 RULING, HAD ANY LAWYER -- HAD YOU HAD ANYBODY,
5 INCLUDING YOUR LAWYERS, SIT DOWN AND TALK TO YOU
6 ABOUT WHAT MODULE 6 MEANT?

7 A NO.

8 MR. LEVEE: YOUR HONOR, COULD I JUST SAY
9 THAT IF THE PLAINTIFF INTEND TO WAIVE THE PRIVILEGE,
10 I HAVE NO QUALMS ABOUT THAT. IF, ON THE OTHER HAND,
11 PLAINTIFF DOES NOT INTEND TO WAIVE THE PRIVILEGE,
12 ASKING A BUNCH OF QUESTIONS ABOUT WHETHER SHE'S HAD
13 CONVERSATIONS WITH HER LAWYER SEEMS TO TAKE US RIGHT
14 THERE.

15 THE COURT: WE'LL SEE WHERE HE GOES WITH
16 THIS AND WHAT THE EFFECTS ARE, BUT I APPRECIATE YOUR
17 CONCERN.

18 MR. LEVEE: ICANN WILL TAKE THE POSITION
19 THAT THE PRIVILEGE HAS BEEN WAIVED, AND WE'LL DEAL
20 WITH IT IN DUE COURSE.

21 THE COURT: OKAY. OKAY. THANK YOU. SO --
22 OKAY. SO, MR. BROWN.

23 THE WITNESS: WHAT WAS THE QUESTION?

24 THE COURT: I'LL LET YOU PROCEED, BUT JUST
25 BE --

26 MR. BROWN: UNDERSTOOD.

27 THE COURT: -- JUST BE AWARE OF WHETHER YOU
28 MAY BE WAIVING THE PRIVILEGE --

1 MR. BROWN: OKAY.

2 THE COURT: -- ATTORNEY/CLIENT PRIVILEGE BY
3 CERTAIN QUESTIONS YOU MIGHT ASK. WE'LL SEE WHERE IT
4 GOES.

5 MR. BROWN: OKAY.

6 Q BY MR. BROWN: UP TO THE POINT IN TIME THAT
7 YOU -- UP TO THE POINT IN TIME THAT THE IRP RENDERED
8 ITS DECISION, HAD YOU SEEN ANY COURT DECISION TALKING
9 ABOUT MODULE 6 AND WHAT IT MEANT?

10 A NO.

11 Q HAD YOU SEEN ANY INTERPRETATION OF MODULE 6
12 IN ANY COURT DECISION UP TO THAT POINT IN TIME?

13 A UNTIL -- WHILE IN IRP.

14 Q UP TO THE TIME THE IRP REACHED ITS DECISION.

15 A NO.

16 Q PRIOR TO RECEIVING JUDGE HALM'S DECISION IN
17 THIS CASE, HAD YOU SEEN ANY COURT DECISION TALKING
18 ABOUT THE INTERPRETATION OR ENFORCEABILITY OF MODULE
19 6?

20 A NOT REALLY, NO.

21 Q YOU SAY NOT REALLY?

22 A NO.

23 Q DID YOU SEE ONE? OKAY.

24 NOW, WHEN YOU LOOK BACK ON THE STATEMENTS
25 THAT YOU MADE TO CONGRESS IN EXHIBIT 50 AND THE
26 STATEMENTS THAT MR. ALI MADE IN THE VARIOUS DOCUMENTS
27 THAT WE SAW YESTERDAY, DO YOU HAVE ANY REACTION TO
28 THOSE?

1 A WELL, BASICALLY, I THINK OUR LAWYERS -- IT'S
2 HIS OWN PAPER. THEY WERE ARGUING THAT IF THE IRP'S
3 BINDING, THEN THE MODULE 6 IS NOT VALID. THAT'S WHAT
4 THEY WERE ARGUING; RIGHT? AND THE TIME I WROTE THIS
5 LETTER, I WAS NOT AWARE -- I WASN'T REALLY DEEP INTO
6 THE MODULE 6, SO I THINK I WOULD NOT HAVE KNOWN THE
7 OUTCOME OF MODULE 6 OR WHAT IT WOULD BE OR IF IT'S
8 VALID OR NOT VALID BECAUSE I BELIEVED THAT THE IRP
9 WAS THE SOLE FORUM AT THE TIME. THAT WAS WHAT I WAS
10 INFORMING CONGRESS ABOUT.

11 Q HAVE YOU LEARNED ANYTHING SUBSEQUENT TO
12 MAKING THESE STATEMENTS AND SEEING MR. ALI'S
13 STATEMENTS THAT HAS EDUCATED YOU MORE ABOUT THE
14 MEANING AND INTERPRETATION OF MODULE 6?

15 A OKAY. WELL, NOW I KNOW THAT THE IRP IS NOT
16 THE SOLE FORUM AND THAT, IF THE IRP IS NOT BINDING,
17 THEN THE LEGITIMACY OF MODULE 6 IS QUESTIONABLE. SO
18 I'VE LEARNED THAT NOW.

19 Q OKAY. LET ME SHOW YOU EXHIBIT 15 THAT YOU
20 LOOKED AT WITH MR. -- IT SHOULD BE IN YOUR BOOK. AND
21 THIS HAS ALREADY BEEN MOVED INTO EVIDENCE.

22 MS. COLON: IT'S IN THE BOOK AS WELL.

23 THE WITNESS: YEAH. BUT I'M WATCHING.
24 THANKS.

25 Q BY MR. BROWN: HAVE YOU BEEN ABLE TO FIND
26 EXHIBIT 15?

27 A OKAY. LET ME FIND IT THEN. IS THAT 2 OF 2?

28 Q I CAN COME UP AND FIND IT FOR YOU. MAY I

1 APPROACH?

2 THE COURT: YOU MAY APPROACH.

3 MR. BROWN: SEE IF I CAN FIND IT HERE.

4 Q BY MR. BROWN: THESE ARE KIND OF IN
5 NUMERICAL ORDER. SO UP TO 35, THEY'RE IN THAT BOOK,
6 AND AFTER 35 THEY'RE IN THIS BOOK (INDICATING).

7 TURN YOU TO PAGE -- PARAGRAPH 15 IS WHAT
8 WE'RE LOOKING AT.

9 THE COURT: JUST TO BE CLEAR, WHICH
10 EXHIBIT AND PAGE NUMBER YOU'RE REFERRING THE WITNESS
11 TO.

12 MR. BROWN: SURE. IT'S EXHIBIT 15 AND IT'S
13 PAGE 11 OF THE ADDED TO -- I'M USING THE BIG NUMBERS
14 AT THE BOTTOM OF THE PAGE, NOT THE INTERNAL
15 PAGINATION OF THE DOCUMENT ITSELF. AND SPECIFICALLY
16 LOOKING AT PARAGRAPH 15.

17 Q BY MR. BROWN: DID YOU SEE -- HAVE YOU BEEN
18 ABLE TO FIND PARAGRAPH 15?

19 A YES.

20 Q DURING THE PROCEDURAL HEARING HELD ON APRIL
21 12 -- 22 APRIL, ICANN'S COUNSEL DISPUTED THE FACT
22 THAT THE IRP IS FINAL AND BINDING. AS WE EXPLAINED
23 THEN, HOWEVER, "WHATEVER ICANN MAY HAVE INTENDED WHEN
24 IT CREATED THE IRP, IT HAS PUT IN PLACE A BINDING
25 MECHANISM FOR FINAL RESOLUTION OF DISPUTES OVER ICANN
26 BOARD DECISIONS."

27 I WANT TO TALK TO YOU ABOUT THE IRP. IN THE
28 IRP, WHAT PRIMARILY WAS -- WHAT WAS THE CENTRAL CLAIM

1 **THAT DCA WAS MAKING IN THE IRP?**

2 A IT WAS THE GAC OBJECTION ADVICE THAT STOPPED
3 OUR APPLICATION FROM MOVING FORWARD.

4 Q **OKAY. AND WHO MADE THE DECISION AT THE --**
5 **WHO MADE THE DECISION TO STOP DCA'S APPLICATION AS A**
6 **RESULT OF THE GAC ADVICE?**

7 A THE NGCP, WHICH IS PART OF THE BOARD GROUP.

8 Q **AND YOU THEN CHALLENGED THAT BOARD DECISION**
9 **IN THE IRP? IS THAT, BASICALLY, WHAT HAPPENED?**

10 A CORRECT. CORRECT.

11 Q **OKAY. AND IF YOU LOOK AT YOUR -- WELL, LET**
12 ME ASK YOU THIS: YOU HAD SOME OTHER COMPLAINTS ABOUT
13 THE CONDUCT OF ICANN DURING THE IRP; IS THAT FAIR TO
14 SAY?

15 A CORRECT. MANY.

16 Q **MANY. COULD YOU REMIND THE COURT WHAT SOME**
17 **OF THOSE WERE?**

18 A WELL, ONE OF IT WAS CONFLICT OF INTEREST OF
19 THE BOARD MEMBERS THAT WERE ACTUALLY MAKING DECISIONS
20 ON OUR APPLICATION THAT WERE ALSO MEMBERS OF THE
21 COMPETITION.

22 AND THE OTHERS WERE THE ISSUE OF AN
23 IRREGULAR CONTRACT BETWEEN THE AFRICAN UNION AND THE
24 COMPETITION THAT WAS AGAINST THE GUIDEBOOK.

25 AND MANY OTHER ISSUES ON THE APPLICATION OF
26 THE COMPETITION THAT DID NOT MEET THE GUIDEBOOK
27 CRITERIA. SO WE HAD SUBMITTED IT PRIOR TO EVEN THE
28 GAC ADVICE FOR THE EVALUATORS BECAUSE WE ARE ALLOWED

1 TO BY THE GUIDEBOOK RULES, AND THAT WAS IGNORED. AND
2 SO EVERY GRIEVANCE THAT WAS -- THAT DCA PRESENTED TO
3 THE GAC TO THE EVALUATORS WAS ALSO BROUGHT INTO THE
4 IRP.

5 Q OKAY. NOW, ON THESE OTHER ISSUES -- WE'RE
6 SEPARATING OUT THE BOARD'S DECISION ON THE GAC
7 ADVICE, BUT IN RESPECT TO ALL THOSE OTHER ISSUES, DID
8 ICANN TAKE A POSITION AS TO WHETHER IT WAS
9 APPROPRIATE FOR THE IRP TO DETERMINE ALL THOSE OTHER
10 ISSUES?

11 A YES.

12 Q AND WHAT WAS ICANN'S POSITION?

13 A THEY WERE IN A POSITION THAT THE BYLAWS OF
14 ICANN DOES NOT ALLOW THE PANEL TO RULE ON ANY ISSUES
15 OTHER THAN THE GAC ADVICE.

16 Q OKAY. AND DID, IN FACT, THE -- OTHER THAN
17 THE PROCEDURAL ISSUES ABOUT HOW THE IRP WAS TO
18 OPERATE AND THINGS LIKE COSTS THAT WE LOOKED AT
19 YESTERDAY AND THE BOARD'S DECISION ON GAC, DID THE
20 IRP PANEL RULE ON ANY OF THOSE OTHER COMPLAINTS THAT
21 YOU HAD, ANY OF THOSE OTHER SUBSTANTIVE COMPLAINTS
22 THAT YOU HAD PRESENTED?

23 A NO, THEY DIDN'T, UNFORTUNATELY. THE
24 ARGUMENT BETWEEN DCA AND OUR LAWYERS WERE THEY
25 SHOULD -- THE PANEL SHOULD RULE UPON IT, BUT THEY DID
26 NOT.

27 Q OKAY. SO I JUST WANT TO BE CLEAR. YOUR
28 TESTIMONY IS THAT THE PANEL DID NOT RULE ON THOSE

1 OTHER POINTS?

2 A YES.

3 Q OKAY.

4 NOW, WE'LL GET INTO SOMEWHAT MORE DETAIL
5 WITH THIS, BUT WITH REGARD TO THE FIRST AMENDED
6 COMPLAINT THAT YOU NOW BRING IN COURT, WHAT IS YOUR
7 CENTRAL COMPLAINT, CONCERN, THAT CAUSED YOU TO BRING
8 THE FIRST AMENDED COMPLAINT?

9 A WELL, AFTER THE IRP RULING WAS DECLARED BY
10 THE PANEL, WE THOUGHT IT WAS A BINDING RULING AND WE
11 THOUGHT THAT THE ICANN BOARD WOULD ACTUALLY FOLLOW IT
12 AND, IN FACT, THEY DID NOT. CONTRARY TO WHAT ICANN
13 REPORTS, THE ICANN BOARD IN FACT TOOK AND INSTRUCTED
14 AND PUT IN SOME LANGUAGES FOR THE ICANN STAFF TO
15 ACTUALLY TAKE OUR APPLICATION TO GAC AND ALSO TAKE
16 OUR APPLICATION TO EVALUATION OR CONTINUE WITH THE
17 EVALUATION, AS THEY SAID.

18 WE THOUGHT BY THE TIME THAT THE DISCOVERY
19 WAS DONE DURING THE IRP, WE HAD LEGITIMATE
20 ENDORSEMENTS THAT QUALIFIED US TO GO TO THE REMAINDER
21 OF THE APPLICATION BY THE PANEL, JUST LIKE THE PANEL
22 SAID.

23 SO ICANN -- WHILE THE GAC POSITION CANNOT BE
24 REINSTITUTED, ICANN, IN FACT, TOOK -- CONTACTED THE
25 A.U.C. AND CONTACTED THE COMPETITION AND ASKED THEM
26 TO PROVIDE INPUT AS TO HOW THEY EVALUATE THE IRP
27 RESULT, WHICH IS ENTIRELY AGAINST ANY GUIDEBOOK OR
28 ETHICAL PRINCIPLES WHERE A COMPETITION WILL BE ASKED

1 TO MAKE A COMMENT ON OR OPINION ON THE PANEL'S
2 DECISION.

3 WHILE THEY DID SO, THEY GAVE THEIR OPINION,
4 ICANN IMPLEMENTED THAT OPINION AND FAILED US ON THE
5 EVALUATION AND DECLARED, AGAIN, ZACR THE WINNER SINCE
6 THEY HAVE ALREADY SIGNED A REGISTRY CONTRACT WITH
7 THEM.

8 THE COURT: I'M SORRY. THANK YOU,
9 MS. BEKELE, I THINK YOU'RE -- IT'S BECOMING A
10 NARRATIVE.

11 MR. BROWN: RIGHT. I DIDN'T MEAN FOR IT TO
12 BECOME THAT.

13 MR. LEVEE: YOUR HONOR, ALL OF THIS IS PHASE
14 II, AND I'M GOING TO MOVE TO STRIKE THE ENTIRE
15 ANSWER. IT COULD HAVE BEEN -- THE ANSWER COULD HAVE
16 BEEN PROVIDED IN A SENTENCE.

17 THE COURT: ONE MOMENT.

18 OKAY. THE OBJECTION'S OVERRULED, BUT
19 MR. BROWN, I DON'T --

20 MR. BROWN: LET ME SEE IF I CAN --

21 THE COURT: I DON'T FIND IT TERRIBLY
22 PROBATIVE, BUT THE OBJECTION IS OVERRULED. SO
23 PERHAPS I'LL LET YOU FOCUS.

24 MR. BROWN: LET ME SEE IF I CAN FOCUS THIS
25 IN A LITTLE BIT.

26 Q BY MR. BROWN: AFTER THE IRP RULING, DID
27 ICANN TAKE ACTION ON WHETHER TO ALLOW OR DENY YOUR
28 APPLICATION?

1 A OKAY. THEY DENIED OUR APPLICATION.

2 Q OKAY. AND WHICH ACTORS WITHIN ICANN, TO
3 YOUR UNDERSTANDING, DID THE DENYING OF THE
4 APPLICATION?

5 A THE STAFF OF -- WELL, THE EVALUATORS WERE
6 THE VENDORS, ICC AND WITH THE INTERVENTION OF STAFF
7 AND THE INPUT OF GAC.

8 Q AND TO THE BEST OF YOUR UNDERSTANDING, DOES
9 THE IRP PROCEDURE ALLOW DCA TO CHALLENGE THE ACTIONS
10 OF A VENDOR SUCH AS ICC?

11 A NO.

12 Q AND TO THE BEST OF YOUR UNDERSTANDING, DO
13 IRP PROCEDURES ALLOW DCA TO CHALLENGE THE ACTIONS OF
14 ICANN'S STAFF?

15 A NO, IT DOESN'T.

16 Q OKAY.

17 MR. BROWN: YOUR HONOR, I NOTICE IT'S TWO OR
18 THREE MINUTES BEFORE. I'M KIND OF AT A STOPPING
19 POINT.

20 THE COURT: GOOD TIME TO BREAK.

21 MR. BROWN: IT MIGHT BE A GOOD TIME TO
22 BREAK.

23 THE COURT: OKAY. SO THE COURT NOTES IT'S
24 ABOUT 11:57 A.M.; WE'LL TAKE OUR NOON BREAK AT THIS
25 TIME AND RESUME THE TRIAL TODAY AT 1:30 P.M. WE'RE
26 OFF THE RECORD. THANK YOU.

27 THE WITNESS: THANKS.

28 (AT 11:58 A.M. THE LUNCH RECESS WAS TAKEN.)

1 CASE NAME : DOTCONNECTAFRICA TRUST
2 VS. INTERNET CORPORATION
3 FOR ASSIGNED NAMES AND
4 NUMBERS, ET AL.
5 CASE NUMBER: BC607494
6 LOS ANGELES, CALIFORNIA THURSDAY, FEBRUARY 7,
7 2019
8 DEPARTMENT NO. 53 HON. ROBERT B. BROADBELT,
9 III, JUDGE
10 COURT REPORTER: LAURIE MILLER, CSR #6457
11 APPEARANCES: (AS HERETOFORE
12 MENTIONED.)
13 TIME: 1:38 P.M.

14
15 THE COURT: GOOD AFTERNOON. WE'RE BACK ON
16 THE RECORD IN DOTCONNECTAFRICA TRUST VERSUS ICANN,
17 AND THE COURT NOTES THAT COUNSEL ARE AT THEIR PLACES
18 AT COUNSEL TABLE, AND THE WITNESS, MS. BEKELE, IS AT
19 HER PLACE AT THE WITNESS STAND. AND IT'S NOW A
20 LITTLE AFTER 1:35 P.M.

21 WE'RE RESUMING THE TRIAL IN THIS MATTER ON
22 PHASE I AFTER THE LUNCH HOUR, AND WHEN WE TOOK OUR
23 BREAK, MR. BROWN WAS CONDUCTING HIS CROSS-EXAMINATION
24 OF THE WITNESS. ARE YOU READY TO PROCEED?

25 MR. BROWN: I AM, YOUR HONOR, THANK YOU.

26 THE COURT: ALL RIGHT. YOU MAY CONTINUE.

27 Q BY MR. BROWN: MS. BEKELE, I JUST WANT TO
28 ASK A COUPLE OF FOLLOW-UP QUESTIONS TO EXHIBIT 50

1 THAT WE LOOKED AT A LITTLE BIT EARLIER. IT'S YOUR
2 LETTER TO CONGRESS. WE CAN PUT IT UP ON YOUR SCREEN.
3 I DON'T THINK YOU NEED THE DOCUMENT FOR THIS.

4 WHEN YOU SENT THIS LETTER, WAS IT PART OF
5 THE IRP PROCESS?

6 A NO, IT WASN'T.

7 Q WAS IT PART OF ANY JUDICIAL PROCESS?

8 A NO, IT WASN'T.

9 Q AND DID YOU OBTAIN ANY RELIEF FROM CONGRESS
10 AS A RESULT OF THE LETTER YOU WROTE?

11 A NO.

12 Q LET ME TAKE TO YOU THE NEXT DOCUMENT I WANT
13 TO ASK ABOUT, AND IT'S ALSO ONE THAT CAME UP IN YOUR
14 TESTIMONY YESTERDAY, AND THAT'S EXHIBIT 16. YOU
15 SHOULD BE ABLE TO FIND THAT IN YOUR BOOK.

16 A ALL RIGHT. I AM THERE.

17 Q ALL RIGHT. ARE YOU FAMILIAR WITH EXHIBIT
18 16? DCA'S RESPONSE TO PANEL'S QUESTIONS?

19 A CORRECT.

20 Q YES.

21 A ON PROCEDURAL ISSUES? YES.

22 Q OKAY.

23 WE LOOKED AT SOME PARAGRAPHS OF THIS
24 DOCUMENT YESTERDAY. I WANT TO TAKE YOU TO SOME OTHER
25 PARAGRAPHS THAT WE DIDN'T SPEND ANY TIME WITH.

26 IN PARTICULAR, I WANT TO TAKE YOU TO
27 PARAGRAPH 15, WHICH IS ON PAGE 9 OF THE DOCUMENT, AND
28 IT'S A CULMINATION OF A SERIES OF PARAGRAPHS STARTING

1 WITH PARAGRAPH 10 ON PAGE 6 UNDER THE HEADING, "THE
2 PANEL MAY LIMIT THE APPLICATION OF CERTAIN TERMS
3 GOVERNING THE IRP BECAUSE THE AGREEMENT TO USE IRP IS
4 PROCEDURALLY AND SUBSTANTIVELY UNCONSCIONABLE."

5 IF YOU LOOK AT PARAGRAPH 15, IT SAYS.
6 (AS READ):

7 "CALIFORNIA COURTS HAVE RULED
8 NON-BINDING ARBITRATION AGREEMENTS,
9 SIMILAR TO WHAT ICANN CLAIMS THE
10 IRP IS, IS UNCONSCIONABLE. UNDER
11 CALIFORNIA LAW, WHERE A COURT OR
12 TRIBUNAL DETERMINES THAT A CONTRACT
13 IS UNCONSCIONABLE, THE DECIDING
14 BODY MAY, 1, REFUSE TO ENFORCE THE
15 CONTRACT AS A WHOLE;
16 2, ENFORCE THE REMAINDER OF THE
17 CONTRACT WITHOUT THE UNCONSCIONABLE
18 CLAUSE; OR, 3, LIMIT ANY
19 UNCONSCIONABLE CLAUSE TO AVOID AN
20 UNCONSCIONABLE RESULT."

21 AFTER THE IRP RULING IN WHICH THE IRP
22 DETERMINED THAT THE IRP SHOULD BE BINDING, HOW DID
23 ICANN TREAT THE IRP RULING?

24 A WELL, HAVING ARGUED THROUGHOUT THE IRP THAT
25 IT SHOULDN'T BE BINDING, ALL THE PROCEDURAL ISSUES OR
26 THE PROCEDURES, THEY FINALLY DID NOT TREAT THE --
27 EVEN THOUGH THE PANEL SAID IT SHOULD BE BINDING,
28 ICANN TOOK IT AND DID NOT TREAT IT AS BINDING.

1 Q AND IN FACT DID ICANN CONTINUE TO TAKE THE
2 POSITION THAT IRP'S WERE NOT BINDING AFTER THE RULING
3 IN YOUR IRP?

4 A YES, THEY DID.

5 Q OKAY. AND TO YOUR UNDERSTANDING, WHAT
6 WAS -- WHAT WERE YOUR LAWYERS TRYING TO SAY IN
7 PARAGRAPH 15 OF EXHIBIT 16?

8 A (REVIEWING DOCUMENT.)

9 IT'S COMPLEX, BUT I THINK WHAT THEY'RE
10 SAYING IS IF THE IRP IS NOT BINDING, THEN MODULE 6
11 SHOULD -- IS UNCONSCIONABLE.

12 Q AND, FURTHER, IF IT'S UNCONSCIONABLE, HOW
13 SHOULD MODULE 6 BE TREATED?

14 A WELL, THERE IS AN OPPORTUNITY FOR APPLICANT
15 TO SUE ICANN.

16 Q SURE. HOW IS -- YOU UNDERSTAND THAT DCA HAS
17 TAKEN SOME POSITIONS WITH REGARD TO THE
18 ENFORCEABILITY OF MODULE 6 IN THIS CASE; IS THAT FAIR
19 TO SAY?

20 A YEAH.

21 Q OKAY. AND IS THE POSITIONS THAT DCA HAS
22 TAKEN IN THIS CASE THE SAME OR DIFFERENT THAN THOSE
23 THAT ARE SET FORTH IN PARAGRAPH 15 OF EXHIBIT 16?

24 MR. LEVEE: OBJECTION, YOUR HONOR.

25 THE WITNESS: SEEMS LIKE THE SAME.

26 MR. LEVEE: CALLS FOR A LEGAL CONCLUSION.

27 THE WITNESS: SEEMS LIKE THE SAME.

28 THE COURT: EXCUSE ME ONE MOMENT. THERE'S

1 AN OBJECTION. I'LL ASK YOU TO WAIT, PLEASE.

2 OVERRULED. YOU CAN ANSWER THE QUESTION.

3 THE WITNESS: YOU CAN ASK ME AGAIN. SORRY.

4 Q BY MR. BROWN: YOU DON'T REMEMBER THE
5 QUESTION? OKAY. I'LL ASK IT AGAIN.

6 SO ARE THE POSITIONS THAT DCA IS TAKING IN
7 THIS CASE ABOUT MODULE 6 THE SAME OR DIFFERENT THAN
8 THOSE POSITIONS THAT ARE SET FORTH IN PARAGRAPH 15 OF
9 TRIAL EXHIBIT 16, TO THE BEST OF YOUR UNDERSTANDING?

