

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

**Reporter's Transcript of Proceedings**

**February 08, 2019**

**Volume III**



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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

FRIDAY, FEBRUARY 8, 2019

VOLUME III

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REPORTED BY:

LAURIE MILLER, CSR #6457, RPR, CLR

OFFICIAL REPORTER PRO TEMPORE

JOB NO. 10052227

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I N D E X

FEBRUARY 8, 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 FRIDAY, FEBRUARY 8,  
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: 10:44 A.M.

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

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

21 MR. BROWN: ETHAN BROWN FOR DOTCONNECTAFRICA  
22 TRUST.

23 MS. COLON: GOOD MORNING, YOUR HONOR. SARA  
24 COLON FOR PLAINTIFF DOTCONNECTAFRICA TRUST.

25 MS. YEGAZARIAN: NONA YEGAZARIAN FOR  
26 DOTCONNECTAFRICA TRUST.

27 MS. BURKE: ERIN BURKE FOR DEFENDANT ICANN.

28 MS. PUSHINSKY: AMANDA PUSHINSKY FOR ICANN.

1 MS. OZUROVICH: KELLY OZUROVICH FOR ICANN.

2 MR. LEVEE: JEFF LEVEE FOR ICANN.

3 THE COURT: OKAY. THANK YOU, EVERYONE. THE  
4 COURT NOTES IT'S ABOUT 10:45 A.M., AND WE'RE RESUMING  
5 PHASE I OF THE BIFURCATED TRIAL IN THIS ACTION ON THE  
6 ISSUE OF DEFENDANT ICANN'S AFFIRMATIVE DEFENSE OF  
7 JUDICIAL ESTOPPEL.

8 AND WHEN WE ADJOURNED YESTERDAY, THE WITNESS  
9 ON THE STAND WAS CHRISTINE WILLETT. AND DEFENSE  
10 COUNSEL, MS. BURKE, WAS CONDUCTING HER DIRECT  
11 EXAMINATION OF MS. WILLETT.

12 ARE YOU READY TO CONTINUE WITH YOUR DIRECT  
13 EXAMINATION, MS. BURKE?

14 MS. BURKE: YES, YOUR HONOR.

15 THE COURT: YOU MAY CONTINUE AT THIS TIME.

16 I'M SORRY. DO WE HAVE COUNSEL BY COURTCALL?

17 THE CLERK: CLIENT, YOUR HONOR.

18 THE COURT: DO WE HAVE A PARTY APPEARING BY  
19 COURTCALL -- MS. STATHOS?

20 MS. STATHOS: YES, YOUR HONOR, I'M HERE.

21 THE COURT: AND COULD YOU STATE WHAT YOUR  
22 POSITION IS?

23 MS. STATHOS: YES. I'M AMY STATHOS, DEPUTY  
24 GENERAL COUNSEL OF ICANN.

25 THE COURT: ALL RIGHT. THANK YOU. THANK  
26 YOU.

27 MS. BURKE, YOU MAY PROCEED.

28 MS. BURKE: THANK YOU.

1 CHRISTINE WILLETT,  
2 CALLED AS A WITNESS BY THE DEFENSE,  
3 WAS PREVIOUSLY SWORN AND TESTIFIED AS FOLLOWS:  
4

5 DIRECT EXAMINATION (RESUMED)  
6 BY MS. BURKE:

7 Q JUST TO REMIND US WHERE WE LEFT OFF  
8 YESTERDAY, WE TALKED ABOUT THE IRP PANEL'S  
9 RESOLUTION.

10 DO YOU RECALL THAT TESTIMONY?

11 A YES.

12 Q AND THEN I ASKED YOU WHETHER THE ICANN BOARD  
13 TOOK ANY ACTION IN RESPONSE TO THE IRP'S FINAL  
14 DECLARATION.

15 DO YOU RECALL THAT?

16 A YES.

17 Q AND YOUR ANSWER WAS, IN FACT, YES?

18 A YES.

19 Q AND AT THAT POINT I ASKED YOU TO TURN TO  
20 EXHIBIT 41. SO LET'S PICK UP RIGHT THERE WHERE WE  
21 LEFT OFF. COULD YOU PLEASE TURN TO EXHIBIT 41.