10 A IT IS.

11 Q IT IS WHAT?

12 A THE SAME.

13 Q THE SAME? OKAY. THANK YOU.

14 NEXT I'M GOING TO ASK YOU TO LOOK AT EXHIBIT
15 119.

16 A SECOND BOOK?

17 Q IT WILL BE IN THE SECOND BOOK. IT WILL BE
18 IN THE ONE WITH THE HIGHER NUMBERS.

19 A I'M THERE.

20 Q DID YOU FIND IT?

21 A YES.

22 Q ARE YOU FAMILIAR WITH THAT DOCUMENT?

23 A ICANN'S RESPONSE TO CLAIMANT'S AMENDED
24 NOTICE.

25 Q DURING THE COURSE OF THE IRP, DID YOUR
26 LAWYERS SEND YOU VARIOUS FILINGS BY THE PARTIES?

27 A YES, THEY DID.

28 Q AND ARE YOU FAMILIAR WITH THEM?

1 A YEAH. I REVIEWED THEM.

2 MR. BROWN: YOUR HONOR, WE'D MOVE TO ADMIT
3 EXHIBIT 119. I NOTE IT'S NOT ON THE AGREED LIST, SO
4 THERE MAY BE OBJECTIONS.

5 THE COURT: ANY OBJECTION?

6 MR. LEVEE: NO, YOUR HONOR. EXHIBIT 119 IS
7 RECEIVED INTO EVIDENCE. THANK YOU.

8

9 (JOINT EXHIBIT NO. 119 WAS RECEIVED IN EVIDENCE.)

10

11 **Q BY MR. BROWN: LET ME POINT YOU TO PARAGRAPH**
12 **2 ON PAGE 002.**

13 IT SAYS (AS READ):

14 "THESE UNIQUE PROCEEDINGS
15 OCCUR PURSUANT TO ARTICLE 4 OF
16 SECTION 3 OF ICANN'S BYLAWS, WHICH
17 CREATES A NON-BINDING METHOD OF
18 EVALUATING CERTAIN ACTIONS OF
19 ICANN'S BOARD OF DIRECTORS."

20 DO YOU SEE THAT?

21 A YES, I DO.

22 **Q IS THAT CONSISTENT WITH THE POSITION THAT**
23 **ICANN TOOK THROUGHOUT THE IRP?**

24 A COMPLETELY, YES.

25 **Q AND IT GOES ON TO SAY, AT -- IN THE BOTTOM**
26 **OF THAT PARAGRAPH, IN PARTICULAR, THE IRP PANEL IS**
27 **THE -- DEFINED STANDARD OF REVIEW OF THE IRP REQUEST,**
28 **FOCUSING ON THREE SPECIFIC THINGS, A, B, AND C.**

1 A DID THE BOARD ACT WITHOUT CONFLICT OF
2 INTEREST IN ITS DECISION? DID THE BOARD EXERCISE DUE
3 DILIGENCE AND CARE? DID THE BOARD MEMBER EXERCISE
4 INDEPENDENT JUDGMENT?

5 AND YOUR QUESTION IS?

6 Q ARE THOSE THE LIMITED ISSUES THAT ICANN
7 ASSERTED THAT THE IRP SHOULD FOCUS ON?

8 A YES.

9 Q AND WAS THAT POSITION TAKEN CONSISTENTLY
10 THROUGHOUT THE IRP PROCEEDINGS?

11 A CORRECT.

12 Q LET ME GET YOU TO LOOK AT EXHIBIT 33.

13 A (WITNESS COMPLIES.)

14 Q AND, SPECIFICALLY, I'M GOING TO TAKE YOU TO
15 PAGE 22 OF THAT DOCUMENT. DID THE IRP, TO YOUR
16 UNDERSTANDING, EVER MAKE A RULING AS TO WHETHER THE
17 IRP WAS THE SOLE FORUM IN WHICH DCA COULD EVER BRING
18 CLAIMS AGAINST ICANN?

19 A NO.

20 Q OKAY. LET ME TAKE YOU TO PARAGRAPH 73,
21 WHICH SAYS (AS READ):

22 "THUS, ASSUMING THAT THE
23 FOREGOING WAIVER OF ANY AND ALL
24 JUDICIAL REMEDIES WAS VALID AND
25 ENFORCEABLE, THEN THE ONLY AND
26 ULTIMATE ACCOUNTABILITY REMEDY FOR
27 AN APPLICANT IS THE IRP."

28 OTHER THAN THAT ASSUMPTION, ARE YOU AWARE OF

1 ANY OTHER RULING THAT THE IRP MADE ON THAT SUBJECT?

2 A NO.

3 Q LET ME TAKE YOU TO -- WELL, ACTUALLY, LET ME
4 ASK YOU THIS: DID DCA ASK THE IRP PANEL TO DECLARE
5 THAT ICANN HAD VIOLATED CALIFORNIA LAW?

6 A NO.

7 Q DID DCA ASK THE IRP PANEL TO FIND THAT ICANN
8 HAD COMMITTED FRAUD UNDER CALIFORNIA LAW?

9 A NO.

10 Q DID DCA ASK THE PANEL TO FIND THAT ICANN HAD
11 VIOLATED BUSINESS AND PROFESSIONS CODE SECTION 17200?

12 A NO.

13 Q LET ME GET YOU TO LOOK AT PARAGRAPH -- LET
14 ME GET TO YOU LOOK AT EXHIBIT 37, WHICH I THINK IS IN
15 YOUR SECOND BINDER.

16 AND, SPECIFICALLY, I WANT YOU TO LOOK AT
17 PAGE 13, IF YOU WOULD.

18 A OKAY. I SEE THAT.

19 Q PARAGRAPHS 57 THROUGH 61.

20 NOW, WITHOUT GETTING INTO DETAIL, AND WE'RE
21 NOT TRYING TO GET INTO PHASE II HERE, BUT COULD YOU
22 JUST INFORM THE COURT GENERALLY WHAT ALLEGATIONS
23 YOU'RE MAKING IN THOSE PARAGRAPHS, 57 TO 61?

24 A LET ME SEE THE TITLE. (AS READ):

25 "ICANN'S PROCESS OF
26 APPLICATION AFTER THE IRP
27 DECLARATION."

28 SO IT'S BASICALLY THE PROCESSING OF OUR

1 APPLICATION REGARDING ENDORSEMENT AFTER THE IRP.

2 Q AND WHAT DID -- WELL, LET ME STRIKE THAT.

3 LET ME TAKE YOU TO THE FRAUD SECTION OF THE
4 COMPLAINT, WHICH IS ON PAGE 17. PARAGRAPH 73 TO 78.

5 THERE WAS SOME TESTIMONY YESTERDAY ABOUT
6 WHETHER THE ITEMS THAT ARE LISTED IN THE FRAUD
7 SECTION OF THE FIRST AMENDED COMPLAINT ARE THE SAME
8 OR IDENTICAL ISSUES THAT WERE RAISED AT THE IRP, AND
9 WHAT I WANT TO ASK YOU IS: IS THERE ANYTHING THAT
10 ICANN DID AFTER THE IRP THAT YOU CONSIDER TO BE
11 FRAUDULENT OR INTENTIONALLY WRONGFUL?

12 A YES.

13 Q OKAY. AND JUST WITHOUT GETTING INTO
14 DETAIL -- I DON'T WANT TO BORE THE COURT WITH ANY
15 DETAIL BECAUSE IT'S REALLY RELEVANT TO PHASE II, BUT
16 CAN YOU SUMMARIZE VERY BRIEFLY WHAT YOU THINK WAS
17 DONE AFTER THE IRP THAT YOU BELIEVED WAS FRAUDULENT
18 AND/OR INTENTIONALLY WRONGFUL?

19 A WELL, BASICALLY, WE BELIEVE THAT THE ORDER
20 THAT THE PANEL GAVE TO PROCESS OUR APPLICATION
21 THROUGH THE REMAINDER OF THE PROCESS MEANT FOR US
22 THAT WE GO TO DELEGATION BECAUSE THE ENDORSEMENT
23 REQUIREMENT WAS ALREADY MET, EVEN THOUGH THE DECISION
24 HAS NOT BEEN MADE.

25 SO -- DURING THE IRP PANEL, IT WAS
26 DISCOVERED THAT. SO WE BELIEVE THAT ICANN WENT AND
27 REPROCESSED OUR APPLICATION, AND SO THEY HAD ASKED US
28 CLARIFICATION QUESTIONS. WE OBLIGED WITH THE

1 PROCESS. WE DIDN'T WANT TO INTERRUPT IT. SO WE
2 OBLIGED. THEY ASKED US FOR CLARIFICATION; WE GAVE
3 THEM A CLARIFICATION, AND THEY CAME BACK AND SAID WE
4 FAILED AND DIDN'T MEET THEM. AND WE GO BACK AND ASK
5 THEM, WHICH IS VERY NORMAL, PLEASE TELL US THE BASIS
6 OF WHY YOU ARE REJECTING OUR CLARIFICATION, AND
7 THEY -- NO COMMUNICATION. THEY JUST FORWARDED US THE
8 SAME CLARIFICATION SAYING, "HERE IT IS, EITHER ANSWER
9 THAT OR."

10 SO WE WENT BACK TO GIVE THEM EXACTLY THE
11 SAME DOCUMENTS THAT WE SUBMITTED SAYING THIS SHOULD
12 BE ADEQUATE FOR YOU, AND THEY CAME BACK WITH A
13 RESPONSE SAYING YOU FAILED. SO THERE WAS NO
14 COMMUNICATION.

15 Q I WANT TO TRY TO KEEP IT --

16 A OKAY.

17 Q TRY TO KEEP IT SHORT AND TO THE POINT HERE.

18 SO LET ME TAKE YOU TO SOME ADDITIONAL
19 DOCUMENTS.

20 WE TALK -- YOU TALKED SOME YESTERDAY DURING
21 MR. LEVEE'S TESTIMONY ABOUT VARIOUS PROCEDURAL ISSUES
22 THAT WERE RAISED IN THE IRP.

23 YOU REMEMBER THAT?

24 A YES.

25 Q THINGS LIKE LIVE WITNESSES, DOCUMENT
26 EXCHANGES, ADDITIONAL BRIEFING, AND THINGS OF THAT
27 SORT; RIGHT?

28 A CORRECT.

1 Q AND MR. LEVEE POINTED OUT SOME STATEMENTS
2 THAT MR. ALI HAD MADE REFERENCING WHETHER OR NOT DCA
3 COULD PURSUE ITS CLAIMS IN COURT.

4 YOU REMEMBER THAT?

5 A I DON'T QUITE REMEMBER, BUT OKAY.

6 Q OKAY. DO YOU RECALL DURING THE -- DO YOU
7 REMEMBER IF DURING THE IRP PROCEEDING MR. ALI MADE
8 OTHER ARGUMENTS RELATING TO THOSE PROCEDURAL ISSUES
9 OTHER THAN THE FACT THAT -- OR OTHER THAN THE
10 ARGUMENT THAT DCA DIDN'T HAVE AN OPPORTUNITY TO BRING
11 THESE CLAIMS IN COURT?

12 A AGAIN, THE QUESTION?

13 Q SURE. DO YOU REMEMBER WHETHER -- MR. ALI
14 MADE ARGUMENTS ABOUT THESE PROCEDURAL ISSUES; RIGHT?

15 A CORRECT.

16 Q DO YOU REMEMBER WHETHER HE MADE ARGUMENTS
17 THAT WERE OTHER THAN JUST THE FACT THAT YOU MIGHT NOT
18 BE ABLE TO BRING THESE CLAIMS IN COURT?

19 A THE ARGUMENTS THAT ALL THE PROCEDURAL -- THE
20 PROCEDURE SHOULD BE BINDING OR NOT WAS DISCUSSED IN
21 DETAIL.

22 Q OKAY. LET ME SEE IF I CAN DO THIS. LET ME
23 SEE IF I CAN REFRESH YOUR RECOLLECTION.

24 LET ME TAKE YOU TO EXHIBIT 39, IF I COULD.
25 AND YOU SAW THIS DOCUMENT YESTERDAY.

26 CAN YOU TELL THE COURT WHAT THIS DOCUMENT
27 IS.

28 A DCA WRITES (AS READ):

1 "IN RESPONSE TO ICANN'S LETTER
2 TODAY CONCERNING THE SCOPE OF THE
3 IRP, WE ALSO BRIEFLY ADDRESS
4 ICANN'S CATEGORICAL REFUSAL TO STAY
5 PROCESSING OF ZACR'S APPLICATION
6 FOR .AFRICA UNTIL THIS IS
7 CONCLUDED."

8 SO THIS IS THE DOCUMENT THAT REQUESTED THE
9 PANEL TO DO A STAY, AN EMERGENCY STAY.

10 Q I THINK THIS DOCUMENT, IF YOU LOOK AT IT --
11 LET ME SHOW YOU -- IT TALKS ABOUT THE SCOPE -- IF YOU
12 LOOK AT THE BOTTOM OF THE FIRST PAGE, IT TALKS ABOUT
13 THE SCOPE OF THE PROCEEDING FOCUSING ON ICANN'S
14 SUPPLEMENTARY PROCEDURES?

15 A OKAY.

16 Q SO DO YOU REMEMBER WHETHER THIS DOCUMENT
17 RELATES TO SOME OF THESE PROCEDURAL ISSUES THAT WE
18 WERE TALKING ABOUT YESTERDAY?

19 A YES.

20 Q OKAY. AND IF YOU LOOK AT THE DOCUMENT --
21 AND THIS -- WAS THIS DOCUMENT WRITTEN BY YOUR
22 LAWYERS?

23 A IF IT'S SIGNED BY THEM, YES.

24 Q WELL, IF YOU LOOK AT THE BACK, JUST SO THE
25 RECORD IS CLEAR.

26 A YEAH. CORRECT.

27 Q IF YOU LOOK AT THE BACK PAGE.

28 A CORRECT.

1 Q AND IF YOU LOOK AT PAGE 2, IT SAYS

2 (AS READ):

3 "THE PANEL SHOULD BE GUIDED FIRST
4 AND FOREMOST BY THE TEXT OF THE
5 ICDR RULES AND SUPPLEMENTARY
6 PROCEDURES AS OPPOSED TO ICANN'S
7 CURRENT SELF-SERVING GLOSS ON THOSE
8 RULES."

9 DO YOU SEE THAT?

10 A YES, I DO.

11 Q DOES THIS REFRESH YOUR RECOLLECTION AS TO
12 WHETHER MR. ALI, ON THESE PROCEDURAL ISSUES, ALSO
13 MADE ARGUMENTS REGARDING WHAT THE ICDR RULES REQUIRED
14 FOR PROCEDURES?

15 A YES.

16 Q AND DO YOU KNOW WHETHER THE PANEL
17 ACCEPTED -- LET ME STRIKE THAT.

18 IN RULING ON THE PROCEDURAL ISSUES, DO YOU
19 KNOW WHAT ARGUMENTS ULTIMATELY THE PANEL ACCEPTED?

20 A I THINK THEY ACCEPTED ARGUMENTS OF THE ICDR
21 RULES BEING SUPPLEMENTARY PROCEDURES, PLUS ALL THE
22 ARGUMENTS THAT DCA PUT FORWARD.

23 MR. LEVEE: OBJECTION. FOUNDATION.

24 THE COURT: SUSTAINED. THE RESPONSE WILL BE
25 STRICKEN.

26 Q BY MR. BROWN: DO YOU RECALL AT ANY POINT IN
27 TIME THAT ANY OF THE PANELISTS STATED, IN EFFECT,
28 THAT THEY WERE RULING ON THE PROCEDURAL ISSUES IN

1 YOUR FAVOR BECAUSE THE -- BECAUSE DCA DIDN'T HAVE
2 ANOTHER AVENUE TO GO TO COURT?

3 A NOT AT ALL.

4 MR. LEVEE: BEFORE THE WITNESS RESPONDS, MAY
5 I OBJECT?

6 THE COURT: YOU MAY.

7 MR. LEVEE: THE QUESTION IS LEADING. MOST
8 OF THE QUESTIONS ARE LEADING, BUT I'M ONLY OBJECTING
9 AT THIS POINT TO THIS PARTICULAR QUESTION.

10 THE COURT: WELL, I'M GOING TO OVERRULE THE
11 OBJECTION ON THAT PARTICULAR QUESTION, BUT I'M GOING
12 TO ASK YOU TO NOT ASK LEADING QUESTIONS, MR. BROWN.

13 MR. BROWN: FAIR ENOUGH. IN SOME RESPECTS,
14 I'M TRYING TO MOVE IT, BUT I'LL TRY TO REFRAIN.

15 Q BY MR. BROWN: DO YOU RECALL ANY STATEMENTS
16 BY THE PANEL STATING THAT THEY WERE RULING ON THE
17 PROCEDURAL ISSUES BECAUSE OF THE ARGUMENTS THAT
18 MR. ALI MADE ABOUT THE IRP BEING THE SOLE FORUM?

19 A NO.

20 Q OKAY. LET ME -- LET ME TAKE YOU TO EXHIBIT
21 31, WHICH WE ALSO LOOKED AT YESTERDAY. LET ME TAKE
22 YOU SPECIFICALLY TO PAGE 3 OF THAT DOCUMENT.

23 A I'M THERE.

24 Q CAN YOU DESCRIBE FOR THE COURT GENERALLY
25 WHAT THIS DOCUMENT IS?

26 A OKAY. SAYS "DCA MAKES THIS SUBMISSION ON
27 COST PURSUANT TO THE PANEL'S PROCEDURAL ORDER NUMBER
28 10."

1 Q AND THIS APPEARS TO BE A FIVE-PAGE LETTER,
2 AND IT'S SIGNED BY YOUR COUNSEL; IS THAT RIGHT?

3 A I BELIEVE, YES.

4 Q OKAY.

5 A SAYS ARIF ALI.

6 Q MR. LEVEE TOOK YOU TO A PARTICULAR STATEMENT
7 ON PAGE 3, OR PART OF A STATEMENT THAT SAYS IN THE
8 CLAUSES -- IT WAS RIGHT BEFORE THE HEADING ON THE
9 MIDDLE OF PAGE 3 WHERE IT SAYS (AS READ):

10 "WHICH IS THE ONLY INDEPENDENT
11 ACCOUNTABILITY MECHANISM AVAILABLE
12 TO PARTIES SUCH AS DCA."

13 DO YOU SEE THAT? IT'S RIGHT ABOVE THE
14 HEADING.

15 A THE LAST HEADING?

16 Q YOU SEE THE HEADING THAT SAYS --

17 A "ICANN PREVAILS IN THE IRP PROCEEDING"?

18 Q YES. RIGHT. RIGHT ABOVE THAT -- YOU SEE
19 WHERE IT SAYS THIS IS THE ONLY INDEPENDENT
20 ACCOUNTABILITY MECHANISM AVAILABLE FOR THE PARTIES?

21 A YES.

22 Q ARE YOU FAMILIAR GENERALLY WITH THE
23 ARGUMENTS THAT WERE MADE BY YOUR COUNSEL ABOUT COSTS
24 IN THE IRP PROCEEDING?

25 A YES.

26 Q AND WHAT WAS THE BASIS OF THOSE ARGUMENTS?

27 A BASICALLY, A COST. THE ICANN BYLAWS DIRECT
28 PARTICIPANTS OR APPLICANTS IN THE IRP AND GIVES

1 DIRECTION WHO SHOULD ASSUME THE COST SHOULD THE -- TO
2 WHICH PARTY PREVAILS.

3 SO THE PREVAILING PARTY -- OR THE LOSING
4 PARTY PAYS ALL THE COSTS FOR THE PREVAILING PARTY.
5 IT IS A STATEMENT OF FACT IN THE BYLAWS.

6 Q OKAY. AND IF YOU LOOK AT EXHIBIT 33, WHICH
7 IS THE PANEL DECLARATION STARTING AT PARAGRAPH 140 TO
8 147, STARTS ON PAGE 59 -- WERE YOU ABLE TO FIND THAT
9 ON PAGE 39 OF EXHIBIT 33?

10 A PANEL'S FINDING. 59.

11 Q PAGE 59, EXHIBIT 33, STARTING AT PARAGRAPH
12 140.

13 A ALL RIGHT.

14 Q DO YOU HAVE AN UNDERSTANDING AS TO THE
15 GROUNDS UPON WHICH THE IRP PANEL RULED IN FAVOR OF
16 DCA ON THE ISSUE OF COSTS?

17 A YEAH. IT IS BASICALLY ADHERENCE TO THE
18 ICANN BYLAWS. WE BOTH SUBMITTED; ICANN SUBMITTED
19 PAPERWORK AND DCA SUBMITTED PAPERWORK. ASSUMING BOTH
20 SIDES PREVAILED, THIS IS THE COST. ICANN DID THE
21 SAME THING. AND WHEN WE FINALLY PREVAILED, THEY
22 INSTRUCTED ICANN TO PAY ALL THE COSTS.

23 Q AND THE PARAGRAPHS FROM 140 TO 147 RELATING
24 TO COSTS, DID THE PANEL SAY ANYTHING ABOUT AWARDING
25 COSTS BASED ON THE IRP BEING THE SOLE FORUM AVAILABLE
26 TO DCA?

27 A NO. IT'S BASED ON THE MERITS AND THE
28 OUTCOME OF THE CASE.

1 Q I'D LIKE TO SHOW YOU EXHIBIT 109.

2 ARE YOU FAMILIAR WITH THIS DOCUMENT?

3 A SUBJECT MATTER -- I'M RESPONDING FURTHER TO
4 MRS. WALTER'S E-MAIL SENT ON --

5 THE COURT: SO, I'M SORRY, THE QUESTION WAS
6 ARE YOU FAMILIAR WITH THIS DOCUMENT?

7 THE WITNESS: I'LL HAVE TO READ THROUGH IT.

8 THE COURT: PLEASE FOCUS ON YOUR ATTORNEY'S
9 QUESTION. HE'S ASKING FOR A REASON.

10 THE WITNESS: OKAY. I'M TRYING TO READ
11 THROUGH IT. IS THAT OKAY?

12 THE COURT: YOU MAY, BUT YOU NEED TO READ
13 THROUGH IT SILENTLY TO YOURSELF IF YOU WISH TO LOOK
14 AT IT.

15 THE WITNESS: OKAY.

16 MR. BROWN: YOUR HONOR, AND I'LL JUST SAY
17 THIS TO POTENTIALLY SPEED THIS UP. WE HAVE SOME
18 NUMBER OF DOCUMENTS NOT ON THE JOINT LIST, BUT THERE
19 ARE DOCUMENTS WE WOULD LIKE TO GET IN THAT ARE
20 FILINGS OR LETTERS OR OTHER STATEMENTS THAT WERE MADE
21 BY ICANN IN FRONT OF THE IRP PANEL.

22 IF THERE'S NOT AN OBJECTION TO THOSE
23 DOCUMENTS COMING IN, THEN I CAN DEFER QUESTIONING AND
24 WE COULD JUST ADMIT THEM AT THE END, BUT THERE MAY BE
25 OBJECTIONS, SO I DON'T WANT TO --

26 THE COURT: OKAY.

27 MR. BROWN: I'M JUST TRYING TO SEE IF
28 THERE'S A WAY TO MOVE THIS FASTER.

1 THE COURT: MAYBE YOU CAN MEET AND CONFER ON
2 A BREAK AND SEE IF YOU CAN STIPULATE TO ADMISSIBILITY
3 OF CERTAIN EXHIBITS. IF SO, YOU CAN JUST STATE WHAT
4 YOUR STIPULATION IS AND WHICH EXHIBITS THE PARTIES
5 HAVE STIPULATED TO BE RECEIVED INTO EVIDENCE.

6 MR. LEVEE: IF I MAY, THE REASON THAT --
7 ICANN DOES NOT OBJECT TO HAVING THE COURT KNOW, WHICH
8 I ALREADY ELICITED TESTIMONY, THAT ICANN ALMOST
9 ALWAYS TOOK CONTRARY POSITIONS TO DCA.

10 WHAT WE OBJECT TO IS THE EXTENSIVE MATERIALS
11 THAT THE PLAINTIFF HAS PROPOSED TO INTRODUCE AS
12 EXHIBITS THAT GO INTO GREAT DETAIL AS TO WHAT THE
13 PARTIES' VARIOUS POSITIONS WERE. I DON'T SEE HOW
14 THAT'S RELEVANT. WE'VE ALREADY AGREED, AND WE WOULD
15 STIPULATE. AND I, AS I SAID, ELICITED TESTIMONY FROM
16 MS. BEKELE YESTERDAY THAT WHEN DCA TOOK A POSITION ON
17 A PROCEDURAL ISSUE, ICANN INVARIABLY TOOK THE
18 OPPOSITE POSITION. AND THAT IS ACTUALLY LAID OUT IN
19 GREAT DETAIL IN THE FINAL DECLARATION BY THE IRP
20 PANEL, WHICH HAS BEEN ADMITTED INTO EVIDENCE.

21 SO WE ARE TRYING -- THAT IS THE REASON FOR
22 OUR OBJECTIONS TO SO MANY OF THE DOCUMENTS.

23 THE COURT: WELL, IT SEEMS LIKE SOMETHING --
24 IF THE EXHIBITS WERE ADMITTED, BOTH SIDES CAN ARGUE
25 WHAT THE PROBATIVE VALUE OF THE EXHIBITS ARE.

26 MR. BROWN: WELL, THAT WAS ACTUALLY MY
27 SUGGESTION, SO IF WE JUST ADMIT THEM, WE CAN CUT
28 THROUGH THIS. OBVIOUSLY THEY CAN ARGUE THEY'RE

1 COMPLETELY IRRELEVANT. FOR THE MOST PART, WE'RE
2 USING THEM TO MAKE CONTEXT FOR THE STATEMENTS THAT
3 DCA MADE OR, IN SOME INSTANCES, OR CHARACTERIZATIONS
4 OF WHAT THE IRP PROCEEDING WAS, WHICH WE THINK IT
5 GOES TO WHETHER IT WAS A JUDICIAL OR QUASI-JUDICIAL
6 FORUM. SO WE'D LIKE TO BE ABLE TO USE THOSE SPECIFIC
7 STATEMENTS. I MEAN, OBVIOUSLY WE'RE NOT GOING TO
8 QUOTE IN OUR BRIEFS TO YOUR HONOR PAGES AND PAGES AND
9 PAGES OF THESE THINGS.

10 THE COURT: OKAY. WHY DON'T YOU TAKE IT
11 EXHIBIT BY EXHIBIT. BUT I WOULD SUGGEST WHEN WE TAKE
12 OUR BREAK, THAT COUNSEL CONFER AND SEE IF YOU CAN
13 STIPULATE TO ANY OF THE ADMISSIBILITY OF ANY OF THE
14 EXHIBITS THAT MR. BROWN WISHES TO ADMIT.

15 MR. LEVEE: IF YOU HAVE A LIST, I CAN LOOK
16 RIGHT NOW.

17 MR. BROWN: SURE. DO YOU WANT TO JUST HAND
18 THEM A LIST OF THE ONES THAT WE -- I THINK WE PARED
19 IT DOWN SOME FROM THE ONES THAT WERE IN THE --

20 THE COURT: YOU WANT TO TAKE A 10-MINUTE
21 BREAK?

22 MR. BROWN: WE CAN.

23 MR. LEVEE: MAYBE EVEN LESS. I DON'T NEED A
24 10-MINUTE BREAK.

25 THE COURT: WE'LL TAKE A BREAK, AND THEN
26 BOTH COUNSEL CAN LET THE CLERK KNOW WHEN YOU'RE READY
27 TO PROCEED; OKAY?

28 MR. LEVEE: THANK YOU, YOUR HONOR.

1 MR. BROWN: THANK YOU.

2 THE COURT: WE CAN GO OFF THE RECORD AT THIS
3 TIME.

4

5 (A RECESS WAS TAKEN.)

6

7 THE COURT: WE'RE BACK ON THE RECORD IN
8 DOTCONNECTAFRICA TRUST VERSUS INTERNET CORPORATION
9 FOR ASSIGNED NAMES AND NUMBERS, AND COUNSEL ARE AT
10 THEIR PLACES AT COUNSEL TABLE.

11 THE COURT: MR. BROWN IS AT THE PODIUM, AND
12 THE WITNESS IS ON THE WITNESS STAND.

13 OKAY. WAS THERE ANYTHING YOU WANT TO
14 ADDRESS WITH THE COURT BEFORE MR. BROWN CONTINUES
15 WITH HIS CROSS-EXAMINATION?

16 MR. BROWN: YES, YOUR HONOR. WE WERE ABLE
17 TO MEET AND CONFER AND AGREE ON SOME STIPULATED
18 EXHIBITS WHICH I THINK WILL SAVE US SOME TRIAL
19 TESTIMONY, SO I'LL READ IN THE LIST IF YOU LIKE.

20 THE COURT: THAT'S FINE. I NOTE IT'S ABOUT
21 2:25 P.M. OKAY.

22 SO THE PARTIES HAVE STIPULATED TO ADMISSION
23 OF CERTAIN EXHIBITS.

24 MR. BROWN: CERTAIN EXHIBITS.

25 THE COURT: OKAY. THANK YOU.

26 MR. BROWN: WHICH OBLIATE THE NEED TO HAVE
27 TESTIMONY ABOUT THEM.

28 SO THE FIRST ONE IS PLAINTIFF'S EXHIBIT 107.

1 THE NEXT ONE IS 108.

2 THE NEXT ONE IS 121; 122; 124 AND 132.

3 THE COURT: ALL RIGHT. SO THE PARTIES HAVE
4 STIPULATED TO HAVE THE FOLLOWING EXHIBITS ADMITTED
5 INTO EVIDENCE: EXHIBITS 107, 108, 121, 122, 124 AND
6 132.

7 IS THAT SO STIPULATED, MR. BROWN?

8 MR. BROWN: YES, YOUR HONOR.

9 THE COURT: THANK YOU. AND MR. LEVEE?

10 MR. LEVEE: YES, YOUR HONOR.

11 THE COURT: OKAY. THANK YOU FOR WORKING
12 THAT OUT, COUNSEL.

13 ALL RIGHT. AND THE COURT ORDERS THAT
14 PURSUANT TO STIPULATION OF THE PARTIES, EXHIBITS 107,
15 108, 121, 122, 124 AND 132 ARE RECEIVED INTO
16 EVIDENCE. ALL RIGHT. THANK YOU.

17 EXHIBITS 107, 108, 121, 122, 124
18 AND 132 ARE RECEIVED INTO EVIDENCE.

19 MR. BROWN: THANK YOU VERY MUCH.

20

21 (PLAINTIFF'S EXHIBIT NOS. 107, 108,
22 121, 122, 124 AND 132 WERE
23 RECEIVED IN EVIDENCE.)

24

25 Q BY MR. BROWN: MS. BEKELE, I THINK I ONLY
26 HAVE A HANDFUL OF MORE QUESTIONS HERE.

27 SO THE THING I WANT TO ASK YOU IS DO YOU
28 HAVE A VIEW AS TO WHETHER -- WHEN ICANN MET -- WHEN

1 ICANN'S BOARD MET AFTER THE IRP AND MADE SOME
2 RESOLUTIONS THAT WE SAW YESTERDAY, DO YOU HAVE A VIEW
3 AS TO WHETHER THE ICANN BOARD FAITHFULLY IMPLEMENTED
4 THE RULING OF THE IRP?

5 A NO, THEY DID NOT.

6 Q AND CAN YOU TELL THE COURT, IN YOUR WORDS,
7 WHAT YOU THINK -- WHAT PARTS OF THE IRP RULING YOU
8 BELIEVE WERE NOT FULLY OR FAITHFULLY IMPLEMENTED?

9 A THE RULING THAT CLEARLY SAYS THAT THE DCA
10 APPLICATION SHOULD GO TO THE REMAINDER OF THE
11 PROCESS, AND THE OTHER THING IS THAT GAC SHOULD
12 NOT -- THEY DIDN'T SAY ANYTHING ABOUT GAC, BUT ICANN
13 DECIDED TO INVITE GAC TO HAVE OPINED ON IT.

14 Q OKAY. AND CAN YOU EXPLAIN, JUST AGAIN,
15 BRIEFLY, WHY DO YOU BELIEVE THAT ICANN RAISING THIS
16 ISSUE AGAIN WITH THE GAC AFTER THE IRP RULING WAS NOT
17 PROPER AND NOT CONSISTENT WITH THE IRP DECLARATION?

18 A WELL, BASICALLY, THE SCOPE OF THE IRP, AS
19 ICANN ARGUED, WAS LIMITED TO THE GAC OBJECTION
20 ADVICE, AND WE WON THAT, AND THEN THEY STILL WENT
21 BACK AND ASKED GAC FOR REFINEMENT, AND WE WROTE A
22 LETTER SAYING THAT'S ALSO NOT CONSISTENT WITH YOUR
23 GUIDEBOOK.

24 AND THEN THEY INVITED, INSTEAD, THE A.U.C.,
25 WHICH HOLDS THE LARGE PART OF GAC IN AFRICAN
26 COUNTRIES AND THE COMPETITION TO OPINE ON THE IRP
27 RESULTS, AND THEN THEY IMPLEMENTED THEIR WISHES.

28 THE COURT: OKAY. THANK YOU. NEXT

1 QUESTION.

2 Q BY MR. BROWN: OKAY. AND THERE'S BEEN SOME
3 SUGGESTION THAT DCA SHOULD HAVE FILED A SECOND IRP
4 AFTER ITS APPLICATION WAS DENIED IF IT HAD ANY
5 COMPLAINTS.

6 CAN YOU TELL THE COURT WHY YOU DID NOT FILE
7 A SECOND IRP?

8 A FIRST OF ALL, WE THOUGHT IT WAS SORT OF A
9 REVOLVING DOOR WHEN -- IF THE IRP IS NOT A BINDING
10 DECISION, AND ICANN IS ALLOWED TO FASHION THEIR OWN
11 SOLUTION AS THEIR LAWYERS SAID, THEY WILL CONTINUE TO
12 FASHION THE SOLUTION TO THEIR OUTCOME, SO GOING TO
13 ANOTHER IRP WOULD BE PURPOSELESS.

14 SECOND, THERE'S NOTHING IN THE GUIDEBOOK
15 THAT SAYS YOU CAN GO TO A SECOND IRP. NOBODY THAT I
16 HAVE KNOWN HAS GONE TO A SECOND IRP.

17 AND THIRD, PRIMARILY, THAT THE POST-IRP
18 ACTIONS WERE STAFF-ORIENTED, SO THERE'S NO PROCEDURE
19 OR ANYTHING IN PLACE IN THE IRP; AS ICANN ARGUED,
20 THAT'S ONLY FOR BOARD ACTION. SO WHAT WOULD WE HAVE
21 GAINED IF WE HAD GONE TO SECOND IRP? I CAN'T JUST
22 SIMPLY COME BACK AND SAY "WELL, THAT'S A STAFF
23 ACTION. BOARD IS NOT ACCOUNTABLE FOR THIS" AND THEN
24 WE GET REJECTED. SO THE PLATFORM WAS NOT THERE.

25 MR. BROWN: I HAVE NO FURTHER QUESTIONS AT
26 THIS TIME.

27 THE COURT: OKAY. THANK YOU, MR. BROWN.
28 THE COURT NOTES IT'S ABOUT 2:30 P.M.

1 MR. LEVEE, DO YOU HAVE ANY REDIRECT
2 EXAMINATION?

3 MR. LEVEE: I DO, YOUR HONOR.

4 THE COURT: OKAY. WHAT'S YOUR TIME
5 ESTIMATE?

6 MR. LEVEE: 20, 30 MINUTES.

7 THE COURT: OKAY. THANK YOU. ARE YOU READY
8 TO PROCEED?

9 MR. LEVEE: I AM.

10 THE COURT: OKAY. YOU MAY DO SO WHEN YOU'RE
11 READY.

12

13 REDIRECT EXAMINATION

14 BY MR. LEVEE:

15 Q GOOD AFTERNOON, MS. BEKELE. HOW ARE YOU?

16 A GOOD AFTERNOON.

17 Q I'M GOING TO GO SOMEWHAT IN SEQUENCE OF
18 WHERE -- WHAT MR. BROWN DID.

19 FIRST, LET ME ASK, YOU SAID THAT ENGLISH IS
20 NOT YOUR FIRST LANGUAGE; IS THAT CORRECT?

21 A YEAH.

22 Q WHEN YOU WENT TO COLLEGE, WHERE DID YOU GO
23 TO COLLEGE?

24 A SAN FRANCISCO STATE UNIVERSITY.

25 Q AND WERE YOUR CLASSES IN ENGLISH?

26 A CORRECT.

27 Q AND WHERE DID YOU GET MASTER'S DEGREE?

28 A GOLDEN GATE UNIVERSITY.

1 Q AND WERE YOUR CLASSES IN ENGLISH?

2 A CORRECT.

3 Q AND WHEN YOU WORKED IN THE INDUSTRY, SO TO
4 SPEAK, DID YOU COMMUNICATE IN ENGLISH?

5 A CORRECT.

6 Q AND WHEN I TOOK YOUR DEPOSITION THREE TIMES,
7 WERE THOSE DEPOSITIONS ALL IN ENGLISH?

8 A YES.

9 Q AND DID YOU CORRECT ANY OF YOUR DEPOSITION
10 TRANSCRIPTS?

11 A SOMETIMES, YES.

12 Q YOU ISSUED -- DCA ISSUED CORRECTIONS TO
13 THEIR TRANSCRIPTS, FORMAL CORRECTIONS, TO YOUR
14 KNOWLEDGE?

15 A WE HAVE SOME -- YEAH. WE GET THE DEPOSITION
16 TRANSCRIPTS; RIGHT?

17 Q YES.

18 A YES.

19 Q AND DID YOU CAUSE --

20 A WE HAVE SUBMITTED REVISIONS.

21 Q YOU RECALL SIGNING A SUBMITTED REVISION TO
22 YOUR DEPOSITION TRANSCRIPT?

23 A I DON'T REMEMBER. I SENT TO IT THE LAWYERS,
24 I BELIEVE.

25 Q YOU DON'T KNOW WHETHER THE LAWYERS SENT TO
26 IT COUNSEL FOR ICANN?

27 A NO.

28 Q NOW, IN 2009, WERE YOU ALSO THE EXECUTIVE

1 DIRECTOR OF DCA?

2 A CORRECT.

3 Q AND DID YOU SUBMIT COMMENTS OCCASIONALLY TO
4 ISSUES THAT WERE -- TO DRAFTS -- EXCUSE ME.

5 DID YOU ISSUE, IN THAT CAPACITY, COMMENTS TO
6 DRAFT MODULES OF THE GUIDEBOOK?

7 A IN THE GUIDEBOOK, YES.

8 Q YES.

9 A NOT PARTICULARLY TO THIS; RIGHT
10 (INDICATING)?

11 Q WE'LL COME BACK TO THAT.

12 A OH.

13 Q BUT DO YOU REMEMBER THAT YOU SUBMITTED SOME
14 COMMENTS TO ICANN WITH RESPECT TO VARIOUS ISSUES
15 ASSOCIATED WITH DRAFTS OF THE GUIDEBOOK?

16 A I BELIEVE THAT AS PARTICIPANT IN GNSO
17 COUNSEL, WE HAD VERBAL COMMUNICATIONS AND VERBAL
18 INPUTS; RIGHT?

19 Q AND DO YOU REMEMBER THAT YOU ALSO SUBMITTED
20 WRITTEN COMMENTS?

21 A I MAY HAVE, IF I'M REQUESTED OR --

22 Q WAS ANYBODY AT DCA AUTHORIZED TO SUBMIT
23 WRITTEN COMMENTS OTHER THAN YOU?

24 A I DON'T THINK SO.

25 Q OKAY.

26 NOW, I THINK YOU TESTIFIED THAT THIS
27 LANGUAGE OF MODULE 6, THE COVENANT, THAT THAT CAME
28 INTO BEING SORT OF LATE IN THE PROCESS; WAS THAT YOUR

1 **TESTIMONY?**

2 A YES, I DID.

3 Q SO YOU'RE PRETTY CONFIDENT THAT IT DID NOT
4 **EXIST PRIOR TO 2011?**

5 A I WAS THERE SINCE 2005.

6 Q DO YOU REMEMBER WHEN THE FIRST DRAFT OF
7 **MODULE 6 BECAME AVAILABLE FOR PUBLIC COMMENTS?**

8 A I UNDERSTOOD IT'S A FEW YEARS BEFORE THE
9 RELEASE OF THE FINAL GUIDEBOOK.

10 Q **OKAY.**

11 MR. LEVEE: YOUR HONOR, MAY I APPROACH? I
12 HAVE A TRIAL EXHIBIT THAT'S BEEN MARKED, BUT WHICH IS
13 NOT IN THE WITNESS'S BINDER. IT'S TRIAL EXHIBIT 60.

14 THE COURT: YOU MAY APPROACH.

15 MR. LEVEE: IT'S A REBUTTAL EXHIBIT, SO I'M
16 GOING TO HAND IT TO THE COURT AS WELL AND --

17 THE COURT: SO YOU WISH TO MARK THIS
18 DOCUMENT AS EXHIBIT 60 FOR IDENTIFICATION?

19 MR. LEVEE: FOR IDENTIFICATION, YES.

20 THE COURT: OKAY. IT WILL BE SO MARKED.

21

22 (DEFENDANT'S EXHIBIT NO. 60, AN
23 E-MAIL DATED 4-12-09, WAS MARKED
24 FOR IDENTIFICATION.)

25

26 Q **BY MR. LEVEE: MS. BEKELE, DO YOU RECOGNIZE**
27 **EXHIBIT 60?**

28 A I'M LOOKING AT IT NOW. LOOKS LIKE IT CAME

1 OUT OF -- IT SAYS "SUBJECT, DOTCONNECTAFRICA TRUST,
2 MODULE 6."

3 Q YES. AND DO YOU SEE IT'S FROM THE
4 DOTCONNECTAFRICA TRUST EXECUTIVE DIRECTOR; RIGHT?

5 A YES.

6 Q AND THAT WAS YOU; RIGHT?

7 A YES.

8 Q DO YOU SEE THAT IT'S TO THE -- "TO GTLD
9 TERMS"; THAT WAS THE ADDRESS WHERE A PERSON COULD
10 SEND COMMENTS ON THE DRAFT OF THE GUIDEBOOK?

11 A WHERE DOES IT SAY THAT, MODULE 6?

12 Q I'M JUST -- WHERE IT SAYS, "TO," "SUBJECT,"
13 "FROM," "DATE." I'M JUST TAKING YOU THROUGH THAT.
14 YOU SEE THAT?

15 A OH, RIGHT.

16 Q AND THEN THE SUBJECT IS "DOTCONNECTAFRICA
17 TRUST MODULE 6."

18 A OKAY.

19 Q YOU SEE THAT?

20 A YES.

21 Q AND THE DATE IS APRIL 12, 2009?

22 A YES.

23 Q RIGHT? THAT'S ROUGHLY THREE YEARS BEFORE
24 YOU SUBMITTED YOUR APPLICATION; RIGHT?

25 A RIGHT.

26 Q OKAY. NOW --

27 MR. LEVEE: YOUR HONOR, FIRST, MAY I MOVE
28 THIS DOCUMENT INTO EVIDENCE?

1 THE COURT: ANY OBJECTION?

2 MR. BROWN: NO, YOUR HONOR.

3 THE COURT: EXHIBIT 60 IS RECEIVED INTO
4 EVIDENCE.

5

6 (DEFENDANT'S EXHIBIT NO. 60 WAS
7 RECEIVED IN EVIDENCE.)

8

9 Q BY MR. LEVEE: OKAY. NOW, IT STARTS AT THE
10 TOP; YOU SEE WHERE IT SAYS "MODULE 6" RIGHT AT THE
11 TOP?

12 A RIGHT.

13 Q AND IT SAYS (AS READ):

14 "ICANN NEEDS TO INVESTIGATE,
15 CLARIFY BEFORE OPENING ROUND IN
16 LIGHT OF POSSIBLE LIABILITIES TO
17 APPLICANTS THAT SOME COUNTRIES,
18 WHERE LOCAL LAWS HAVE BEEN PASSED
19 TO PREVENT THE DEPLOYMENT AND USE
20 OF TLDS, PARTICULARLY IDN TLDS AND
21 SCRIPTS OF LOCAL INTEREST WITHOUT
22 LOCAL GOVERNMENT CONSENT."

23 DO YOU KNOW WHAT THAT MEANS?

24 A YEAH. IT'S SORT OF SAYING THAT -- HONESTLY,
25 I'M TRYING TO REMEMBER, ARTICULATE, WHAT IT'S EXACTLY
26 TRYING TO SAY.

27 Q OKAY. BUT YOU WERE CONCERNED ABOUT WHETHER
28 THERE WERE CERTAIN LIABILITIES TO THE APPLICANTS. IN

1 OTHER WORDS, WHETHER ICANN WOULD HAVE LIABILITY TO
2 APPLICANTS?

3 A RIGHT.

4 Q AND MAYBE IT WILL BE EASIER IF I ASK YOU
5 ABOUT PARAGRAPH 61, YOUR COMMENT. YOU SEE THAT?

6 A UH-HUH.

7 Q YOU SAY (AS READ):

8 "THERE'S NOTHING THAT STATES
9 THAT IF ICANN OR THE APPLICANT
10 ENGAGED IN QUESTIONABLE BEHAVIOR OR
11 LEGAL RECOURSE, AN INVESTIGATION
12 SHOULD REMAIN OPEN. THIS IS WITHIN
13 ANY STANDARD CONTRACTUAL NORMS AND
14 ALSO IN KEEPING WITH ICANN'S STATED
15 ADMISSION OF OPENNESS,
16 TRANSPARENCY, FAIRNESS, AND
17 ESPECIALLY ACCOUNTABILITY. IN MANY
18 LEGAL JURISDICTIONS, FOREGOING THE
19 RIGHT TO SUE OR CHALLENGE ANOTHER
20 PARTY -- IN THIS CASE ICANN ON
21 APPLICATION ISSUES -- IS ILLEGAL IN
22 ITSELF."

23 LET ME STOP THERE.

24 SO YOU WERE REFERRING TO THE COVENANT NOT TO
25 SUE IN MODULE 6; RIGHT?

26 A IT REFERS TO THAT, YEAH.

27 Q OKAY.

28 AND YOU WERE SAYING THIS COULD BE

1 UNENFORCEABLE; RIGHT?

2 A YEAH.

3 Q NOW, DID YOU HAVE A LAWYER BACK THEN?

4 A NO. ACTUALLY, I THINK I KNOW WHERE THIS
5 DOCUMENT COMES FROM. I USED TO REPRESENT --

6 THE COURT: OKAY. I'M SORRY. SO --

7 THE WITNESS: I'M SORRY.

8 THE COURT: -- I'M GOING TO ASK YOU TO JUST
9 CONFINE YOUR ANSWER TO ANSWERING THE QUESTION
10 DIRECTLY.

11 THE WITNESS: OH.

12 THE COURT: SO, I'M SORRY, MR. LEVEE.

13 MR. LEVEE: YES. I'M GOING TO CONTINUE
14 READING.

15 THE WITNESS: OKAY.

16 THE COURT: OKAY.

17 Q BY MR. LEVEE: IT SAYS (AS READ):

18 "FURTHER, THE INCLUSION OF
19 OTHER JUDICIAL FORA BEYOND STANDARD
20 COURTS IMPLIES THAT ICANN CANNOT
21 ONLY DO NO WRONG, BUT CAN DO
22 WHATEVER IT WANTS, AND IN ORDER TO
23 APPLY FOR A GTLD THAT IT MAY OR MAY
24 NOT GET AFTER SIGNIFICANT EXPENSE,
25 THE APPLICANT MUST GIVE UP PRETTY
26 MUCH ALL ITS CIVIL RIGHTS."
27 THAT'S WHAT YOU WROTE; RIGHT?

28 A YEAH.

1 Q AND THEN IN PARAGRAPH 10, YOU WROTE
2 (AS READ):

3 "WHILE ICANN HAS THE OPTION
4 ALL ALONG TO UNILATERALLY DENY THE
5 APPLICATION AT ANY TIME, IT APPEARS
6 THAT IF ULTIMATELY ICANN OFFERS
7 SOME REGISTRY AGREEMENT OF ITS
8 CHOICE FOR THE APPLICANT TO SIGN,
9 THE APPLICANT MUST SIGN AND ACCEPT
10 AND HAS NO RIGHT TO WALK AWAY FOR
11 WHATEVER REASON. NOT SURE IF
12 ENFORCEABLE"; RIGHT?

13 A YES.

14 Q SO WHAT YOU WERE SAYING IS ICANN WAS GOING
15 TO IMPOSE A DRAFT REGISTRY AGREEMENT, IF IT APPROVED
16 THE APPLICATION, AND TELL THE APPLICANT, "YOU SIGN
17 THIS OR YOU'RE NOT GOING TO PROCEED"; RIGHT?

18 A CORRECT.

19 Q YOU WERE SAYING YOU'RE NOT SURE THAT'S
20 ENFORCEABLE; RIGHT?

21 A CORRECT.

22 Q SO WHEN MR. BROWN ASKED YOU IF YOU HAD EVER
23 SUBMITTED ANY PUBLIC COMMENTS ON MODULE 6, AND YOU
24 SAID, "NO, I HAD NEVER SUBMITTED PUBLIC COMMENTS ON
25 MODULE 6," THAT TESTIMONY WAS NOT ACCURATE; RIGHT?

26 A I DON'T REMEMBER IF I ACTUALLY SAID THAT OR
27 NOT.

28 Q YOU DON'T REMEMBER SAYING THAT IN RESPONSE

1 TO MR. BROWN'S QUESTION?

2 A NO. BECAUSE IN DEPOSITION, YOU ASKED ME
3 THIS QUESTION, AND I SAID I HAVE. AND THIS POSITION
4 IS VERY CONSISTENT TO WHAT I HAVE TOLD MR. BROWN
5 REGARDING MY KNOWLEDGE ON MODULE 6.

6 THE COURT: OKAY. THANK YOU. I THINK
7 YOU'VE ANSWERED THE QUESTION.

8 THE WITNESS: OKAY.

9 THE COURT: NEXT QUESTION.

10 MR. LEVEE: THANK YOU, YOUR HONOR. LET ME
11 JUST CLARIFY.

12 Q BY MR. LEVEE: DO YOU NOT REMEMBER TODAY
13 BEFORE LUNCH TELLING MR. BROWN THAT THE DCA HAD NEVER
14 SUBMITTED ANY PUBLIC COMMENT ON MODULE 6?

15 A I MAY HAVE, HONESTLY.

16 Q YOU JUST DON'T REMEMBER ONE WAY OR THE
17 OTHER?

18 A I JUST DON'T REMEMBER.

19 Q OKAY. DOES THIS REFRESH YOUR RECOLLECTION
20 THAT MODULE 6 PRETTY MUCH, IN ITS CURRENT CONDITION,
21 WAS PRETTY MUCH THE SAME AS HAD BEEN PROPOSED IN
22 2009?

23 A I SUPPOSE IT IS. IF THERE WAS A VERSION, I
24 DIDN'T ANALYZE IT.

25 Q OKAY. I HAVE A COPY OF THE 2009 VERSION,
26 BUT I DON'T WANT TO TAKE ANY ADDITIONAL TIME.

27 ARE YOU PRETTY COMFORTABLE THAT THE VERSION
28 OF MODULE 6 THAT WAS IN PLACE IN 2009 THAT YOU

1 COMMENTED ABOUT WAS PRETTY SIMILAR TO THE FINDING?

2 A I DON'T REMEMBER.

3 Q OKAY.

4 WELL, IF YOU DON'T REMEMBER, THEN LET'S MARK
5 THE NEXT EXHIBIT.

6 MR. LEVEE: THIS WILL BE REBUTTAL
7 EXHIBIT 61, YOUR HONOR.

8 THE COURT: OKAY. THAT'S MARKED FOR
9 IDENTIFICATION.

10

11 (DEFENDANT'S EXHIBIT NO. 61, THE
12 NEW GTLD PROGRAM DRAFT APPLICANT
13 GUIDEBOOK, WAS MARKED FOR
14 IDENTIFICATION.)

15

16 MR. LEVEE: MAY I APPROACH, YOUR HONOR?

17 THE COURT: YOU MAY. SO I JUST ASK THAT
18 COUNSEL MAKE SURE THAT THE -- ANY ADDITIONAL EXHIBITS
19 THAT ARE MARKED FOR IDENTIFICATION OR ADMITTED INTO
20 EVIDENCE BE ADDED TO THE EXHIBIT BINDERS.

21 MS. BURKE: YES, YOUR HONOR.

22 THE COURT: THANK YOU.

23 MR. LEVEE: YOUR HONOR, MAY WE DO THAT IN
24 THE MORNING BEFORE WE START?

25 THE COURT: YOU MAY.

26 MR. LEVEE: THANK YOU.

27 Q BY MR. LEVEE: LET ME ASK YOU TO TAKE A LOOK
28 AT EXHIBIT 61 MARKED FOR IDENTIFICATION. DO YOU SEE

1 AT THE BOTTOM, THE DATE IS OCTOBER 24, 2008?

2 A OKAY.

3 Q OKAY. WELL, YES, YOU SEE THAT?

4 A YES. YES. YES.

5 Q AND YOU SEE THAT THIS IS THE NEW GTLD
6 PROGRAM DRAFT APPLICANT GUIDEBOOK?

7 A CORRECT.

8 Q AND SO IF YOU WOULD TURN TO THE NEXT PAGE,
9 YOU CAN SEE THAT WE HAVE NOT INCLUDED MODULES 1
10 THROUGH 5; WE STARTED WITH MODULE 6. PAGE 2 IS
11 MODULE 6.

12 A OKAY.

13 Q AND THEN IF YOU WOULD TURN TO THE BOTTOM OF
14 PAGE 4 -- SO THERE'S TWO DIFFERENT PAGE NUMBERS AS
15 ALWAYS, BUT WE'VE NUMBERED IT IN INK AS PAGE 4. ARE
16 YOU THERE?

17 A YES.

18 Q AND IF YOU LOOK AT PARAGRAPH 6 -- NOT GOING
19 TO READ THE WHOLE THING, BUT I'D ASK FOR YOU TO READ
20 IT AND CONFIRM THAT THE DRAFT FROM LATE 2008 OF
21 MODULE 6 IS PRETTY MUCH THE SAME AS THE VERSION OF
22 THAT SAME PARAGRAPH FOR MODULE 6 THAT WE HAVE UP ON
23 THE BOARD IN THE JURY BOX.

24 A YEAH. I'M NOT DISPUTING IT.

25 Q OKAY. SO DOES THIS REFRESH YOUR
26 RECOLLECTION THAT THE VERSION OF MODULE 6 THAT YOU
27 LOOKED AT AND COMMENTED ON IN THE EXHIBIT WE MARKED
28 PREVIOUSLY WAS PRETTY MUCH THE SAME AS THE FINAL

1 VERSION OF THE COVENANT NOT TO SUE THAT ICANN
2 ULTIMATELY ADOPTED IN THE FINAL GUIDEBOOK?

3 A YES.

4 MR. LEVEE: OKAY. YOUR HONOR, I WOULD MOVE
5 TO ADMIT EXHIBIT 61.

6 THE COURT: ANY OBJECTION?

7 MR. BROWN: NO.

8 THE COURT: EXHIBIT 61 IS RECEIVED INTO
9 EVIDENCE. THANK YOU.

10

11 (DEFENDANT'S EXHIBIT NO. 61 WAS
12 RECEIVED IN EVIDENCE.)

13

14 Q BY MR. LEVEE: AND JUST TO CONFIRM, YOU
15 UNDERSTOOD WHEN YOU WERE SIGNING -- WHEN YOU WERE
16 SUBMITTING YOUR APPLICATION THAT YOU WERE AGREEING TO
17 THESE WORDS IN THE COVENANT NOT TO SUE; RIGHT?

18 A YES.

19 Q AND YOU UNDERSTOOD THAT THAT MEANT YOU WERE
20 NOT GOING TO BE ABLE TO FILE A LAWSUIT IN ANY WAY
21 RELATED TO DCA'S APPLICATION? THAT WAS YOUR
22 UNDERSTANDING AT THE TIME?

23 A YES.

24 Q AND WHEN YOU WROTE IN EXHIBIT 15 TO
25 CONGRESS, YOU DIDN'T SAY THAT YOU HAD CONCERNS THAT
26 THE COVENANT MIGHT BE UNENFORCEABLE, DID YOU?

27 A I SAID IF THE IRP'S THE ONLY SOLE FORUM THAT
28 WE HAD AT THAT TIME.

1 Q CAN'T SUE ICANN; THAT'S WHAT YOU SAID;
2 RIGHT?

3 A THAT'S WHAT I SAID.

4 Q AND YOU DIDN'T SAY YOU HAD QUESTIONS ABOUT
5 WHETHER THE COVENANT WAS ENFORCEABLE; RIGHT?

6 A NO.

7 Q EVEN THOUGH YOU DID HAVE QUESTIONS BACK IN
8 2009 WHEN YOU SUBMITTED YOUR PUBLIC COMMENTS TO
9 ICANN?

10 A MY PUBLIC COMMENTS WERE ON BEHALF OF THE IDN
11 GROUP. YES.

12 Q BUT THEY REFLECTED YOUR OPINION, CORRECT?

13 A THE GROUP'S OPINION.

14 Q YOU WROTE IT, RIGHT?

15 A BECAUSE I WAS THEIR REPRESENTATIVE.

16 THE REPORTER: I'M SORRY. WHAT WAS THE
17 GROUP'S NAME?

18 THE WITNESS: IDN. INTERNATIONAL DOMAIN
19 NAME GROUP.

20 Q BY MR. LEVEE: SO YOUR -- LET ME MAKE SURE I
21 UNDERSTAND YOUR TESTIMONY.

22 YOUR TESTIMONY IS THAT WITH RESPECT TO
23 EXHIBIT 60, THE COURT MARKED IN EVIDENCE, THAT WAS
24 NOT DCA'S -- THAT WAS NOT YOUR PERSONAL COMMENT; IT
25 WAS A COMMENT ON BEHALF OF THE IDN?

26 A YEAH. THAT'S WHY WE TALKED ABOUT THE
27 SCRIPTS, RIGHT, OF LOCAL INTEREST AND SO FORTH AND SO
28 FORTH.

1 Q OKAY. DID YOU SAY ANYWHERE IN THAT DOCUMENT
2 THAT YOU WERE SUBMITTING YOUR COMMENTS ON BEHALF OF
3 IDN?

4 A NO.

5 Q AND, IN FACT, THE COMMENTS SAY IN THE
6 SUBJECT LINE THAT THEY'RE SUBMITTED ON BEHALF OF DCA;
7 RIGHT?

8 A YEAH. RIGHT.

9 Q OKAY.

10 A PERSONAL.

11 Q YES.

12 NOW, YOU TOLD THE COURT THIS AFTERNOON ABOUT
13 A HALF HOUR AGO THAT THE RESULT OF THE IRP PANEL'S
14 FINAL DECISION WAS THAT YOU GOT TO SKIP THE
15 GEOGRAPHIC NAMES REVIEW EVALUATION; RIGHT?

16 A I DID NOT SAY THAT.

17 Q YOU WERE -- YOU SAID THAT YOU WOULD GET TO
18 GO DIRECTLY TO CONTRACTING; RIGHT?

19 A I SAID THAT THE IRP PANEL'S RULING STATED
20 THAT DCA'S APPLICATION GO THROUGH THE REMAINDER OF
21 THE APPLICATION.

22 Q REMAINDER OF THE APPLICATION?

23 A PROCESS.

24 Q PROCESS. RIGHT?

25 A YES.

26 Q AND YOU UNDERSTOOD THAT THE REMAINDER OF THE
27 APPLICATION PROCESS INCLUDED THAT YOU WOULD HAVE TO
28 PASS THE GEOGRAPHIC NAMES REVIEW; RIGHT?

1 A AT THE TIME OF THE IRP, THERE WAS --

2 Q AFTER THE IRP.

3 A NO. AT THE TIME OF THE IRP, I UNDERSTOOD WE
4 PASSED THE GEOGRAPHIC NAME PANEL.

5 Q OKAY. REMEMBER WE HAD A COLLOQUY ABOUT THIS
6 AT THE LAST HEARING?

7 A YEAH. WE ALWAYS DO.

8 Q AND THAT WAS BASED ON THE DEPOSITION YOU HAD
9 TAKEN; RIGHT?

10 A RIGHT.

11 Q AND LET'S GET THE TRIAL TRANSCRIPT.

12 MR. LEVEE: YOUR HONOR, IF I MIGHT APPROACH.

13 THE COURT: YOU MAY. FOR WHAT PURPOSE?

14 MR. LEVEE: I'M BRINGING THE WITNESS THE
15 TRIAL TRANSCRIPT FROM THE FIRST VERSION OF PHASE I OF
16 THIS TRIAL.

17 THE COURT: WHAT'S THE DATE OF THE
18 REPORTER'S TRANSCRIPT?

19 MR. LEVEE: FEBRUARY 28.

20 THE COURT: 2018?

21 MR. LEVEE: CORRECT.

22 THE COURT: DO YOU HAVE A COPY FOR THE
23 COURT?

24 MS. BURKE: YES.

25 Q BY MR. LEVEE: THANK YOU. WOULD YOU TURN --
26 SO WE'RE LOOKING -- JUST TO MAKE IT CLEAR IN THE
27 RECORD -- WE'RE LOOKING AT REPORTER'S TRANSCRIPT OF
28 PROCEEDINGS WEDNESDAY, FEBRUARY 28, 2018, AND I'M

1 GOING TO ASK YOU TO TURN TO PAGE 106.

2 A WHAT EXHIBIT, MR. LEVEE?

3 Q IT'S NOT AN EXHIBIT; IT'S THE TRIAL
4 TRANSCRIPT I OPENED UP FOR YOU. VERY FIRST PART OF
5 THAT BINDER.

6 SO IF YOU'D LOOK AT PAGE 106.

7 MR. LEVEE: AND, YOUR HONOR, WITH THE
8 COURT'S PERMISSION, I'D LIKE TO READ FROM LINE 1 AT
9 PAGE 106 TO LINE 21 OF PAGE 107.

10 THE COURT: LET ME GET PLAINTIFF'S COUNSEL
11 AN OPPORTUNITY TO REVIEW THAT --

12 MR. BROWN: WE'RE TRACKING IT DOWN.

13 THE COURT: -- EXCERPT.

14 MR. BROWN: 106/1 TO 107 SOMETHING.

15 THE COURT: PAGE 106, LINE 1, THROUGH 107,
16 LINE 21.

17 MR. BROWN: 107, LINE 21.

18 THE COURT: ANY OBJECTION?

19 MR. BROWN: NO.

20 THE COURT: OKAY. THANK YOU.

21 ALL RIGHT. MR. LEVEE, DO YOU INTEND TO READ
22 THAT EXCERPT?

23 MR. LEVEE: I THINK IT'S JUST EASIER TO DO
24 IT THAT WAY, YES.

25 THE COURT: SURE. GO AHEAD.

26 MR. LEVEE: PAGE 106, LINE 1. (AS READ):

27 QUESTION: "SO LET ME MAKE IT
28 CLEAR. THE IRP PANEL ISSUED A

1 FINAL DECLARATION; RIGHT?"

2 ANSWER: "RIGHT."

3 QUESTION: "AND THE DECLARATION
4 DOES NOT SAY THE DCA GETS TO SKIP
5 THE GEOGRAPHIC NAMES REVIEW --
6 NAMES AND REVIEW PROCESS?"

7 ANSWER: "THAT'S NOT PART OF THE
8 RULING THAT THEY HAD. THEY DIDN'T
9 RULE ANYTHING ON SPECIFICALLY OUR
10 -- OUR CONTENTION WHEN WE WENT TO
11 THE IRP WAS ABOUT THE GOVERNMENT
12 ADVISORY COMMITTEE OBJECTION ON OUR
13 APPLICATION, SO THEY FOCUSED ON
14 THAT."

15 QUESTION: COULD I ASK YOU TO LOOK
16 AT YOUR DEPOSITION AND, IN
17 PARTICULAR, YOUR DECEMBER 1
18 DEPOSITION?"

19 ANSWER: "IT IS A SEPARATE BINDER?"

20 QUESTION: "IT WAS THE BINDER YOU
21 HAD BEFORE. I APOLOGIZE. IT
22 SHOULD STILL BE THERE."

23 ANSWER: "WHAT EXHIBIT NUMBER?"

24 AND THEN I'M GOING TO PARAPHRASE. I ASKED
25 TO APPROACH THE WITNESS.

26 I'M PICKING BACK UP ON LINE 22. (AS READ):

27 QUESTION: "YES. IF YOU WOULD LOOK
28 AT THE DECEMBER 1 DEPOSITION, I

1 THINK WE MUST HAVE SWITCHED IT BACK
2 SO IT MIGHT BE THE FIRST ONE?"
3 ANSWER: "FIRST ONE."
4 QUESTION: "YES. TAKE A LOOK, IF
5 YOU WOULD, AT PAGE 203. LET ME
6 KNOW WHEN YOU'RE THERE."
7 ANSWER: "203 PAGE?"
8 QUESTION: "YOU'RE ON PAGE 203?"
9 ANSWER: "UH-HUH."
10 QUESTION: "NOW LOOK AT LINE 4.
11 I'M GOING TO READ YOU THE QUESTION
12 AND ANSWER. THIS IS YOUR
13 DEPOSITION UNDER OATH; RIGHT?"
14 ANSWER: "UH-HUH."
15 QUESTION: "JUST TO BE CLEAR,
16 NOTHING IN THE FINAL DECLARATION
17 SAYS THAT YOU GET TO SKIP THE
18 GEOGRAPHIC REVIEW PROCESS. YOUR
19 ANSWER ON DECEMBER 1 OF 2016 WAS
20 'YES.'"
21 ANSWER: "WHERE WAS IT? I'M
22 SORRY."
23 QUESTION: "LINE 4 THROUGH 7."
24 ANSWER: "LINE 4 THROUGH 7 ON PAGE
25 202; RIGHT?"
26 QUESTION: "203."
27 THE COURT: "4 THROUGH 7."
28 THE WITNESS: "THERE IT IS. CORRECT."

1 Q BY MR. LEVEE: SO WHAT YOUR ANSWER -- I'M
2 DONE READING.

3 AND SO THE ANSWER IN THE DEPOSITION AND YOUR
4 ANSWER DURING THE HEARING WAS THAT NOTHING IN THE
5 FINAL DECLARATION THAT THE IRP PANEL ISSUED ALLOWED
6 DCA TO SKIP THE GEOGRAPHIC NAMES REVIEW; RIGHT?

7 A YES.

8 Q AND, IN FACT, DCA ASKED THE PANEL FOR
9 ADDITIONAL TIME TO COMPLETE THE GEOGRAPHIC REVIEW
10 PROCESS; RIGHT?

11 A WE ASKED A RELIEF.

12 Q YES. LET'S TAKE A LOOK AT TRIAL EXHIBIT 29.
13 YOU DON'T HAVE THAT IN YOUR BOOK. THE COURT DOES?

14 MR. LEVEE: YOUR HONOR, MAY I APPROACH?

15 THE COURT: YOU MAY.

16 Q BY MR. LEVEE: DO YOU REMEMBER YESTERDAY
17 WHEN I ASKED YOU WHETHER YOU AND YOUR LAWYER HAD HAD
18 A DISPUTE ABOUT WHAT THE NATURE OF THE RELIEF SHOULD
19 BE?

20 A CORRECT.

21 Q AND THE PANEL SENT YOU OUT OF THE ROOM TO
22 FIGURE OUT WHAT RELIEF YOU ASKED THE PANEL TO HAVE;
23 RIGHT?

24 A RIGHT.

25 Q AND JOINT TRIAL EXHIBIT 29 IS THE DOCUMENT
26 THAT YOU BROUGHT BACK -- YOUR LAWYERS BROUGHT BACK
27 AND HANDED TO THE PANEL; RIGHT?

28 A YES, IT IS.

1 Q IT'S ENTITLED "CLAIMANT'S FINAL REQUEST FOR
2 RELIEF"; RIGHT?

3 A YES.

4 MR. LEVEE: YOUR HONOR, I'LL MOVE IT INTO
5 EVIDENCE BEFORE I ASK QUESTIONS ABOUT IT.

6 THE COURT: ANY OBJECTION?

7 MR. BROWN: NO, YOUR HONOR.

8 THE COURT: THANK YOU. EXHIBIT 29 IS
9 RECEIVED INTO EVIDENCE.

10

11 (JOINT EXHIBIT NO. 29 WAS RECEIVED IN EVIDENCE.)

12

13 Q BY MR. LEVEE: SO IT STARTS AT THE TOP.

14 (AS READ):

15 "FOR THESE REASONS, DCA
16 RESPECTFULLY REQUESTS THAT THE
17 PANEL --"

18 AND THEN I'M GOING TO SKIP TO THE THIRD
19 BULLET. DO YOU SEE WHERE IT SAYS "RECOMMEND" --

20 A YES.

21 Q -- "AS A RESULT OF ALL THESE VIOLATIONS,"
22 AND THE FIRST BULLET IS (AS READ):

23 "ICANN SHOULD CEASE ALL
24 PREPARATIONS TO DELEGATE THE
25 .AFRICA GTLD TO ZACR; RIGHT?

26 A RIGHT.

27 Q YOU REQUESTED THAT; RIGHT?

28 A YES.

1 Q SECOND BULLET IS (AS READ):
2 "ICANN PERMIT DCA'S
3 APPLICATION TO PROCEED FOR THE
4 REMAINDER OF THE NEW DETAILED
5 APPLICATION PROCESS AND BE GRANTED
6 A PERIOD OF NO LESS THAN 18 MONTHS
7 TO OBTAIN GOVERNMENT SUPPORT AS SET
8 OUT IN THE AGB."
9 THAT'S THE GUIDEBOOK; RIGHT?

10 A UH-HUH.

11 Q (AS READ):
12 "AND INTERPRETED BY THE
13 GEOGRAPHIC NAMES PANEL OR ACCEPT
14 THAT THE REQUIREMENT IS SATISFIED
15 AS A RESULT OF THE ENDORSEMENT OF
16 THE DCA TRUST APPLICATION BY
17 UNECA."
18 DID I READ THAT CORRECTLY?

19 A CORRECT.

20 Q SO WHAT DCA WAS ASKING THE PANEL WAS, YOU
21 WANTED ADDITIONAL TIME -- ACTUALLY 18 MONTHS -- TO
22 TRY TO GET THE SUPPORT OF THE SUFFICIENT NUMBER OF
23 GOVERNMENTS IN AFRICA SO THAT YOU WOULD HAVE THE
24 SUPPORT OF THE NUMBER REQUIRED BY THE GUIDEBOOK;
25 CORRECT?

26 A THAT'S WHAT IT SAYS.

27 Q YES.

28 A BUT THERE'S AND/OR; RIGHT?

1 Q I SEE BOTH, BUT YOU SPECIFICALLY ASKED FOR
2 18 MONTHS; RIGHT?

3 A TO MEET THE GUIDEBOOK REQUIREMENT, YEAH.

4 Q YES. AND THAT WAS IN THE EVENT THAT THE
5 REQUIREMENT WAS NOT SATISFIED AS A RESULT OF A LETTER
6 THAT YOU HAD FROM UNECA. YOU HAD A LETTER FROM
7 UNECA; RIGHT?

8 A CORRECT.

9 Q AND YOU WERE CONCERNED THAT THAT MIGHT NOT
10 BE SUFFICIENT; RIGHT?

11 A NO. THAT WAS -- DURING THE IRP, WE FOUND
12 THAT THAT WAS SUFFICIENT LETTER AS PER THE
13 EVALUATORS, SO --

14 Q OKAY. WELL, LET ME --

15 MR. LEVEE: YOUR HONOR, LET ME ASK A NEW
16 QUESTION, IF I MIGHT.

17 THE COURT: THAT'S FINE.

18 MR. LEVEE: OKAY.

19 Q BY MR. LEVEE: THE IRP, ACCORDING TO YOUR
20 TESTIMONY WHEN MR. BROWN WAS ASKING YOU QUESTIONS,
21 WAS LIMITED TO WHETHER THE GOVERNMENT ADVISORY
22 COMMITTEE IMPROPERLY VOTED TO BLOCK YOUR APPLICATION;
23 RIGHT?

24 A CORRECT.

25 Q AND SO ULTIMATELY THE PANEL DIDN'T RULE ON
26 THE VIABILITY OF ANY LETTERS OF SUPPORT THAT YOU HAD;
27 RIGHT?

28 A YES.

1 Q AND SO ONE OF THE THINGS THAT YOU WERE DOING
2 WAS ASKING THE PANEL TO GIVE YOU 18 MONTHS TO BE ABLE
3 TO GET MORE LETTERS; RIGHT?

4 A SHOULD THEY RULE ON THE ENDORSEMENT ISSUES;
5 RIGHT?

6 Q OKAY. AND THE PANEL DIDN'T TAKE UP YOUR
7 REQUEST AT ALL?

8 A AT ALL.

9 Q OKAY. SO THERE'S NOTHING IN THE FINAL
10 DECISION OF THE PANEL AGREEING TO YOUR REQUEST THAT
11 YOU BE GRANTED A PERIOD OF NO LESS THAN 18 MONTHS TO
12 OBTAIN GOVERNMENT SUPPORT; RIGHT?

13 A NO.

14 Q THERE'S NOTHING IN THERE?

15 A THEY DID NOT RULE ON THIS AT ALL.

16 Q YES. NOR DID THEY RULE AS TO WHETHER ANY
17 LETTER YOU HAD FROM UNECA WAS SUFFICIENT TO PASS THE
18 GEOGRAPHIC NAMES REVIEW?

19 A THEY DID NOT RULE ON OURS AND/OR THE
20 COMPETITION.

21 Q THEY WERE -- THEY DIDN'T?

22 A THEY DIDN'T -- THEY JUST SKIPPED IT, JUST
23 LIKE ON THE FIRST ONE WHERE IT SAYS ICANN CEASES ALL
24 PREPARATION TO DELEGATE THE .AFRICA. SO WHAT IT
25 MEANS IS CEASE IT AND EVALUATE BOTH APPLICATIONS. WE
26 DON'T KNOW IF THEY DID THAT OR NOT.

27 THE COURT: OKAY. THANK YOU. I THINK
28 YOU'VE ANSWERED THE QUESTION.

1 THE WITNESS: OKAY.

2 Q BY MR. LEVEE: SO WHEN YOU TOLD -- WHEN YOU
3 TESTIFIED IN RESPONSE TO MR. BROWN'S QUESTION THAT
4 THE PANEL'S -- AS A RESULT OF THE PANEL'S RULING, YOU
5 WERE ENTITLED TO GET A CONTRACT FOR .AFRICA, THAT
6 WASN'T WHAT THE PANEL RULED AT ALL; RIGHT?

7 A NO.

8 Q THE -- MR. BROWN ALSO SHOWED YOU SOME OF THE
9 BACK AND FORTH THAT THE LAWYERS HAD AS TO WHETHER THE
10 IRP PANEL WOULD DETERMINE THAT ITS DECISION WOULD BE
11 BINDING; RIGHT?

12 A YES.

13 Q AND YOUR LAWYERS TOOK THE POSITION THAT THE
14 IRP PANEL SHOULD ISSUE A BINDING DECISION; RIGHT?

15 A CORRECT.

16 Q AND ICANN'S LAWYERS TOOK THE DECISION THAT
17 THE DECISION SHOULD NOT BE BINDING; RIGHT?

18 A YES.

19 Q AND I SHOWED YOU THIS BEFORE, BUT I'LL DO IT
20 AGAIN.

21 IN THE FINAL DECLARATION -- OR, I'M SORRY,
22 THE PANEL ITSELF ISSUED A RULING THAT ITS DECISION
23 WOULD BE BINDING; RIGHT?

24 A YES.

25 Q OKAY. AND IF YOU WOULD TAKE A LOOK AT
26 EXHIBIT 18. AND IN PARTICULAR, PARAGRAPH 131. TELL
27 ME WHEN YOU'RE THERE.

28 A I AM AT EXHIBIT 18, PAGE 1.

1 Q PARAGRAPH 131. NOT PAGE 1, PARAGRAPH 131.
2 IT'S ON PAGE 32.

3 A OKAY.

4 Q WOULD YOU READ --

5 A 32, PARAGRAPH 131.

6 Q 131.

7 A IT SAYS (AS READ):

8 "BASED ON THE FOREGOING AND
9 THE LANGUAGE AND CONTENT OF THE IRP
10 PROCEDURE, THE PANEL CONCLUDES THAT
11 THIS DECLARATION AND ITS FUTURE
12 DECLARATION ON THE MERITS OF THIS
13 CASE ARE BINDING ON THE PARTIES."

14 Q AND DID THE PANEL EVER CHANGE ITS POSITION
15 ON THAT ISSUE?

16 A I DON'T THINK SO.

17 MR. LEVEE: YOUR HONOR, MAY I HAVE ONE
18 MINUTE?

19 THE COURT: YOU MAY.

20 MR. LEVEE: THANK YOU, YOUR HONOR. I HAVE
21 NO FURTHER QUESTIONS.

22 THE COURT: ALL RIGHT. THAT COMPLETES THE
23 DIRECT EXAMINATION OF THE WITNESS. MAY THE
24 WITNESS -- DOES THAT COMPLETE THE EXAMINATION OF THE
25 WITNESS, MR. BROWN?

26 MR. BROWN: I THINK WE HAVE PROBABLY THREE
27 OR FOUR, FIVE QUESTIONS, JUST VERY SHORT, TO CLARIFY.

28 THE COURT: OKAY. YOU MAY PROCEED WITH

1 RE CROSS-EXAMINATION.

2 MR. BROWN: OKAY.

3 THE COURT: IT'S ABOUT 3:00 P.M.

4 MR. BROWN: OKAY.

5

6

RE CROSS-EXAMINATION

7

BY MR. BROWN:

8

Q JUST A COUPLE OF THINGS.

9

ON EXHIBIT 29 THAT YOU LOOKED AT JUST A
MOMENT AGO IN REGARD TO THE RELIEF SOUGHT IN THE IRP
PROCEEDING, YOU POINTED OUT THAT THERE WAS AN "OR" IN
THE REQUEST THAT YOU MADE.

13

CAN YOU EXPLAIN TO THE COURT WHY THERE WAS
TWO DIFFERENT TYPES OF RELIEF THAT WAS ASKED FOR IN
THAT PARAGRAPH? EITHER 18 MONTHS OR A FINDING THAT
THE EXISTING ENDORSEMENTS WERE SUFFICIENT? CAN YOU
EXPLAIN THAT FOR US?

18

A YES. OKAY. ACCORDING TO THE GUIDEBOOK FOR
GEOGRAPHIC NAMES, YOU WOULD REQUIRE 60 PERCENT
ENDORSEMENT FROM INDIVIDUAL GOVERNMENTS, AND WE HAD
THE AFRICAN UNION, I HAD THE AFRICAN UNION
ENDORSEMENT AHEAD OF TIME, AND THE COMPETITION HAD
CLAIMED THAT THEY HAD INDIVIDUAL -- 60 PERCENT OF
INDIVIDUAL GOVERNMENT ENDORSEMENTS DURING THE
APPLICATION, BUT DURING DISCOVERY ON THE IRP, WE
FOUND THAT THEY NEVER HAD ANY ENDORSEMENTS, AND ICANN
CHANGED THE ENTIRE RULE AND POLICY OF -- TO ASSIST
THEM, THEY CHANGED THE ENTIRE POLICY AND DRAFTED A

28

1 LETTER FOR THEM FROM THE AUC TO QUALIFY THEM TO PASS.

2 BUT ON OUR CASE, WE HAD, ALSO, UNECA; THE
3 OTHER GROUP DID NOT HAVE UNECA, AND UNECA IS AN
4 ORGANIZATION JUST LIKE AFRICAN UNION, A MEMBER, THAT
5 COULD QUALIFY APPLICANTS.

6 SO I HAD BOTH THE AFRICAN UNION, AUC, AND
7 THEN UNECA ENDORSEMENTS EARLY ON, AND I SUBMITTED
8 THAT AS PART OF THE APPLICATION.

9 SO DURING THE IRP, WHEN WE FOUND THAT THE
10 COMPETITION DID NOT QUALIFY AND ICANN HAS CHANGED THE
11 ENTIRE RULE TO QUALIFY THEM, HOPING THAT DURING THE
12 RELIEF TIME THAT THE IRP PANEL WOULD RULE ON THE
13 MERITS OF OTHER THAN THE GAC, I HAD AN ARGUMENT WITH
14 MY LAWYERS IN CASE THEY RULE OVER GAC: PLEASE LET US
15 HAVE THIS BECAUSE IT WILL TAKE 18 MONTHS MINIMUM TO
16 GO GET INDIVIDUAL ENDORSEMENTS, MEANING 60 PERCENT OF
17 THE ENDORSEMENTS TO MEET THEIR REQUIREMENTS OF THE
18 GUIDEBOOK.

19 THE COURT: OKAY. I'M GOING TO --

20 THE WITNESS: THAT IS WHY I ASKED THE PANEL
21 TO GIVE ME 18 MONTHS IN CASE -- IN CASE WE HAVE TO
22 FOLLOW THE RULES OF THE GUIDEBOOK.

23 THE COURT: OKAY. I'M GOING TO STOP YOU
24 THERE AND LET MR. BROWN ASK ANOTHER QUESTION.

25 THE WITNESS: OKAY.

26 Q BY MR. BROWN: SO JUST TO CLARIFY, THERE
27 WERE TWO POSSIBLE WAYS TO MEET THE 60 PERCENT
28 REQUIREMENT; ONE WAS THROUGH REGIONAL AUTHORITIES

1 **LIKE AUC AND UNECA?**

2 A YES.

3 **Q AND THE OTHER WAS THROUGH ACTUALLY GETTING**
4 **INDIVIDUAL ENDORSEMENTS; IS THAT WHAT YOU'RE SAYING?**

5 A YES.

6 **Q AND WAS YOUR -- AS FAR AS GETTING THE ACTUAL**
7 **INDIVIDUAL COUNTRIES, DID YOU HAVE AN UNDERSTANDING**
8 **AS TO THE ZACR HAD GOTTEN 60 PERCENT OF ACTUAL**
9 **INDIVIDUAL COUNTRY REPRESENTATIONS?**

10 A NO, THEY DID NOT.

11 **Q AND DID -- WHAT REGIONAL AUTHORITY**
12 **RECOMMENDATIONS DID DCA HAVE?**

13 A WE HAD AFRICAN UNION PERMISSION.

14 MR. LEVEE: YOUR HONOR --

15 THE COURT: I'M SORRY. I'M GOING TO ASK YOU
16 TO WAIT UNTIL COUNSEL STATES HIS OBJECTION.

17 MR. LEVEE: IT'S BEYOND THE SCOPE -- I DID
18 ASK A QUESTION FOR A PARTICULAR PURPOSE THAT I'M NOT
19 GOING TO REPEAT, BUT ALL OF THESE QUESTIONS ARE WELL
20 BEYOND THE SCOPE.

21 THE COURT: OKAY. THAT'S OVERRULED BECAUSE
22 I'M EXPECTING MR. BROWN TO CONDUCT THE EXAMINATION OF
23 THIS WITNESS AT THIS TIME. HE CAN ASK THESE
24 QUESTIONS IN HIS -- HE CAN RECALL THE WITNESS.

25 MR. BROWN: I'M TRYING TO KEEP IT SHORT.
26 I'M JUST TRYING TO EXPLAIN THE STATEMENTS THAT WERE
27 BROUGHT UP.

28 **Q BY MR. BROWN: AND SO YOUR -- SO WHEN YOU**

1 WERE ASKING FOR THE "OR," "OR THE UNECA," WERE YOU
2 REFERRING TO ONE OF THESE REGIONAL AUTHORITY
3 ENDORSEMENTS?

4 A YES.

5 Q OKAY. NOW, THERE WAS ALSO SOME TESTIMONY
6 ABOUT WHETHER OR NOT YOU COULD, QUOTE/UNQUOTE, "SKIP
7 THE GEOGRAPHIC NAMES PANEL WORK."

8 YOU REMEMBER THAT TESTIMONY?

9 A YES.

10 Q OKAY. DID THAT ISSUE COME UP IN YOUR -- YOU
11 WERE DEPOSED MULTIPLE TIMES BY MR. LEEVEE; IS THAT
12 RIGHT?

13 A CORRECT.

14 Q AND DID -- WAS THAT ISSUE FLESHED OUT IN A
15 SECOND DEPOSITION THAT YOU HAD WITH MR. LEEVEE?

16 A YES, IT DID.

17 Q OKAY. AND, IF I COULD, COULD I JUST PROVIDE
18 THE WITNESS WITH A COPY OF HER DEPOSITION OF
19 SEPTEMBER 6TH, 2017?

20 THE COURT: FOR WHAT PURPOSE?

21 MR. BROWN: JUST TO REFRESH HER
22 RECOLLECTION. I JUST WANT HER TO SUMMARIZE WHAT SHE
23 TESTIFIED TO WHEN THIS ISSUE WAS BROUGHT UP IN HER
24 SECOND DEPOSITION BECAUSE SHE WAS IMPEACHED AT SOME
25 LEVEL, I THINK, DURING THE TESTIMONY AND TRYING TO
26 REHABILITATE.

27 THE COURT: IT DOESN'T SOUND LIKE HER -- SHE
28 DIDN'T SAY SHE DOESN'T REMEMBER IT, SO I DON'T THINK

1 THERE'S ANY NEED TO REFRESH HER RECOLLECTION.

2 Q BY MR. BROWN: OKAY. DO YOU RECOLLECT
3 EXPLAINING THE ISSUE OF WHY YOU TESTIFIED THAT YOU
4 WERE NOT ENTITLED TO SKIP GEOGRAPHIC NAMES IN YOUR
5 SECOND DEPOSITION?

6 A YEAH. I CLARIFIED.

7 Q OKAY. COULD YOU JUST SUMMARIZE FOR THE
8 COURT GENERALLY WHAT YOU -- HOW YOU CLARIFIED THAT
9 ISSUE?

10 A WELL, MR. LEVEE ASKED ME THE SAME QUESTION,
11 AND I BROUGHT IT UP. AND I SAID THAT THE QUESTION OF
12 SKIPPING IS SOMETHING THAT IS NOT EVEN THE CORRECT
13 QUESTION; RIGHT? WHAT WE'RE SAYING IS THE -- I
14 THINK -- I HAVE NO IDEA WHY, THE WAY THE QUESTIONING
15 IS. BUT THE WAY I EXPLAINED IT IS THAT WE BELIEVED
16 AT DCA THAT THE PANEL RULED TO SEND US TO THE
17 REMAINDER OF THE APPLICATION, WHICH MEANS PASS US TO
18 DELEGATION. AND I THINK I CLARIFIED IT FROM OUR
19 PERSPECTIVE, AND THAT'S THE DIFFERENCE OF OPINION WE
20 HAD WITH ICANN, I SUPPOSE.

21 Q OKAY. LET ME JUST ASK YOU BRIEFLY ABOUT
22 TRIAL EXHIBIT 60, THE REBUTTAL EXHIBIT THAT WAS
23 HANDED TO YOU.

24 CAN YOU JUST -- I CAN'T TOTALLY UNDERSTAND
25 YOUR TESTIMONY, SO I JUST WANT TO MAKE SURE IT'S
26 CLEAR ON THE RECORD.

27 YOU INDICATED THAT YOU WERE SUBMITTING A
28 COMMENT FOR AN ENTITY CALLED IDN?

1 A IDN, YES.

2 **Q AND WHO IS THAT?**

3 A THEY'RE A GROUP OF INFORMAL ENTITIES OR
4 CONSTITUENTS WITHIN ICANN THAT I REPRESENTED AT SOME
5 TIME AND WHO HAD COME TO ME AND REQUESTED AS A POLICY
6 ADVISOR TO HELP THEM IMPLEMENT A POLICY FOR PEOPLE
7 WHO ARE -- HAVE COME FROM DEVELOPING COUNTRIES, AND
8 THEY SPEAK A DIFFERENT LANGUAGE, AND THEY HAVE A
9 DIFFERENT SCRIPT.

10 SO I WAS PUSHING THAT POLICY DEVELOPMENT
11 PROCESS FOR ICANN.

12 **Q OKAY.**

13 A YEAH.

14 **Q AND THE COMMENTS YOU MADE IN EXHIBIT 60,**
15 **WERE THOSE COMMENTS THAT YOU WROTE OR COMMENTS THAT**
16 **THEY WROTE OR COMMENTS YOU WROTE FOR THEM?**

17 A IT'S JUST EXACTLY WHAT I SAID BEFORE. IT
18 BECAME VERY CONTROVERSIAL, AND THE PEOPLE WERE
19 NERVOUS BECAUSE THEY WERE ALSO APPLYING FOR IDN
20 SCRIPTS ON THE INTERNET.

21 THE COURT: OKAY. I'M GOING TO STOP YOU.
22 YOUR ANSWER IS NOT RESPONSIVE TO YOUR ATTORNEY'S
23 QUESTION.

24 THE WITNESS: OKAY.

25 THE COURT: SO I'M GOING TO ASK YOU TO
26 LISTEN CAREFULLY TO HIS QUESTION AND JUST ANSWER HIS
27 QUESTION.

28 **Q BY MR. BROWN: I JUST WANT TO ASK YOU, DID**

1 YOU WRITE THE COMMENTS, OR WERE YOU WRITING THEM FOR
2 THEM?

3 A I WAS WRITING ON BEHALF OF THE GROUP.

4 Q AND IN TERMS OF YOUR TESTIMONY TODAY, DID
5 YOU RECOLLECT THESE COMMENTS WHEN YOU TESTIFIED
6 EARLIER TODAY?

7 A I DON'T REMEMBER IT.

8 MR. BROWN: OKAY. THAT'S ALL I HAVE.

9 THE COURT: OKAY. THANK YOU. DOES THAT
10 COMPLETE THE WITNESS'S TESTIMONY, MR. LEEVEE?

11 MR. LEEVEE: IT DOES, YOUR HONOR.

12 THE COURT: OKAY. THANK YOU.

13 MR. BROWN?

14 MR. BROWN: YES, IT DOES.

15 THE COURT: OKAY. THANK YOU. ALL RIGHT.

16 MS. BEKELE, YOU MAY STEP DOWN.

17 THE WITNESS: THANK YOU.

18 THE COURT: THANK YOU. THAT COMPLETES YOUR
19 TESTIMONY.

20 ALL RIGHT. AND THEN, MR. LEEVEE, DO YOU
21 INTEND TO CALL ANOTHER WITNESS?

22 MR. LEEVEE: I DO, YOUR HONOR. WE WILL CALL
23 CHRISTINE WILLETT. WITH YOUR HONOR'S PERMISSION, WE
24 WILL TAKE A VERY SHORT BREAK, SO WE CAN REORGANIZE
25 OUR BINDERS.

26 THE COURT: THAT'S FINE. SO THE COURT NOTES
27 THAT IT'S ABOUT 3:10 RIGHT NOW. SO WE'RE GOING TO
28 TAKE A 10-MINUTE BREAK AT THIS TIME. WE'LL TAKE OUR

1 AFTERNOON BREAK FOR ABOUT 10 MINUTES AND THEN RESUME.
2 WE'LL GO OFF THE RECORD.

3

4

(A RECESS WAS TAKEN.)

5

6

7

8

9

THE COURT: WE'RE BACK ON THE RECORD IN
DOTCONNECTAFRICA TRUST VERSUS INTERNET CORPORATION
FOR ASSIGNED NAMES AND NUMBERS. AND COUNSEL ARE AT
THEIR PLACES AT COUNSEL TABLE, EXCEPT MS. BURKE.

10

IS IT MS. BURKE?

11

MS. BURKE: THAT'S CORRECT, YOUR HONOR.

12

THE COURT: MS. BURKE IS AT THE PODIUM.

13

14

15

16

17

18

19

20

AND I DID WANT TO ASK THAT, EARLIER TODAY,
PLAINTIFF'S COUNSEL, MS. COLON, HAD MADE A REQUEST
THAT THE COURT RECONSIDER CERTAIN RULINGS IT MADE ON
OBJECTIONS TO DESIGNATIONS OF DEPOSITION TESTIMONY
FOR CROCKER AND -- WITNESSES CROCKER AND SILBER, AND
THERE WERE SPECIFIC PAGES AND LINE NUMBERS THAT
PLAINTIFF'S COUNSEL ASKED THE COURT TO RECONSIDER
OBJECTIONS THAT THE COURT HAD SUSTAINED.

21

22

23

24

25

26

27

28

I'M GOING TO ASK DEFENDANT ICANN'S COUNSEL
TO PROVIDE ME WITH DESIGNATIONS WITH ANY ADDITIONAL
PAGES AND LINE NUMBERS, ANY ADDITIONAL EXCERPTS OF
THOSE DEPOSITION TRANSCRIPTS. IF IT TURNS OUT I
OVERRULE THE OBJECTIONS TO ANY OF THE EXCERPTS THAT
PLAINTIFF'S COUNSEL IS ASKING TO READ INTO THE
RECORD, THEN I UNDERSTAND THAT DEFENSE COUNSEL HAD
PREVIOUSLY ASKED THAT THERE BE, UNDER THE RULE OF

1 COMPLETENESS, ADDITIONAL EXCERPTS READ, AND I'LL ASK
2 YOU TO PROVIDE ME WITH THOSE. I'M NOT GOING TO PUT
3 YOU ON THE SPOT RIGHT NOW TO DO THAT, BUT IF YOU
4 COULD DO THAT EITHER BY THE END OF TODAY OR FIRST
5 THING TOMORROW MORNING, IT WOULD BE FINE.

6 MR. LEVEE: NO PUTTING US ON THE SPOT, YOUR
7 HONOR. MS. OZUROVICH IS READY TO GO.

8 THE COURT: WOW. THAT'S GREAT. THANK YOU.
9 ONE MOMENT, PLEASE.

10 MS. OZUROVICH: SURE.

11 THE COURT: AND THE COURT NOTES IT'S ABOUT
12 3:25 P.M.

13 OKAY. MS. OZUROVICH?

14 MS. OZUROVICH: OZUROVICH.

15 THE COURT: OKAY. THANK YOU. YOU CAN GO
16 AHEAD.

17 MS. OZUROVICH: YES. SO YOU'RE NOT PUTTING
18 ME ON THE SPOT. NOT MUCH HAS CHANGED IN TERMS OF
19 ICANN'S COUNTER-DESIGNATIONS.

20 SO IN REGARDS TO THE DR. CROCKER DEPOSITION
21 TRANSCRIPT, PAGE 75, LINES 6 THROUGH 9, ICANN COUNTER
22 DESIGNATES, UNDER THE RULE OF COMPLETENESS, PAGE 62,
23 LINES 12 THROUGH 15; PAGE 62, LINE 24.

24 THE COURT: I'M SORRY. ONE MOMENT.

25 MS. OZUROVICH: OKAY.

26 THE COURT: OKAY. SO PLAINTIFF'S REQUEST TO
27 READ FROM THE CROCKER DEPOSITION PAGE 75, LINES 6
28 THROUGH 9, WHAT ARE THE COUNTER-DESIGNATIONS THAT THE

1 DEFENDANTS ARE REQUESTING?

2 MS. OZUROVICH: PAGE 62, LINES 12 THROUGH
3 15; PAGE 62, LINE 24, TO PAGE 63, LINE 4; PAGE 64,
4 LINES 7 THROUGH 14. PAGE 74, LINES 13 THROUGH 17.
5 AND PAGES OR PAGE 79, LINE 20 THROUGH PAGE 80, LINE
6 4. AND, FINALLY, PAGE 80, LINE 7 THROUGH 9.

7 THE COURT: OKAY. THANK YOU.

8 MS. OZUROVICH: MOVING TO THE SECOND
9 DESIGNATION.

10 THE COURT: STILL ON CROCKER?

11 MS. OZUROVICH: ON CROCKER, YES.

12 THE COURT: SO PLAINTIFFS HAVE DESIGNATED
13 CROCKER DEPOSITION EXCERPTS STARTING PAGE 17, LINE 17
14 THROUGH PAGE 78, LINE 6.

15 AND WHAT ARE THE COUNTER-DESIGNATIONS THAT
16 DEFENDANT IS REQUESTING?

17 MS. OZUROVICH: PAGE 78, LINE 7 THROUGH 79,
18 LINE 11.

19 THE COURT: THANK YOU.

20 AND THEN FOR DESIGNATIONS FOR THE SILBER
21 DEPOSITION THE PLAINTIFF HAS REQUESTED, ARE THERE ANY
22 COUNTER-DESIGNATIONS THAT THE DEFENDANTS ARE
23 REQUESTING?

24 MS. OZUROVICH: NO, YOUR HONOR.

25 THE COURT: OKAY.

26 OKAY. THANK YOU VERY MUCH.

27 MS. OZUROVICH: THANK YOU.

28 THE COURT: ALL RIGHT. MS. BURKE, DO YOU

1 WISH TO CALL YOUR NEXT WITNESS ON BEHALF OF ICANN?

2 MS. BURKE: YES, YOUR HONOR. ICANN CALLS
3 CHRISTINE WILLETT TO THE STAND.

4 THE COURT: ALL RIGHT. MS. WILLETT, I'M
5 GOING TO ASK YOU TO COME UP TO THE WITNESS STAND AND
6 PLEASE STAND, RAISE YOUR RIGHT HAND TO BE SWORN BY
7 THE CLERK.

8 THE CLERK: AFTERNOON, MA'AM.

9 DO YOU SOLEMNLY STATE THAT THE TESTIMONY
10 YOU'RE ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE
11 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
12 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

13 THE WITNESS: I DO.

14 THE CLERK: THANK YOU, MA'AM. BE SEATED.

15

16 CHRISTINE WILLETT,
17 CALLED AS A WITNESS BY THE DEFENSE,
18 WAS SWORN AND TESTIFIED AS FOLLOWS:

19

20 DIRECT EXAMINATION

21 BY MS. BURKE:

22 Q GOOD AFTERNOON, MS. WILLETT.

23 A GOOD AFTERNOON.

24 THE CLERK: MA'AM, IF YOU COULD STATE AND
25 SPELL YOUR FULL NAME FOR THE RECORD.

26 THE WITNESS: CHRISTINE WILLETT.

27 C-H-R-I-S-T-I-N-E W-I-L-L-E-T-T.

28 THE COURT: IT'S NOW ABOUT 3:30 P.M.

1 AND, MS. BURKE, WHAT'S YOUR TIME ESTIMATE
2 FOR YOUR DIRECT EXAMINATION OF THE WITNESS?

3 MS. BURKE: I THINK ABOUT 75 MINUTES, YOUR
4 HONOR. MAY BE ABLE TO GET IT DONE IN A LITTLE BIT
5 LESS.

6 THE COURT: OKAY. YOU MAY PROCEED.

7 MS. BURKE: THANK YOU.

8 **Q BY MS. BURKE: GOOD AFTERNOON, MS. WILLETT.
9 COULD YOU TELL US EDUCATIONAL BACKGROUND?**

10 A I HAVE A BACHELOR'S DEGREE IN MATERIAL
11 SCIENCE ENGINEERING FROM NORTHWESTERN UNIVERSITY.

12 **Q WHEN DID YOU RECEIVE THAT DEGREE?**

13 A 1990.

14 **Q AND WHERE ARE YOU CURRENTLY EMPLOYED?**

15 A ICANN.

16 **Q CAN YOU BRIEFLY DESCRIBE FOR THE COURT,
17 BRIEFLY, WHAT ICANN DOES?**

18 A SO ICANN IS THE NOT-FOR-PROFIT ORGANIZATION
19 WHICH SUPPORTS THE DEVELOPMENT OF POLICIES AROUND
20 INTERNET GOVERNANCE AND THE DOMAIN NAME SYSTEM, AND
21 WE IMPLEMENT THOSE POLICIES THROUGH A SERIES OF
22 CONTRACTS WITH OUR CONTRACTED PARTIES WHO ARE
23 REGISTRY OPERATORS AND REGISTRARS.

24 **Q YOU USED THE TERM "DOMAIN NAME SYSTEM."
25 COULD YOU EXPLAIN THAT, PLEASE?**

26 A SO THE DOMAIN NAME SYSTEM IS THE SYSTEM THAT
27 ALLOWS US USERS TO OPERATE, INTERACT WITH THE
28 INTERNET THROUGH DOMAIN NAMES THAT WE CAN RECOGNIZE,

1 LIKE GOOGLE.COM, AND CORRELATES THAT NAME TO AN I.P.
2 ADDRESS, WHICH A COMPUTER UNDERSTANDS AND CAN FIND
3 THAT WEBSITE THROUGH THE INTERNET TECHNICALLY.

4 Q GENERALLY SPEAKING, CAN YOU DESCRIBE HOW
5 ICANN IS ORGANIZED?

6 A SO ICANN IS ORGANIZED INTO THREE MAIN PARTS.
7 THERE'S THE ICANN ORGANIZATION, WHICH IS LED BY OUR
8 CEO AND WE HAVE STAFF LIKE MYSELF.

9 THERE'S THE ICANN BOARD, WHICH GOVERNS AND
10 HAS AN OVERSIGHT FUNCTION FOR THE ORGANIZATION.

11 AND THEN THE THIRD PART IS WHAT WE CALL THE
12 ICANN COMMUNITY. IT'S COMPOSED OF SEVEN
13 ORGANIZATIONS WHICH ARE DESCRIBED IN ICANN'S BYLAWS.

14 Q WE'VE HEARD AT TIMES PEOPLE REFER TO ICANN
15 AS A MULTI-STAKEHOLDER MODEL.

16 HAVE YOU HEARD THAT TERM BEFORE?

17 A YES.

18 Q CAN YOU DESCRIBE WHAT THAT MEANS?

19 A SO MULTI-STAKEHOLDER MODEL REFERS TO THE
20 DIFFERENT INTERESTS THAT ARE REPRESENTED IN THAT
21 COMMUNITY I REFERRED TO.

22 SO THERE'S BUSINESS INTERESTS, GOVERNMENT
23 INTERESTS, PUBLIC POLICY INTERESTS, ACADEMICS; THOSE
24 MULTI-STAKEHOLDERS ARE ALL REPRESENTED AND HAVE A WAY
25 TO BE REPRESENTED IN THAT COMMUNITY OF ICANN.

26 Q YOU MENTIONED A MOMENT AGO THAT THERE ARE
27 SEVERAL COMMITTEES OR ORGANIZATIONS WITHIN THE ICANN
28 COMMUNITY. TELL US A LITTLE BIT MORE ABOUT THAT.

1 A SO THERE ARE TWO TYPES OF ORGANIZATIONS THAT
2 ARE DESCRIBED IN THAT COMMUNITY -- THAT OUR BYLAWS
3 DESCRIBE.

4 THERE ARE SUPPORTING ORGANIZATIONS.
5 SUPPORTING ORGANIZATIONS MAKE -- DEFINE POLICY AND
6 MAKE POLICY RECOMMENDATIONS ABOUT THE INTERNET AND
7 THE DNS.

8 Q LET ME STOP YOU FOR A SECOND. CAN YOU GIVE
9 US AN EXAMPLE OR TWO OF SUPPORTING ORGANIZATIONS
10 WITHIN ICANN?

11 A SO -- YES. HERE, THIS TODAY, WE'VE BEEN
12 TALKING ABOUT THE GNSO. IT'S THE GENERIC NAMES
13 SUPPORTING ORGANIZATION. THERE IS ALSO A CCNSO,
14 WHICH IS THE COUNTRY CODE NAME SUPPORTING
15 ORGANIZATION.

16 Q AND YOU WERE ABOUT TO TELL US ABOUT A SECOND
17 TYPE OF ORGANIZATION. PLEASE CONTINUE.

18 A SO THAT SECOND TYPE OF ORGANIZATION ARE
19 ADVISORY COMMITTEES. SO THEY DON'T DIRECTLY MAKE
20 POLICY RECOMMENDATIONS, BUT THEY ADVISE THE BOARD ON
21 MATTERS THAT ARE RELEVANT TO THEIR CONSTITUENCIES.

22 Q AND WHAT ARE SOME EXAMPLES OF ADVISORY
23 COMMITTEES IN THE ICANN COMMUNITY?

24 A SO THERE IS AN AT-LARGE ADVISORY COMMITTEE
25 THAT REPRESENTS THE INTERESTS OF THE GENERAL PUBLIC
26 AND USERS OF THE INTERNET.

27 THERE IS A SECURITY AND STABILITY ADVISORY
28 COMMITTEE. WE CALL THEM THE SSAC.

1 AND THEN ONE WE'VE BEEN TALKING ABOUT IS THE
2 GOVERNMENTAL ADVISORY COMMITTEE, THE GAC.

3 **Q NOW, WHEN DID YOU START WORKING AT ICANN?**

4 A SO I STARTED WORKING AT ICANN ON OCTOBER
5 1ST, 2012.

6 **Q AND WHAT WAS YOUR TITLE?**

7 A MY TITLE AT THAT TIME WAS GENERAL MANAGER OF
8 THE NEW GTLD PROGRAM.

9 **Q HEARD A LITTLE BIT ABOUT THAT PROGRAM, BUT
10 COULD YOU TELL THE COURT JUST GENERALLY WHAT IS THE
11 NEW GTLD PROGRAM?**

12 A SO IT WAS A PROGRAM DEVELOPED BASED ON A SET
13 OF POLICIES FROM THE GNSO REGARDING THE EXPANSION OF
14 THE TOP-LEVEL DOMAIN OF THE INTERNET.

15 **Q AND REMIND US AGAIN, WHAT IS A TOP-LEVEL
16 DOMAIN?**

17 A SO THOSE ARE THE STRING AFTER THE DOT, LIKE
18 .COM AND .NET AND .GOV.

19 **Q AND CAN YOU GIVE US AN EXAMPLE OF GTLDS THAT
20 WERE INTRODUCED INTO THE DOMAIN SYSTEM VIA OR THROUGH
21 THE NEW GTLD PROGRAM?**

22 A SURE. SO THERE WERE OVER 1200 OF THOSE
23 STRING THINGS LIKE THAT, .SHOP, .GOOGLE, .OSAKA.

24 **Q WHEN DID THE NEW GTLD PROGRAM LAUNCH?**

25 A IT LAUNCHED AND STARTED RECEIVING
26 APPLICATIONS IN JANUARY OF 2012.

27 **Q AS THE GENERAL MANAGER OF THE NEW GTLD
28 PROGRAM, WHAT WERE YOUR JOB RESPONSIBILITIES?**

1 A MY RESPONSIBILITY WAS TO SEE -- OVERSEE ALL
2 OF THE DAY-TO-DAY ASPECTS OF THE PROGRAM OPERATION.

3 Q NOW, WHEN YOU STARTED AT ICANN, HAD THE NEW
4 GTLD PROGRAM ALREADY BEGUN?

5 A YES, IT HAD.

6 Q SO WHAT DID YOU DO AT THAT TIME TO
7 FAMILIARIZE YOURSELF WITH THE PROGRAM AND YOUR
8 RESPONSIBILITIES?

9 A SO I REVIEWED THE APPLICANT GUIDEBOOK FOR
10 THE PROGRAM; I REVIEWED ICANN'S WEBSITE; I SPOKE WITH
11 STAFF TO LEARN ABOUT THE STATUS OF THE PROGRAM.

12 Q DID YOU DO ANYTHING TO LEARN ABOUT THE
13 HISTORY OF THE PROGRAM?

14 A YES.

15 Q WHAT DID YOU DO?

16 A SO ICANN RETAINS A LOT OF DOCUMENTATION FOR
17 TRANSPARENCY PURPOSES ON OUR WEBSITE. AND SO I
18 REVIEWED MATERIALS THAT ARE ON THE NEW GTLD PORTION
19 OF THAT WEBSITE.

20 Q HOW LONG DID YOU HOLD THE POSITION OF
21 GENERAL MANAGER?

22 A ABOUT A YEAR.

23 Q AND THEN DID YOUR POSITION CHANGE?

24 A YES.

25 Q WHAT WAS YOUR NEW POSITION?

26 A MY NEW TITLE WAS AND IS VICE PRESIDENT OF
27 GTLD OPERATIONS.

28 Q I THINK YOU JUST ANSWERED THAT, BUT THIS IS

1 YOUR CURRENT TITLE; IS THAT TRUE?

2 A YES.

3 Q AND WHAT ARE YOUR CURRENT JOB
4 RESPONSIBILITIES IN THE POSITION OF VICE PRESIDENT OF
5 GTLD OPERATIONS?

6 A SO I CONTINUE TO HAVE RESPONSIBILITY FOR THE
7 REMAINING PROCESSING AND CONTINUED OPERATIONS OF THE
8 NEW GTLD PROGRAM, BUT I ALSO HAVE RESPONSIBILITY TO
9 PROVIDE SERVICE AND SUPPORT TO THOSE CONTRACTED
10 PARTIES: THE REGISTRY OPERATORS AND REGISTRARS THAT
11 ICANN HAS CONTRACTS WITH, AND MY TEAM PROCESSES
12 ADMINISTRATIVE TYPES OF CONTRACT CHANGES FOR THEM.

13 Q LET'S FOCUS AGAIN ON THE NEW GTLD PROGRAM.
14 CAN YOU GENERALLY DESCRIBE HOW THAT PROGRAM
15 DEVELOPED?

16 A SO IT DEVELOPED FIRST THROUGH POLICY
17 DEVELOPMENT UNDER THE GNSO OVER MULTIPLE YEARS.

18 AND THEN THE -- AFTER THOSE POLICIES WERE
19 ADOPTED IN, OH, 2008, THEN --

20 Q LET ME STOP YOU FOR A SECOND.
21 WHO HAD TO, OR WHO DID ADOPT THE POLICIES?

22 A SO THE GNSO MADE POLICY RECOMMENDATIONS TO
23 THE BOARD, AND THEN THE ICANN BOARD ADOPTED THOSE
24 POLICY RECOMMENDATIONS.

25 Q OKAY. AND THEN WHAT HAPPENED?

26 A THEN ICANN, IN CONCERT WITH THAT EXTENDED
27 COMMUNITY, BEGAN A MULTI-YEAR PROCESS TO DEVELOP THE
28 IMPLEMENTATION PLANS FOR THOSE POLICIES. AND THAT

1 RESULTED IN A SERIES OF IMPLEMENTATION DOCUMENTS,
2 INCLUDING THAT BIG 300-PAGE APPLICANT GUIDEBOOK.

3 Q IS THERE A SET OF RULES THAT GOVERNS THE NEW
4 GTLD PROGRAM?

5 A YES.

6 Q AND WHERE IS THAT CONTAINED?

7 A IT IS THAT APPLICANT GUIDEBOOK.

8 Q AND CAN YOU BRIEFLY TELL US A LITTLE BIT
9 MORE ABOUT HOW THE GUIDEBOOK WAS DEVELOPED?

10 A YES. SO THE GUIDEBOOK WAS DRAFTED OVER A
11 SERIES OF YEARS. IT, LIKE MANY DOCUMENTS ICANN
12 PRODUCES, WE PUT DOCUMENTS OUT FOR PUBLIC COMMENT.
13 SO IT'S A FORMAL PROCESS WE HAVE SO THAT THE GENERAL
14 PUBLIC AND THEN MEMBERS OF THAT MULTI-STAKEHOLDER
15 COMMUNITY CAN COMMENT AND GIVE THEIR OPINIONS ON THE
16 MATERIALS WE'RE PUBLISHING.

17 Q DO YOU KNOW WHEN THE FINAL VERSION OF THE
18 GUIDEBOOK WAS PUBLISHED?

19 A THE FINAL VERSION WAS PUBLISHED IN JUNE OF
20 2012.

21 Q AND THERE'S A BINDER IN FRONT OF YOU.
22 WOULD YOU TURN WITH ME TO EXHIBIT 2.

23 A YES.

24 Q AND JUST -- DO YOU RECOGNIZE THAT DOCUMENT?

25 A I DO.

26 Q AND WHAT IS IT?

27 A IT IS THE JUNE 2012 VERSION OF THE APPLICANT
28 GUIDEBOOK.

1 MS. BURKE: I BELIEVE, YOUR HONOR, THAT'S
2 ALREADY IN EVIDENCE.

3 Q BY MS. BURKE: MS. WILLETT, WHAT ARE SOME OF
4 THE EXAMPLES OF THE KIND OF INFORMATION THE GUIDEBOOK
5 PROVIDES TO THE APPLICANTS?

6 A SO THE APPLICANT GUIDEBOOK DESCRIBES HOW
7 THE -- THEIR APPLICATIONS WOULD BE PROCESSED. IT
8 INCLUDES THE APPLICATION QUESTIONS AND THE EVALUATION
9 CRITERIA.

10 IT INCLUDES OBJECTION PROCEDURES,
11 DESCRIPTIONS ON HOW INDIVIDUAL PARTIES OR ENTITIES
12 THAT HAVE CONCERNS ABOUT SPECIFIC APPLICATIONS COULD
13 POSE THAT OBJECTION.

14 IT INCLUDES A DRAFT OF THE REGISTRY
15 AGREEMENT THAT APPLICANTS WOULD HAVE TO SIGN IF THEY
16 WERE SUCCESSFUL THROUGH THE PROGRAM.

17 AND THEN IT ALSO INCLUDES THE TERMS AND
18 CONDITIONS, WHICH ALL OF THE APPLICANTS HAD TO AGREE
19 TO, AS PART OF APPLYING TO THE PROGRAM.

20 Q WE'VE HEARD SOME TESTIMONY ABOUT THAT. IS
21 THAT MODULE 6?

22 A YES, IT IS.

23 Q AND ARE APPLICANTS REQUIRED TO AGREE TO THE
24 TERMS AND CONDITIONS OF THE GUIDEBOOK IN ORDER TO
25 APPLY FOR AN APPLICATION?

26 A YES, THEY WERE.

27 Q COULD YOU TURN TO MODULE 6 WHICH IS THERE IN
28 EXHIBIT 2 AT PAGE 332?

1 A (WITNESS COMPLIES.)

2 Q AND CAN YOU POINT OUT FOR THE COURT OR READ
3 FOR US AND POINT OUT FOR US WHERE IN THAT MODULE IT
4 SAYS THAT APPLICANTS ARE REQUIRED TO AGREE TO THE
5 TERMS AND CONDITIONS?

6 A UM, SO RIGHT AT THE TOP OF PAGE 332, THAT
7 FIRST PARAGRAPH, IT SAYS (AS READ):

8 "BY SUBMITTING THIS
9 APPLICATION THROUGH ICANN'S ONLINE
10 INTERFACE FOR GENERIC TOP-LEVEL
11 DOMAIN, GTLD, THIS APPLICATION,
12 APPLICANT, INCLUDING ALL PARENT
13 COMPANIES, SUBSIDIARIES,
14 AFFILIATION AGENTS, CONTRACTORS,
15 EMPLOYEES, AND ANY AND ALL OTHER
16 ACTING ON ITS BEHALF AGREES TO THE
17 FOLLOWING TERMS AND CONDITIONS,
18 THESE TERMS AND CONDITIONS, WITHOUT
19 MODIFICATION. APPLICANT
20 UNDERSTANDS AND AGREES THAT THESE
21 TERMS AND CONDITIONS ARE BINDING ON
22 APPLICANT AND ARE A MATERIAL PART
23 OF THIS APPLICATION."

24 Q THANK YOU.

25 WHAT HAPPENS IF AN APPLICANT HAD A DISPUTE
26 WITH ICANN OVER THE PROCESSING OF ITS APPLICATION?

27 A SO THE APPLICANTS WERE ABLE TO USE ANY OF
28 ICANN'S ACCOUNTABILITY MECHANISMS TO ADDRESS THAT

1 DISPUTE.

2 Q AND WHERE IN THE GUIDEBOOK -- WE'VE BEEN
3 LOOKING AT THIS COVENANT NOT TO SUE, BUT WHERE,
4 SPECIFICALLY, IN THE GUIDEBOOK DOES IT TELL
5 APPLICANTS THAT THEY CAN USE ACCOUNTABILITY
6 MECHANISMS?

7 A MAY I --

8 Q ABSOLUTELY.

9 A (REVIEWING DOCUMENT.)

10 Q I'M NOT SURE THERE'S ANY DISPUTE. IT WAS A
11 BIT OF AN UNFAIR QUESTION.

12 MR. BROWN, DO YOU HAVE ANY OBJECTION IF I
13 DIRECT HER TO THE GENERAL AREA?

14 MR. BROWN: NO.

15 Q BY MS. BURKE: IF YOU LOOK AT PAGE 234, IN
16 PARAGRAPH 6 THERE, IF YOU LOOK TOWARDS THE END OF
17 THAT, IS THAT THE AREA THAT INCLUDES THIS
18 INFORMATION?

19 A SO, I'M SORRY, COULD YOU STATE THE QUESTION
20 AGAIN?

21 Q ABSOLUTELY. IT WAS A TERRIBLE QUESTION.
22 LET ME ASK A BETTER ONE.

23 LOOKING AT EXHIBIT 2, PAGE 334, LOOKING AT
24 PARAGRAPH 6 TOWARDS THE END, IS THERE LANGUAGE IN
25 THAT PART OF THE GUIDEBOOK THAT TELLS APPLICANTS THAT
26 THEY'RE GOING TO BE PERMITTED TO USE ICANN'S
27 ACCOUNTABILITY MECHANISMS TO RESOLVE ANY DISPUTES?

28 A YES.

1 Q COULD YOU POINT OUT THAT LANGUAGE, PLEASE?

2 A SO I WOULD READ IT AS STARTING WITH THE
3 LANGUAGE (AS READ):

4 "PROVIDED THAT APPLICANT MAY
5 UTILIZE ANY ACCOUNTABILITY
6 MECHANISM SET FORTH IN ICANN'S
7 BYLAWS FOR PURPOSES OF CHALLENGING
8 ANY FINAL DECISION MADE BY ICANN
9 WITH RESPECT TO THE APPLICATION.
10 APPLICANT ACKNOWLEDGES THAT ANY
11 ICANN-AFFILIATED PARTY IS AN
12 EXPRESS THIRD PARTY BENEFICIARY OF
13 THIS SECTION 6, AND MAY ENFORCE
14 EACH PROVISION OF SECTION 6 AGAINST
15 APPLICANT."

16 Q OKAY. THANK YOU. WHERE, SPECIFICALLY, ARE
17 THE ACTUAL ACCOUNTABILITY MECHANISMS SET FORTH?

18 A THEY ARE DESCRIBED IN ICANN'S BYLAWS.

19 Q OKAY. AND THE COURT HAS ALREADY HEARD SOME
20 INFORMATION ABOUT THAT. WILL YOU GENERALLY JUST TELL
21 US WHAT THE ACCOUNTABILITY MECHANISMS ARE THAT ARE
22 AVAILABLE?

23 A SURE. SO THERE'S AN OMBUDSMAN, IS ONE OF
24 OUR ACCOUNTABILITY MECHANISMS.

25 Q AND WHAT DOES AN OMBUDSMAN DO, OR WHEN WOULD
26 SOMEBODY USE AN OMBUDSMAN?

27 A LARGELY AN OMBUDSMAN DEALS WITH MATTERS OF
28 FAIRNESS, IF PARTIES TAKE MATTERS OF FAIRNESS WHERE

1 THEY FEEL THEY HAVE NOT BEEN TREATED FAIRLY, TO HIM.

2 **Q OKAY. WHAT OTHER ACCOUNTABILITY MECHANISMS**
3 **ARE THERE?**

4 A THERE IS A REQUEST FOR RECONSIDERATION.

5 **Q AND WHO HEARS THAT AND WHAT ABOUT?**

6 A SO AS OF IN 2013, THE BOARD GOVERNANCE
7 COMMITTEE REVIEWED REQUESTS FOR RECONSIDERATION.

8 **Q AND WHAT SORT OF THINGS COULD SOMEBODY**
9 **CHALLENGE THROUGH A RECONSIDERATION REQUEST?**

10 A SO AT THAT TIME, REQUESTS FOR
11 RECONSIDERATION DEALT WITH MATTERS OF STAFF ACTION,
12 AND WE EXTENDED IT TO INCLUDE THE THIRD PARTY PANELS,
13 THE VENDORS THAT WE ALSO UTILIZED AS PART OF THE NEW
14 GTLD PROGRAM.

15 **Q AND WHAT OTHER ACCOUNTABILITY MECHANISMS ARE**
16 **THERE IN ICANN'S BYLAWS?**

17 A THERE'S ALSO THE IRP, OR INDEPENDENT REVIEW
18 PROCESS.

19 **Q AND WE'VE HEARD QUITE A BIT ABOUT THAT**
20 **TODAY.**

21 LET ME ASK YOU THIS: THERE WAS ALSO A
22 REFERENCE TO THE CEP? DO YOU RECOGNIZE THAT TERM?

23 A I DO.

24 **Q WHAT DOES IT STAND FOR, FIRST?**

25 A IT IS THE COOPERATIVE ENGAGEMENT PROCESS.

26 **Q OKAY. IS THAT ALSO ONE OF ICANN'S DISPUTE**
27 **RESOLUTION PROCESSES?**

28 A IT'S -- YES. IT'S A COMPONENT OF, OR IT'S

1 THE FIRST STEP OF AN IRP.

2 Q THANK YOU.

3 NOW, IN YOUR ROLE AS VICE PRESIDENT OF GTLD
4 OPERATIONS, ARE YOU FAMILIAR WITH THE EVALUATION
5 PROCESS FOR NEW GTLD APPLICATIONS?

6 A YES, I AM.

7 Q AND WERE YOU ALSO FAMILIAR WITH THAT WHEN
8 YOUR TITLE WAS GENERAL MANAGER?

9 A YES.

10 Q OKAY. DID ICANN AT ANY POINT ESTIMATE THE
11 NUMBER OF NEW GTLD APPLICATIONS IT WOULD RECEIVE
12 THROUGH THIS PROGRAM?

13 A YES.

14 Q AND WHAT WAS THAT ESTIMATE?

15 A ICANN ESTIMATED THAT IT WOULD RECEIVE ABOUT
16 500 APPLICATIONS TO THE PROGRAM.

17 Q HOW MANY APPLICATIONS DID ICANN ACTUALLY
18 RECEIVE THROUGH THE NEW GTLD PROGRAM?

19 A NEARLY 2,000. 1,930 APPLICATIONS.

20 Q CAN YOU EXPLAIN TO THE COURT AT A HIGH LEVEL
21 WHAT THE STEPS ARE THAT ARE INVOLVED IN PROCESSING A
22 NEW GTLD APPLICATION?

23 A SO ICANN HAD TO PERFORM A SERIES OF REVIEWS
24 AND EVALUATIONS OF EACH APPLICATION. IT INCLUDED
25 BACKGROUND SCREENING, AS WELL AS INITIAL EVALUATION,
26 WHICH HAD -- WE HAD A NUMBER OF PANELS, FINANCIAL,
27 TECHNICAL EVALUATIONS. AND AS WE'VE BEEN TALKING
28 ABOUT, THE GEOGRAPHIC NAME PANEL, GEOGRAPHIC

1 EVALUATION.

2 Q WERE APPLICANTS MADE AWARE OF THE VARIOUS
3 STAGES OR EVALUATIONS THAT THEIR APPLICATIONS WOULD
4 NEED TO GO THROUGH?

5 A YES.

6 Q IS THAT ALSO SET OUT IN THE GUIDEBOOK?

7 A YES, IT IS.

8 Q WERE -- WAS ANY APPLICANT FOR A GTLD ALLOWED
9 TO SKIP ANY PHASE OF THE EVALUATION PROCESS?

10 MS. COLON: OBJECTION, YOUR HONOR. IT'S A
11 LEADING QUESTION.

12 THE COURT: OVERRULED.

13 THE WITNESS: NO. NO APPLICANTS WERE
14 ALLOWED TO SKIP PORTIONS OF THE EVALUATION.

15 Q BY MS. BURKE: HAS ANY APPLICATION, ANY GTLD
16 APPLICATION, BEEN APPROVED DESPITE THE APPLICANT
17 FAILING A PHASE OF THE EVALUATION PROCESS?

18 A SO IT'S NOT QUITE THAT SIMPLE.

19 Q OKAY. SO PLEASE EXPLAIN.

20 A SO THERE WAS AN INITIAL EVALUATION, AND IF
21 AN APPLICANT FAILED INITIAL EVALUATION, WE EXTENDED
22 THEM AN OPPORTUNITY TO GO TO EXTENDED EVALUATIONS.
23 SO THEY COULD HAVE FAILED INITIAL EVALUATION BUT
24 PASSED ON EXTENDED EVALUATION AND THEN ULTIMATELY
25 BEEN CONTRACTED.

26 Q WHAT IF AN APPLICANT WENT INTO -- SORRY.
27 YOU CALLED THAT EXTENDED EVALUATION; CORRECT?

28 A YES.

1 Q IF AN APPLICANT WENT INTO EXTENDED
2 EVALUATION AND STILL WAS DEEMED TO HAVE FAILED ONE OR
3 MORE OF THE EVALUATION PHASES, DID ANY APPLICANT IN
4 THAT POSITION -- WAS ANY APPLICANT IN THAT POSITION
5 GRANTED THE GTLD THAT THEY APPLIED FOR?

6 A NO.

7 Q DID THE GUIDEBOOK EXPLAIN TO APPLICANTS THAT
8 THEY MUST PASS EACH OF THE EVALUATION PHASES?

9 MS. COLON: OBJECTION, YOUR HONOR. IT'S
10 ANOTHER LEADING QUESTION.

11 THE COURT: OVERRULED.

12 THE WITNESS: YES. THE GUIDEBOOK EXPLAINED
13 THAT.

14 Q BY MS. BURKE: AND, GENERALLY, WHERE IN THE
15 GUIDEBOOK?

16 A SO MAY I --

17 Q ABSOLUTELY.

18 A ALL RIGHT. SO MODULE 1 OF THE GUIDEBOOK
19 DESCRIBED THE GENERAL PROCESSING AND HAD SOME
20 TIMELINE INFORMATION.

21 AND THEN MODULE 2 HAS THE EVALUATION
22 PROCEDURES.

23 Q AND JUST SO THE RECORD IS CLEAR, IS MODULE 2
24 OF EXHIBIT 2 -- AND THAT BEGINS AT PAGE 53; IS THAT
25 CORRECT?

26 A YES. EXHIBIT 2, PAGE 53.

27 Q OKAY. AND COULD I DIRECT YOUR ATTENTION AND
28 ASK YOU TO READ THE PARAGRAPH THAT'S IMMEDIATELY

1 ABOVE THE BOLDED HEADING "EXTENDED EVALUATION"?

2 A YES. IT SAYS (AS READ):

3 "AN APPLICATION MUST PASS ALL
4 THESE REVIEWS TO PASS THE INITIAL
5 EVALUATION. FAILURE TO PASS ANY
6 ONE OF THESE REVIEWS WILL RESULT IN
7 A FAILURE TO PASS THE INITIAL
8 EVALUATION."

9 Q AND IMMEDIATELY ABOVE THAT IS THE SUMMARY OF
10 THE VARIOUS REVIEW PROCESSES; CORRECT?

11 A CORRECT.

12 Q DOES ICANN'S STAFF ACTUALLY PERFORM THE
13 EVALUATIONS?

14 A NO, WE DO NOT.

15 Q WHY NOT?

16 A SO WE'RE NOT EXPERTS IN ALL OF THESE
17 CATEGORIES, AND SO WE ENGAGED EXPERT PANELISTS WHO
18 WERE -- WHO HAD SPECIFIC EXPERTISE IN EACH OF THESE
19 SPECIFIC AREAS TO PERFORM THOSE REVIEWS.

20 Q WERE THOSE -- WHAT WERE THOSE PANELS
21 REFERRED TO AS?

22 A EXPERT PANELS, EVALUATION PANELS.

23 Q WHAT ROLE DOES ICANN'S STAFF PLAY IN THE
24 EVALUATION PROCESS?

25 A SO WE COORDINATE AND FACILITATE PROVIDING
26 APPLICATION DATA TO THOSE EXPERT PANELS AND RECEIVING
27 THE RESULTS BACK FROM THEM AND COMPILING AND
28 PUBLISHING THOSE RESULTS.

1 Q WHEN STAFF RECEIVED RESULTS FROM AN EXPERT
2 OR AN EVALUATION PANEL, DID IT REVIEW THE PANEL'S
3 DECISION?

4 A YES.

5 Q FOR WHAT PURPOSE?

6 A SO WE REVIEWED THE PANEL'S DECISIONS FOR
7 CONSISTENCY AND COMPLETENESS AND -- ESPECIALLY IN
8 CASES WHERE AN APPLICANT WAS FAILING FOR CLARITY.

9 Q WHEN ICANN STAFF RECEIVED RESULTS FROM AN
10 EVALUATION PANEL, DID IT REVIEW THAT PANEL'S DECISION
11 BY REDOING THE EVALUATION ITSELF?

12 A NO.

13 Q AND LET ME JUST STOP AND CLARIFY FOR A
14 SECOND.

15 THE STAFF THAT WE'RE REFERRING TO RIGHT NOW,
16 IS THAT THE STAFF THAT YOU OVERSEE?

17 A YES.

18 Q DID YOUR STAFF DECIDE UPON RECEIVING AN
19 EVALUATION PANEL'S DECISION WHETHER OR NOT THE PANEL
20 HAD ARRIVED AT A CORRECT RESULT?

21 A NO, WE DID NOT.

22 Q NOW, YOU MENTIONED EARLIER THAT ICANN ENDED
23 UP RECEIVING 1,930 APPLICATIONS.

24 HOW DID ICANN ADJUST FROM THE EXPECTATION OF
25 RECEIVING 500 TO ACTUALLY RECEIVING ALMOST 2000
26 APPLICATIONS?

27 A SO ULTIMATELY WE HELD A PRIORITIZATION DRAW,
28 A RAFFLE, LIKE A DRAWING OF NUMBERS TO ASSIGN

1 PRIORITY TO EACH APPLICATION, EACH OF THE 1,930
2 APPLICATIONS.

3 Q WHEN WAS THAT HELD?

4 A IN DECEMBER OF 2012.

5 Q AND ONCE YOU HAD THESE PRIORITY NUMBERS
6 GENERALLY, THEN WHAT WAS THAT USED TO DETERMINE?

7 A SO WE USED THAT TO FACILITATE ALL OF THOSE
8 EXPERT PANELS TO COMPLETE THEIR EVALUATION IN THAT
9 SEQUENCE, AND WE USED THAT TO -- THAT SAME PRIORITY
10 NUMBER TO THEN PUBLISH THE RESULTS IN THAT SEQUENCE.

11 Q WHEN DID THE EVALUATION PANELS BEGIN THEIR
12 REVIEW OF NEW GTLD APPLICATIONS?

13 A SOMETIME -- SOME APPLICATIONS WERE SENT TO
14 PANELS IN 2012, SOME OF IT BEFORE MY TENURE, BEFORE I
15 JOINED ICANN, BUT WE WERE STILL ASSIGNING
16 APPLICATIONS OUT TO SOME PANELS IN JANUARY AND
17 FEBRUARY OF 2013.

18 Q AND AFTER THE PRIORITIZATION DRAW, DID THAT
19 CHANGE ANYTHING ABOUT HOW THE EVALUATION PANELS WERE
20 OPERATING?

21 A YES.

22 Q WHAT, FOR EXAMPLE?

23 A SO WE'RE TALKING ABOUT A LOT OF PANELS AND
24 MULTIPLE FIRMS, SO WE HAD THREE FIRMS THAT DID
25 FINANCIAL EVALUATION AND THREE FIRMS THAT DID
26 TECHNICAL EVALUATIONS, FOR EXAMPLE.

27 SO WE HAD HANDED OUT APPLICATIONS TO THEM,
28 AND THEY HAD STARTED PROCESSING THEM, BUT THEN WE

1 ASSIGNED THE NUMBERS, AND WE WANTED RESULTS IN A
2 WHOLE DIFFERENT ORDER, AND WE NEEDED RESULTS BACK ON
3 APPLICATIONS WE HADN'T ASSIGNED OUT.

4 SO IT SORT OF TURNED ALL OF THE PROCESSING
5 AND SEQUENCE A LITTLE UPSIDE DOWN. IT WAS A LITTLE
6 CHALLENGING. WE HAD TO GET EVERYBODY ALIGNED TO
7 PROCESS IN THAT SEQUENCE.

8 **Q NOW, DID YOU AND YOUR STAFF RECEIVE**
9 **QUESTIONS FROM THESE EVALUATION PANELS?**

10 A YES.

11 **Q HOW MANY?**

12 A OH, HUNDREDS OF QUESTIONS.

13 **Q AND HOW DID YOU RESPOND, GENERALLY, NOT**
14 **SPECIFICALLY, TO QUESTIONS FROM PANELS?**

15 A I MEAN, WE TRIED TO RESPOND TO KEEP THEM
16 MOVING, BUT GIVEN THE NUMBER OF QUESTIONS WE
17 RECEIVED, WE HAD TO -- COULDN'T DEAL WITH THEM ALL AT
18 ONCE.

19 **Q HOW DID YOU THEN APPROACH THE QUESTIONS YOU**
20 **WERE RECEIVING?**

21 A WE PRIORITIZED THE ISSUES AT HAND THAT WERE
22 RAISED WITH US, AND WE TRIED TO ADDRESS THE ISSUES
23 THAT WERE GOING TO AFFECT THE GREATEST NUMBER OF
24 APPLICANTS FIRST. SO ISSUES THAT AFFECT EVERY
25 APPLICATION WE TRIED TO ADDRESS FIRST.

26 AND THINGS THAT WOULD HOLD UP A PANEL'S WORK
27 ENTIRELY WITH ISSUES PERTAINING TO A FEW APPLICATIONS
28 OR A SINGLE APPLICATION GOT A BIT DELAYED.

1 Q NOW, WE HEARD IN THE LAST COUPLE DAYS, AND
2 YOU MENTIONED THAT ONE OF THE EVALUATION PHASES IS
3 THE GEOGRAPHIC NAMES REVIEW.

4 WHAT DOES THE GEOGRAPHIC NAMES REVIEW PHASE
5 SEEK TO DETERMINE?

6 A ESSENTIALLY, TWO THINGS.

7 THE GEOGRAPHIC NAMES REVIEW REVIEWS EVERY
8 STRING APPLIED FOR. SO WHETHER IT'S .SHOP OR
9 .AFRICA, EVERY SINGLE STRING WAS DETERMINED BY THE
10 PANEL AS TO WHETHER OR NOT IT WAS A GEOGRAPHIC NAME,
11 AND PHASE II WAS, IF IT WAS A GEOGRAPHIC NAME, DID IT
12 HAVE THE REQUISITE SUPPORT OR NON-OBJECTION
13 DEMONSTRATED THAT THE GUIDEBOOK CALLED FOR.

14 Q AND FOR A GEOGRAPHIC NAME LIKE .AFRICA, WHAT
15 WAS THE REQUISITE SUPPORT REQUIRED?

16 A SO FOR A REGION OR CONTINENT OF AFRICA, IT
17 REQUIRED SUPPORT FROM 60 PERCENT OF THE RELEVANT
18 GOVERNMENTS.

19 Q AND WHO MADE A DETERMINATION TO WHETHER THAT
20 SUPPORT HAD BEEN DONE OR NON-OBJECTION HAD BEEN
21 DEMONSTRATED?

22 A THE GEOGRAPHIC NAMES PANEL FIRM WHICH HAD
23 BEEN ASSIGNED THE APPLICATION.

24 Q AND WHAT HAPPENS IF AN APPLICANT DOES NOT
25 PASS -- LET ME WITHDRAW IT AND RESTART.

26 IF A STRING HAS BEEN DETERMINED TO BE A
27 GEOGRAPHIC NAME, WHAT HAPPENS IF IT THEN DOES NOT
28 PASS GEOGRAPHIC NAMES REVIEW?

1 A SO IT HAS THE OPPORTUNITY TO GO TO EXTENDED
2 EVALUATION.

3 **Q AND WHAT, FOR EXAMPLE, WOULD AN APPLICANT BE**
4 **ALLOWED TO DO DURING THAT EXTENDED PERIOD FOR**
5 **GEOGRAPHIC NAMES OBJECTION?**

6 MS. COLON: OBJECTION. THIS IS GETTING
7 PRETTY FAR AFIELD OF JUDICIAL ESTOPPEL. OBJECTION
8 BASED ON RELEVANCE.

9 THE COURT: OKAY. OVERRULED FOR NOW.

10 THE WITNESS: SO THE GEOGRAPHIC NAMES PANEL,
11 BOTH IN INITIAL EVALUATION AND IN EXTENDED
12 EVALUATION, IT REVIEWS ALL OF THOSE LETTERS OF
13 SUPPORT OR NON-OBJECTION THAT ARE PROVIDED BY THE
14 APPLICANT, AND EACH OF THOSE LETTERS HAS TO BE
15 VERIFIED, AND IT HAS TO CONTAIN -- MEET FOUR SPECIFIC
16 CRITERIA THAT ARE PROVIDED FOR IN THE GUIDEBOOK, AND
17 IF ALL OF THOSE CRITERIA ARE NOT MET, THEN THE PANEL
18 ISSUES WHAT WE CALL CLARIFYING QUESTIONS, WHICH WE
19 THEN PASS ALONG TO THE APPLICANT, AND THEY HAVE AN
20 OPPORTUNITY TO GET REVISED LETTERS OF SUPPORT, WHICH
21 WOULD THEN FULFILL ALL OF THOSE CRITERIA.

22 **Q BY MS. BURKE: WHAT IS YOUR UNDERSTANDING AS**
23 **TO WHY THE 60 PERCENT SUPPORT OR NON-OBJECTION**
24 **REQUIREMENT IS IMPORTANT FOR GEOGRAPHIC NAMES?**

25 A SO THE INTENTION WAS TO HAVE A MAJORITY,
26 MORE THAN A MAJORITY OF SUPPORT FOR A SPECIFIC
27 APPLICATION.

28 **Q AND WHY WAS THERE A CONCERN ABOUT THAT FOR**

1 **GEOGRAPHIC NAMES?**

2 A SO THERE'S GEOGRAPHIC NAME OF -- ARE OF A
3 SENSITIVE NATURE AND SPECIFIC INTERESTS TO
4 GOVERNMENTS. AND THE INTENTION WAS TO HAVE
5 REPRESENTATION OF THOSE RELEVANT GOVERNMENT
6 AUTHORITIES TO HAVE A SAY IN WHO OPERATED THOSE TLDS.

7 **Q NOW, DOES ICANN'S STAFF DETERMINE WHETHER A**
8 **GOVERNMENT OR A PUBLIC AUTHORITY QUALIFIES AS A**
9 **RELEVANT AUTHORITY FOR THE 60 PERCENT RULE?**

10 A NO.

11 **Q WHO MAKES THAT DETERMINATION?**

12 A THE GEOGRAPHIC NAMES PANEL.

13 **Q DOES THE ICANN STAFF DETERMINE WHETHER AN**
14 **APPLICANT'S LETTER OF SUPPORT MEETS THOSE FOUR**
15 **CRITERIA YOU JUST DISCUSSED FROM THE GUIDEBOOK?**

16 A NO, WE DON'T.

17 **Q WHO DOES THAT?**

18 A AGAIN, IT'S THE GEOGRAPHIC NAMES PANEL.

19 **Q IF ICANN STAFF RECEIVED QUESTIONS FROM A**
20 **GEOGRAPHIC NAMES PANEL, WHAT WOULD IT DO?**

21 A DEPENDS ON WHAT THE QUESTION WAS. BUT WE
22 WOULD TRY TO, YOU KNOW, GIVE AS MUCH HELP AND
23 ASSISTANCE TO THE PANEL AS THEY NEEDED.

24 **Q I'D LIKE TO SWITCH OUR ATTENTION TO THE GAC**
25 **FOR A MOMENT AND START WITH A QUESTION AS TO WHETHER**
26 **THE APPLICANT GUIDEBOOK PROVIDES ANY PROCESS FOR**
27 **ADVISORY COMMITTEES OR OTHER ENTITIES OR INDIVIDUALS**
28 **TO COMMENT ON SPECIFIC APPLICATIONS.**

1 MS. COLON: OBJECTION, YOUR HONOR. AGAIN,
2 THIS IS REALLY GETTING TO PHASE II ISSUES. THIS WAS
3 THE SUBJECT OF THE IRP, BUT NOT THE SUBJECT OF
4 JUDICIAL ESTOPPEL.

5 THE COURT: OKAY. OVERRULED.

6 THE WITNESS: SO THERE ARE TWO PARTS OF THE
7 GUIDEBOOK THAT REFERENCE WHERE THE GAC COULD EXPRESS
8 CONCERNS ABOUT AN APPLICATION.

9 Q BY MS. BURKE: AND WHAT ARE THE TWO AVENUES
10 THAT THE GAC COULD TAKE?

11 A SO THERE'S AN EARLY WARNING THAT THE GAC
12 COULD ISSUE AGAINST A SPECIFIC APPLICATION, AND THEN
13 GAC COULD ALSO ISSUE ADVICE ABOUT AN APPLICATION OR
14 STRING.

15 Q JUST BEFORE WE GO ON, LET'S MAKE SURE THE
16 RECORD IS CLEAR. THE GAC WE'RE REFERRING TO, WHAT IS
17 THAT?

18 A IT'S THE GOVERNMENTAL ADVISORY COMMITTEE.

19 Q AND YESTERDAY YOU WERE HERE DURING OPENING
20 STATEMENTS; IS THAT CORRECT?

21 A YES, I WAS.

22 Q AND DURING OPENING STATEMENTS, DCA'S COUNSEL
23 REFERRED TO THE GAC AS AN ICANN COMMUNITY. DID YOU
24 HEAR THAT?

25 A YES, I DID.

26 Q DO YOU AGREE WITH THAT CHARACTERIZATION?

27 A NOT REALLY.

28 Q OKAY.

1 **WHY NOT?**

2 A SO THERE ARE COMMITTEES OF THE BOARD OR
3 COMMITTEES OF STAFF, BUT THE GAC IS ONE OF THOSE
4 ADVISORY COMMITTEES OF THE COMMUNITY. SO IT'S --
5 THEY'RE NOT -- IT'S NOT COMPOSED OF STAFF MEMBERS.
6 IT'S NOT A COMMITTEE OF THE BOARD.

7 **Q DOES THE GAC OPERATE INDEPENDENTLY OF STAFF**
8 **AND THE BOARD?**

9 A YES. IT'S AN INDEPENDENT ENTITY.

10 **Q WHO ARE THE MEMBERS OF THE GAC?**

11 A SO THERE ARE OVER 150 GOVERNMENTS AND
12 INTERGOVERNMENTAL ORGANIZATIONS WHICH ARE MEMBERS OF
13 THE GAC.

14 **Q AND DOES ICANN APPOINT THOSE MEMBERS TO THE**
15 **GAC?**

16 A NO, WE DON'T.

17 **Q HOW DOES A GOVERNMENTAL OR INTERGOVERNMENTAL**
18 **ENTITY BECOME A MEMBER OF THE GAC?**

19 A THEY APPLY DIRECTLY TO THE GAC FOR
20 MEMBERSHIP.

21 **Q AND DOES THE -- SORRY. DIDN'T MEAN TO**
22 **INTERRUPT YOU.**

23 **DOES ICANN'S BOARD OR STAFF HAVE ANYTHING TO**
24 **DO WITH EVALUATING THOSE APPLICATIONS TO THE GAC?**

25 A NO. NO, WE DON'T.

26 **Q DID THE GAC HAVE THE RIGHT OR WAS IT GIVEN**
27 **AUTHORITY TO ISSUE ADVICE TO THE ICANN BOARD**
28 **REGARDING INDIVIDUAL GTLD APPLICATIONS?**

1 A ACCORDING TO OUR BYLAWS, THE GAC CAN ISSUE
2 ADVICE TO THE BOARD ON ANYTHING AT ANY TIME.

3 Q **DID THE GUIDEBOOK HAVE A PARTICULAR**
4 **PROVISION ABOUT THAT?**

5 A YES, IT DID.

6 Q **WAS THAT WHAT YOU WERE MENTIONING EARLIER**
7 **WHEN YOU TALKED ABOUT ADVICE?**

8 A YES.

9 Q **DO YOU KNOW WHY THE GUIDEBOOK PROVIDED THE**
10 **GAC A PROCESS TO COMMENT ON SPECIFIC APPLICATIONS?**

11 A SO MY UNDERSTANDING IS THAT THE GUIDEBOOK
12 CALLS FOR THE -- THAT ADVICE TO BE ISSUED BEFORE THE
13 COMPLETION OF THE EVALUATION IS DONE.

14 SO IT WAS ABOUT THE TIME OF EVALUATION
15 PROCESSING. SO IT'S NOT TO HAVE US PROCESS AND
16 EVALUATE A BUNCH OF APPLICATIONS WHICH WERE NOT GOING
17 TO BE SUCCESSFUL THAT WERE GOING TO BE STOPPED DUE TO
18 ADVICE AND PUT APPLICANTS THROUGH THAT. THE IDEA WAS
19 THAT THE GUIDEBOOK SPELLED OUT SPECIFICALLY WHERE --
20 WHEN AND WHERE THAT ADVICE COULD BE ISSUED.

21 Q **IS THE GUIDEBOOK THE ONLY AUTHORITY THE GAC**
22 **HAS TO GIVE ADVICE ON APPLICATIONS?**

23 A NO.

24 Q **WHERE ELSE DOES THE GAC HAVE AUTHORITY TO**
25 **GIVE ADVICE ON APPLICATIONS?**

26 A SO IT'S PART OF OUR ICANN'S BYLAWS.

27 Q **WE HEARD EARLIER IN THIS TRIAL THE TERM**
28 **CONSENSUS ADVICE.**

1 DO YOU RECALL THAT?

2 A YES.

3 Q IS THAT A TERM YOU'RE FAMILIAR WITH?

4 A YES.

5 Q WHAT IS CONSENSUS ADVICE?

6 A SO WITHIN THE GAC, ONE OR MORE MEMBERS CAN
7 RECOMMEND -- MAKE A RECOMMENDATION ON A MATTER OF
8 ADVICE. AND AS LONG AS NONE OF THE OTHER MEMBERS OF
9 THE GAC OBJECT TO THAT ADVICE, IT'S ABLE TO BECOME
10 CONSENSUS ADVICE.

11 Q AND DOES THE GUIDEBOOK SAY ANYTHING IN
12 PARTICULAR ABOUT HOW THE BOARD IS TO TREAT OR ADDRESS
13 CONSENSUS ADVICE FROM THE GAC?

14 A YES, IT DOES.

15 Q AND WHERE IS THAT?

16 A MODULE 3 OF THE GUIDEBOOK.

17 Q OKAY. IF I COULD HAVE YOU TURN YOUR
18 ATTENTION TO MODULE 3 IN EXHIBIT 2 AT PAGE 150.

19 ARE YOU THERE?

20 A YES.

21 Q AND CAN YOU READ TO THE COURT WHAT TELLS THE
22 BOARD HOW IT'S TO HANDLE OR TREAT OR RESPOND TO GAC
23 ADVICE -- GAC CONSENSUS ADVICE?

24 A SO IT SAYS "GAC ADVICE MAY TAKE ONE OF THE
25 FOLLOWING FORUMS. ONE --" SHALL I READ IT?

26 Q PLEASE.

27 A (AS READ):

28 "ONE. THE GAC ADVISES ICANN

1 THAT IT IS THE CONSENSUS OF THE GAC
2 THAT A PARTICULAR APPLICATION
3 SHOULD NOT PROCEED. THIS WILL
4 CREATE A STRONG PRESUMPTION FOR THE
5 ICANN BOARD THAT THE APPLICATION
6 SHOULD NOT BE APPROVED. "

7 Q THANK YOU. IN YOUR ROLE AT ICANN, ARE YOU
8 AWARE, OR DID YOU BECOME AWARE AT THE TIME THAT THE
9 PLAINTIFF IN THIS MATTER, DOTCONNECTAFRICA TRUST,
10 SUBMITTED AN APPLICATION TO OPERATE .AFRICA?

11 A YES.

12 Q AND ONCE YOU JOINED ICANN, DID YOU ASSUME
13 RESPONSIBILITIES RELATED TO DCA'S APPLICATION FOR
14 .AFRICA?

15 A YES, I DID.

16 Q NOW, WERE YOU THE ONLY PERSON RESPONSIBLE
17 FOR THAT APPLICATION?

18 A NO.

19 Q WHO ELSE HAD RESPONSIBILITIES THERE?

20 A SO OUR PEOPLE I REPORTED TO, MY STAFF, WE
21 ALL HAD RESPONSIBILITIES.

22 Q ABOUT HOW MANY PEOPLE WORK ON YOUR STAFF?

23 A TO START WITH, IT WAS ABOUT A DOZEN. AT
24 SOME POINT I HAD OVER 25, 30 STAFF.

25 Q AND WOULD YOU AND YOUR STAFF CONSULT OR
26 DISCUSS ISSUES THAT CAME UP THROUGHOUT THE GTLD
27 PROCESS?

28 A YES.

1 Q WAS DCA'S APPLICATION PUT THROUGH THE PHASES
2 OF THE APPLICATION PROCESS THAT YOU DISCUSSED
3 EARLIER?

4 A YES, IT WAS.

5 Q AND DID DCA'S APPLICATION COMPLETE ALL OF
6 THOSE PROCESSES?

7 A EVENTUALLY.

8 Q OKAY. LET'S START WITH THE EARLY PHASE
9 BEFORE APRIL OF 2013.

10 YOU'RE AWARE THAT IN APRIL OF 2013, THE GAC
11 ISSUED ADVICE CONCERNING DCA'S APPLICATION; CORRECT?

12 A YES, I AM.

13 Q PRIOR TO THAT TIME HAD DCA'S APPLICATION
14 COMPLETED ALL OF THE PROCESSES OF THE EVALUATION?

15 A NO, IT HAD NOT.

16 Q CAN YOU EXPLAIN WHERE IT WAS?

17 A SO IT WAS IN THE MIDDLE OF INITIAL
18 EVALUATION. WE WERE STILL AWAITING RESULTS FROM THE
19 GEOGRAPHIC NAMES PANEL.

20 Q OKAY. AND AFTER THE GAC ISSUED CONSENSUS
21 ADVICE REGARDING DCA'S APPLICATION, WHAT DID ICANN
22 DO?

23 A WELL, BEFORE THE BOARD ADOPTED THAT ADVICE,
24 WE WERE CONTINUING TO PROCESS THE APPLICATION.

25 Q SURE. LET ME ASK A BETTER QUESTION.
26 WHAT DID THE ICANN BOARD DO INITIALLY IN
27 RESPONSE TO THE GAC ADVICE?

28 A SO THE BOARD CONSIDERED A LOT OF ADVICE ON

1 THE NEW GTLD PROGRAM, AND IT ADOPTED THAT ADVICE IN
2 JUNE OR JULY OF 2013.

3 Q YOU SAID IT CONSIDERED A LOT OF ADVICE.
4 WE'VE HEARD REFERENCE TO THE BEIJING COMMUNIQUE. IS
5 THAT THE GAC ADVICE YOU'RE REFERRING TO?

6 A YES.

7 Q AND FOR CLARITY, WAS THAT BEIJING COMMUNIQUE
8 ONLY ADDRESSING DCA'S APPLICATION?

9 A NO.

10 Q CAN YOU GENERALLY DESCRIBE WHAT IT DID
11 INCLUDE?

12 MS. COLON: OBJECTION, YOUR HONOR. AGAIN, I
13 REALLY DON'T SEE HOW THIS APPLIES TO ANY OF THE
14 ELEMENTS OF JUDICIAL ESTOPPEL.

15 THE COURT: OKAY. OVERRULED.

16 THE WITNESS: SO THE GAC ADVISED ON SPECIFIC
17 APPLICATIONS, IT ADVISED THE BOARD ON CONCERNS IT HAD
18 WITH A NUMBER OF STRINGS, AND IT ADVISED ABOUT
19 ADDITIONAL SAFEGUARDS THAT IT WANTED TO SEE PUT IN
20 PLACE REGARDING SENSITIVE STRINGS. SO THERE WAS
21 ADVICE AFFECTING DOZENS OF APPLICATIONS.

22 Q BY MS. BURKE: YOU SAID THE BOARD DID
23 APPROVE OR DID ADOPT -- VOTE TO ADOPT THE CONSENSUS
24 ADVICE; IS THAT CORRECT?

25 A YES.

26 Q AND I THINK YOU SAID THAT WAS APPROXIMATELY
27 IN JUNE OR JULY; IS THAT RIGHT?

28 A CORRECT.

1 Q AT THE TIME THAT THE BOARD VOTED TO ACCEPT
2 THE GAC CONSENSUS ADVICE, HAD DCA'S APPLICATION
3 COMPLETED THE GEOGRAPHIC NAMES REVIEW EVALUATION?

4 A NO, IT HAD NOT.

5 Q WHAT DID -- WHAT WAS THE -- WHAT DID THE
6 STAFF DO, OR WHAT WAS THE INSTRUCTION TO THE STAFF
7 AFTER THE BOARD ACCEPTED THE GAC'S ADVICE?

8 A SO STAFF DID A NUMBER OF THINGS.

9 WE INFORMED THE APPLICANT THAT WE WOULD BE
10 CEASING PROCESSING THE EVALUATION AND THAT THE
11 GEOGRAPHIC NAMES PANEL EVALUATION WAS INCOMPLETE.

12 WE --

13 Q LET ME STOP YOU FOR A SECOND AND TAKE YOU
14 THROUGH THOSE INDIVIDUALLY.

15 YOU SAID YOU INFORMED DCA THAT ICANN HAD
16 STOPPED PROCESSING ITS APPLICATION; IS THAT CORRECT?

17 A CORRECT.

18 Q HOW DID YOU DO THAT? HOW DID YOU INFORM DCA
19 OF THAT?

20 A SO WE COMMUNICATED TO APPLICANTS, ALL
21 APPLICANTS, THROUGH A SYSTEM WE CALL THE APPLICANT
22 PORTAL. IT WAS A SYSTEM APPLICANTS LOGGED INTO, AND
23 IT SENT OUT MESSAGES AND E-MAILS TO PASS INFORMATION
24 SECURELY TO APPLICANTS.

25 Q OKAY. AND DID ICANN ALSO INFORM DCA THAT
26 ITS APPLICATION HAD NOT COMPLETED GEOGRAPHIC NAMES
27 REVIEW AS OF THE TIME ICANN STOPPED PROCESSING DCA'S
28 APPLICATION?

1 A YES, WE DID.

2 Q AND HOW DID IT DO THAT?

3 A AGAIN, IN A COMMUNICATION THROUGH THAT
4 APPLICANT PORTAL.

5 Q COULD YOU TURN IN YOUR BINDER IN FRONT OF
6 YOU, PLEASE, TO EXHIBIT 52?

7 A (WITNESS COMPLIES.)

8 YES.

9 Q ARE YOU THERE?

10 A YES, I AM.

11 Q DO YOU RECOGNIZE THAT DOCUMENT?

12 A YES.

13 Q I'M GOING TO WAIT A SECOND. GIVE THE COURT
14 AN OPPORTUNITY TO GET THERE WITH US. SORRY ABOUT
15 THAT.

16 YOU DO RECOGNIZE THIS DOCUMENT?

17 A YES, I DO.

18 Q WHAT IS IT, PLEASE?

19 A IT'S A COMMUNICATIONS THREAD BETWEEN MY
20 STAFF AND SOPHIA BEKELE REGARDING THE APPLICATION AT
21 THIS TIME.

22 Q IS THIS THREAD TAKEN FROM THE APPLICATION
23 PORTAL THAT YOU WERE JUST DESCRIBING?

24 A YES, IT WAS.

25 Q AND WERE THESE COMMUNICATIONS THAT WOULD
26 HAVE BEEN PREPARED IN THE COURSE OF ICANN'S BUSINESS
27 AT OR AROUND THE TIME THAT THEY ARE DATED?

28 A YES.

1 Q CAN YOU TELL US OR POINT OUT FOR THE COURT
2 WHERE IN THIS DOCUMENT ICANN INFORMS DCA THAT IT HAD
3 NOT PASSED OR COMPLETED THE GEOGRAPHIC NAMES
4 EVALUATION?

5 THE COURT: WELL, BEFORE YOU ASK FOR
6 TESTIMONY ABOUT THE CONTENT OF THE DOCUMENT, IT NEEDS
7 TO BE RECEIVED INTO EVIDENCE.

8 MS. BURKE: YES. I'D LIKE TO MOVE IT INTO
9 EVIDENCE AT THIS TIME, YOUR HONOR.

10 THE COURT: ANY OBJECTION?

11 MS. COLON: YES, YOUR HONOR. WE STAND ON
12 OUR OBJECTION THAT IT'S NOT RELEVANT.

13 THE COURT: OKAY. OVERRULED. EXHIBIT 52 IS
14 RECEIVED INTO EVIDENCE.

15 MR. LEVEE: THANK YOU, YOUR HONOR.

16

17 (DEFENDANT'S EXHIBIT NO. 52 WAS
18 RECEIVED IN EVIDENCE.)

19

20 Q BY MS. BURKE: LET ME RESTATE MY QUESTION,
21 MS. WILLETT. WILL YOU POINT OUT TO THE COURT WHERE
22 IN THAT COMMUNICATION ICANN INFORMED DCA THAT ITS
23 APPLICATION HAD NOT COMPLETED THE GEOGRAPHIC NAMES
24 EVALUATION?

25 A SO THERE'S A COUPLE OF PLACES. KIND OF
26 GOING IN SEQUENCE ON PAGE 3, THE FIRST COMMUNICATION
27 HERE ON JULY 3RD SAYS THAT AT SECOND PARAGRAPH; IT
28 READS, SECOND SENTENCE (AS READ):

1 "UNFORTUNATELY, THIS
2 INFORMATION WAS NOT SUFFICIENT FOR
3 THE GEOGRAPHIC NAMES PANEL TO
4 COMPLETE THE EVALUATION OF YOUR
5 APPLICATION. ALL OTHER PANELS
6 PERFORMING INITIAL EVALUATION OF
7 YOUR APPLICATION DETERMINED THAT
8 THE APPLICATION PASSED EACH OF
9 THESE OTHER PANEL EVALUATIONS.
10 BECAUSE THE GEOGRAPHIC NAMES PANEL
11 COULD NOT COMPLETE EVALUATION, THE
12 INITIAL EVALUATION REPORT FOR YOUR
13 APPLICATION WILL REFLECT AN
14 INCOMPLETE RESULT AND WILL BE
15 POSTED ON THE APPLICATION STATUS
16 PAGE."

17 **Q OKAY. NOW, YOU SAID THERE WAS SOMEWHERE**
18 **ELSE IN THIS DOCUMENT THAT ALSO DISCUSSED THAT TOPIC,**
19 **OR DID I MISUNDERSTAND YOU?**

20 A YES. YES. SO I -- ON PAGE 1 IN THE MIDDLE
21 OF THE PAGE, THERE'S A PARAGRAPH THAT READS.
22 (AS READ):

23 "AS ICANN PREVIOUSLY INDICATED
24 TO YOU, THE EVALUATION OF
25 APPLICATION ID 1-1165-42560 WOULD
26 PROCEED ONLY WITH THE INFORMATION
27 THEN CURRENTLY AVAILABLE. AT THE
28 TIME OF THE NEW GTLD PROGRAM

1 COMMITTEE'S RESOLUTION, THE GNP HAD
2 NOT YET COMPLETED ITS EVALUATION OR
3 FINALIZED ANY CLARIFYING QUESTIONS.
4 IT HAS NOT PRODUCED A REPORT THAT
5 WE CAN PROVIDE YOU."

6 Q OKAY. JUST SO THE RECORD IS CLEAR, THERE'S
7 A COUPLE OF ACRONYMS IN THERE. LET'S MAKE SURE WE
8 UNDERSTAND THEM.

9 FIRST, WHO IS THE NEW GTLD PROGRAM
10 COMMITTEE?

11 A SO THAT WAS A COMMITTEE OF THE BOARD
12 COMPRISED OF NON-CONFLICTED BOARD MEMBERS. AT THE
13 TIME THERE WERE A FEW BOARD MEMBERS ON THE FULL BOARD
14 THAT HAD CONFLICTS WITH THE NEW GTLD PROGRAM, SO IF
15 THE NEW GTLD PROGRAM COMMITTEE WAS ESTABLISHED WITH
16 THE FULL EMPOWERED -- TO HAVE THE FULL POWERS AND ACT
17 ON BEHALF OF THE BOARD ON MATTERS RELATING TO THE NEW
18 GTLD PROGRAM.

19 Q AND WAS THAT THE BOARD COMMITTEE THAT, IN
20 FACT, ADOPTED TO GET -- VOTED TO ADOPT THE GAC
21 ADVICE?

22 A YES.

23 Q AND THE NEXT -- JUST AFTER THAT IT SAYS THE
24 GNP. WHAT IS GNP?

25 A THAT'S OUR ACRONYM FOR THE GEOGRAPHIC NAMES
26 PANEL.

27 Q THANK YOU.

28 AFTER ICANN INFORMED DCA THAT ITS

1 APPLICATION HAD BEEN STOPPED IN THE PROCESSING, WHAT
2 DID DCA DO IN RESPONSE?

3 A THEY FILED A REQUEST FOR RECONSIDERATION.

4 Q AND WHO HEARS RECONSIDERATION REQUESTS?

5 A SO IN 2013, THAT WAS THE BOARD GOVERNANCE
6 COMMITTEE, OR THE BGC.

7 Q AND WHAT DID THE BOARD GOVERNANCE COMMITTEE
8 DO IN RESPONSE TO DCA'S RECONSIDERATION REQUEST?

9 A THEY DENIED THAT REQUEST.

10 Q AND WHAT DID DCA DO IN RESPONSE TO THAT?

11 A SO THEN THEY INITIATED AN INDEPENDENT REVIEW
12 PROCESS, AN IRP.

13 Q AND WE'VE HEARD A LOT ABOUT THAT IRP
14 ACTUALLY OCCURRED; IS THAT CORRECT?

15 A CORRECT.

16 Q AND ARE YOU AWARE OF WHETHER THE IRP PANEL
17 ISSUED A DECLARATION OR DECISION?

18 A YES.

19 Q DO YOU KNOW APPROXIMATELY WHEN THE IRP PANEL
20 DID THAT?

21 A I BELIEVE THAT WAS JULY 2015.

22 Q DID YOU REVIEW THAT IRP DECISION AT OR ABOUT
23 AROUND THE TIME IT WAS ISSUED?

24 A YES, I DID.

25 Q WHY DID YOU DO THAT?

26 A WELL, IT WAS PERTAINING TO THE .AFRICA
27 APPLICATION WHICH I HAD RESPONSIBILITY FOR.

28 Q LET'S TURN IN YOUR FOLDER TO THE TAB THAT'S

1 **MARKED EXHIBIT 33.**

2 A (WITNESS COMPLIES.)

3 Q **AND MS. WILLETT, DO YOU RECOGNIZE THAT**
4 **DOCUMENT?**

5 A YES, I DO.

6 Q **IS THAT THE FINAL DECLARATION YOU WERE JUST**
7 **DISCUSSING?**

8 A YES, IT IS.

9 Q **COULD YOU TURN WITH ME TO PAGE 61 OF THAT**
10 **EXHIBIT, PLEASE?**

11 A (WITNESS COMPLIES.)

12 Q **AND THERE'S A TITLE THERE TOWARDS THE**
13 **BOTTOM. WOULD YOU READ THAT INTO THE RECORD FOR US?**

14 A DECLARATION OF THE PANEL.

15 Q **OKAY. AND DID YOU READ THIS AS PART OF YOUR**
16 **REVIEW OF THE IRP DECISION?**

17 A YES, I DID.

18 Q **LET'S START WITH PARAGRAPH 148. AND WHEN**
19 **YOU'VE HAD A CHANCE TO REVIEW THAT, COULD YOU**
20 **SUMMARIZE FOR THE COURT WHAT THE IRP PANEL SAYS IN**
21 **THAT DECLARATION?**

22 A SO THE PANEL DECLARED THAT THE ACTIONS AND
23 IN ACTIONS OF THE ICANN BOARD WITH RESPECT TO THE DCA
24 APPLICATION FOR .AFRICA WERE INCONSISTENT WITH THE
25 ARTICLES OF INCORPORATION AND BYLAWS OF ICANN.

26 Q **AS YOU READ THAT PARAGRAPH, DOES IT REQUIRE**
27 **OR RECOMMEND ANY ACTION BY ICANN?**

28 A NO.

1 Q OKAY. LET'S LOOK AT PARAGRAPH 149. AND
2 WHEN YOU'VE HAD A CHANCE TO REVIEW, COULD YOU JUST
3 SUMMARIZE FOR THE COURT WHAT THAT PARAGRAPH STATES?

4 A IT SAYS THAT -- IT RECOMMENDS THAT ICANN
5 SHOULD CONTINUE TO REFRAIN FROM DELEGATING THE
6 .AFRICA GTLD AND, SECONDLY, IT SAYS
7 (AS READ):

8 "AND PERMIT DCA TRUST'S
9 APPLICATION TO PROCEED THROUGH THE
10 REMAINDER OF THE NEW GTLD
11 APPLICATION PROCESS."

12 Q OKAY. DOES THAT PARAGRAPH, AS YOU
13 UNDERSTAND IT, REQUIRE ACTION BY ICANN?

14 A YES.

15 Q LET'S LOOK AT THE NEXT PARAGRAPH, PARAGRAPH
16 150. AND, BRIEFLY, AFTER YOU'VE HAD A CHANCE TO
17 REVIEW IT, COULD YOU SUMMARIZE THAT FOR THE COURT?

18 A IN SUMMARY, IT SAYS SINCE THE PANEL HAD
19 FOUND THAT DCA IS THE PREVAILING PARTY IN THE IRP,
20 THAT ICANN HAS TO BE RESPONSIBLE, BEAR THE COSTS OF
21 THE IRP, AND IT DIRECTS ICANN TO REIMBURSE DCA TRUST
22 THE SUM OF \$198,000.

23 Q AND AS YOU READ AND UNDERSTOOD THAT
24 PARAGRAPH, DID THAT REQUIRE ACTION BY ICANN?

25 A YES.

26 Q THERE'S A FINAL PARAGRAPH THERE, PARAGRAPH
27 151. CAN YOU BRIEFLY SUMMARIZE THAT FOR THE COURT?

28 A IT SAYS THAT BOTH DCA AND ICANN WILL BEAR

1 THEIR OWN EXPENSES, THEIR LEGAL FEES.

2 Q DID THAT REQUIRE ANY ACTION OF ICANN?

3 A NO.

4 Q DID THE ICANN BOARD TAKE ANY ACTION IN
5 RESPONSE TO THE IRP'S FINAL DECLARATION?

6 A YES.

7 Q HOW DO YOU KNOW THAT?

8 A BECAUSE I READ THE MINUTES, THE RESOLUTION
9 OF THAT MEETING OF THE BOARD.

10 Q WHY WOULD YOU READ THAT OR WHY DID YOU READ
11 THAT?

12 A AGAIN, BECAUSE IT PERTAINED TO MY
13 RESPONSIBILITIES IN THE NEW GTLD PROGRAM.

14 Q OKAY. LET'S HAVE YOU TURN TO EXHIBIT 41 IN
15 THE BINDER IN FRONT OF YOU.

16 THE COURT: SO LET ME JUST CLAIM, IT'S
17 ALMOST 4:25, SO I'LL LEAVE IT UP TO YOU, MS. BURKE,
18 TO DETERMINE WHAT A GOOD BREAKING POINT IS. WE HAVE
19 TO STOP IN THE NEXT FIVE MINUTES.

20 MS. BURKE: THIS IS FINE, YOUR HONOR.

21 THE COURT: TO BREAK BEFORE YOU GO ON TO A
22 NEW EXHIBIT?

23 MS. BURKE: YES.

24 THE COURT: OKAY. THANK YOU. ALL RIGHT.
25 SO WE'RE GOING TO ADJOURN THE TRIAL FOR THE DAY. AND
26 THE COURT -- LET ME FIND OUT WHAT THE TIME ESTIMATES
27 ARE FROM THE REMAINING WITNESSES.

28 SO FOR THIS WITNESS, WHAT'S YOUR TIME

1 ESTIMATE FOR THE REST OF YOUR DIRECT EXAMINATION,
2 MS. BURKE?

3 MS. BURKE: I'M WITHIN 15 MINUTES, YOUR
4 HONOR.

5 THE COURT: OKAY. THANK YOU.

6 AND THEN EITHER MS. COLON OR MR. BROWN,
7 WHAT'S YOUR -- DO YOU HAVE CROSS-EXAMINATION FOR THE
8 WITNESS?

9 MS. COLON: YES, YOUR HONOR. I ANTICIPATE
10 IT WILL BE A LITTLE BIT OVER AN HOUR.

11 THE COURT: OKAY. THANK YOU. AND THEN THIS
12 IS THE LAST WITNESS THAT ICANN INTENDS TO CALL IN ITS
13 CASE-IN-CHIEF?

14 MR. LEVEE: CORRECT. WE'LL REST AFTER
15 MS. WILLETT.

16 THE COURT: OKAY. THANK YOU. AND THEN
17 PLAINTIFF INTENDS TO CALL A WITNESS; IS THAT RIGHT?

18 MS. COLON: YES, YOUR HONOR. WE INTEND TO
19 CALL AKRAM ATALLAH. WE ANTICIPATE THAT TAKING, WE
20 ESTIMATED, AN HOUR.

21 THE COURT: AN HOUR FOR DIRECT EXAMINATION?

22 MS. COLON: YES, YOUR HONOR.

23 THE COURT: AND WHAT IS ICANN'S DEFENDANT'S
24 ESTIMATE FOR CROSS-EXAMINATION?

25 MR. LEVEE: SO, ACTUALLY, YOUR HONOR, I
26 DON'T HAVE A GREAT ESTIMATE. MR. ATALLAH TESTIFIED
27 IN THE FIRST VERSION OF PHASE I, AND HE WAS ON THE
28 STAND PROBABLY 10 MINUTES IN HIS ENTIRETY. SO GIVEN

1 THE PLAINTIFF'S ESTIMATE OF AN HOUR, I WOULD IMAGINE
2 I WOULD TAKE 30 TO 45 MINUTES.

3 THE COURT: OKAY. ALL RIGHT. THANK YOU.

4 ALL RIGHT. THE COURT IS GOING TO ADJOURN
5 FOR THE DAY AND ORDER THAT THE TRIAL OF THIS PHASE I
6 OF THE BIFURCATED TRIAL IS CONTINUED TO TOMORROW,
7 WHICH IS FRIDAY, FEBRUARY 8TH. I'M GOING TO SET IT
8 AT 10:30 A.M. BECAUSE I HAVE QUITE A FEW MATTERS ON
9 MY MORNING CALENDAR. SO I DON'T WANT TO WASTE
10 PEOPLE'S TIME GETTING HERE EARLY IF WE CAN'T START.

11 SO 10:30 TOMORROW, WE'LL RESUME WITH THE
12 TRIAL, AND THE COURT WILL ADJOURN AT THIS TIME AND GO
13 OFF THE RECORD. THANK YOU.

14

15 (AT 4:26 P.M. THE PROCEEDING WAS ADJOURNED
16 UNTIL FEBRUARY 8, 2019, AT 10:30 A.M.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

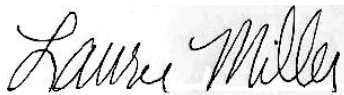
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 53 HON. ROBERT B. BROADBELT, III, JUDGE

DOTCONNECTAFRICA TRUST,)
)
PLAINTIFF(S),)
)
VS.) CASE NO. BC607494
)
INTERNET CORPORATION FOR ASSIGNED)
NAMES AND NUMBERS, ET AL.,)
)
DEFENDANT(S).)
_____)

I, LAURIE MILLER, CSR #6457, OFFICIAL REPORTER
PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
CERTIFY THAT THE FOREGOING PAGES, PAGES 175 THROUGH 311,
COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE
PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE
ABOVE-ENTITLED CAUSE ON FEBRUARY 7, 2019.

DATED THIS 13TH DAY OF FEBRUARY, 2019.


_____, CSR #6457
LAURIE MILLER, COURT REPORTER

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