22 A (WITNESS COMPLIES.)

23 Q AND WHEN YOU'VE HAD A CHANCE TO LOOK AT THAT  
24 DOCUMENT, CAN YOU TELL ME IF YOU RECOGNIZE THAT  
25 DOCUMENT.

26 A I DO.

27 Q AND WHAT IS IT?

28 A IT'S THE BOARD MEETING MINUTES, RESOLUTIONS

1 FROM THE MEETING OF THE ICANN BOARD IN WHICH THEY  
2 CONSIDERED THE IRP DECLARATION REGARDING DCA.

3 Q AND I BELIEVE YOU TOLD US YESTERDAY, BUT ARE  
4 YOU FAMILIAR WITH THIS DOCUMENT?

5 A YES.

6 Q DID YOU, IN FACT, REVIEW IT IN OR AROUND THE  
7 TIME IT WAS PUBLISHED BY ICANN?

8 A I DID.

9 Q AND WHY DID YOU DO THAT?

10 A BECAUSE THE OUTCOME PERTAINED TO THE DCA FOR  
11 .AFRICA AS PART OF THE NEW GTLD, SO IT WAS WITHIN MY  
12 RESPONSIBILITIES.

13 Q NOW, WE ALSO ESTABLISHED THAT YOU WERE, IN  
14 FACT, HERE FOR THE LAST TWO DAYS, INCLUDING OPENING  
15 STATEMENTS; CORRECT?

16 A YES.

17 Q AND AT THAT TIME DID YOU HEAR DCA'S COUNSEL  
18 EXPRESS SOME CRITICISM OF THE ICANN BOARD BECAUSE  
19 THEY VOTED ON THE IRP DECLARATION?

20 A YES, I HEARD THAT.

21 Q NOW, DO YOU HAVE AN UNDERSTANDING OF WHY THE  
22 BOARD CONSIDERED AND VOTED ON THIS IRP DECLARATION?

23 A YES, I DO.

24 Q CAN YOU EXPLAIN THAT FOR US?

25 A SO I BELIEVE IT'S PRESCRIBED BY ICANN'S  
26 BYLAWS THAT IT NEEDED -- THE BOARD IS REQUIRED TO  
27 CONSIDER THE OUTCOME, THE DECLARATION, OF AN IRP  
28 PANEL AT ITS NEXT POSSIBLE MEETING.

1 Q WE'RE GOING TO COME BACK TO 41 IN A SECOND,  
2 BUT IF I COULD HAVE YOU TURN FOR A MOMENT TO  
3 EXHIBIT 4, WHICH ARE THE BYLAWS THAT YOU JUST  
4 REFERRED TO. AND, IN PARTICULAR, TO PAGE 13 OF THOSE  
5 BYLAWS. EXHIBIT 4, PAGE 13.

6 A (WITNESS COMPLIES.)

7 Q LET ME ASK YOU FIRST, ARE YOU GENERALLY  
8 FAMILIAR WITH ICANN'S BYLAWS?

9 A YES. I'M GENERALLY FAMILIAR.

10 Q ARE THERE PORTIONS OF THE BYLAWS THAT YOU'RE  
11 MORE FAMILIAR WITH?

12 A YES. I'M MORE FAMILIAR WITH THE PARTS THAT  
13 SPECIFICALLY APPLY TO THE NEW GTLD PROGRAM AND MY  
14 DAY-TO-DAY WORK RESPONSIBILITIES.

15 Q AND AT A HIGH LEVEL, WHAT PORTIONS OF THE  
16 BYLAWS WOULD THAT INCLUDE?

17 A SO IT INCLUDES THIS TEXT REGARDING  
18 ACCOUNTABILITY MECHANISMS AND ALSO SOME OTHER  
19 SECTIONS ABOUT ADVISORY COMMITTEES.

20 Q OKAY. SO, AGAIN, FOCUSING ON PAGE 13, COULD  
21 YOU TELL US WHAT THIS SECTION 3 IS ABOUT?

22 A SECTION 3 IS THE INDEPENDENT REVIEW OF BOARD  
23 ACTIONS.

24 Q OKAY. AND, GENERALLY SPEAKING, IS THIS THE  
25 SECTION THAT TALKS ABOUT IRP'S?

26 A YES, IT IS.

27 Q YOU MENTIONED A MOMENT AGO THAT YOU BELIEVE  
28 THE BYLAWS REQUIRED THE ICANN BOARD TO CONSIDER THE



1       **IRP'S DECLARATION.**

2                   **COULD YOU POINT US TO WHAT PART OF THE**  
3 **BYLAWS YOU WERE REFERRING?**

4           A       LET ME TAKE A LOOK.

5                   (REVIEWING DOCUMENT.)

6                   SO ON PAGE 17, PARAGRAPH 21, IT READS  
7 (AS READ):

8                               "WHERE FEASIBLE THE BOARD  
9                   SHALL CONSIDER THE IRP PANEL  
10                  DECLARATION AT THE BOARD'S NEXT  
11                  MEETING. THE DECLARATIONS OF THE  
12                  IRP PANEL AND THE BOARD'S  
13                  SUBSEQUENT ACTION ON THOSE  
14                  DECLARATIONS ARE FINAL AND HAVE  
15                  PRECEDENTIAL VALUE."

16           **Q       ARE IRP DECLARATIONS SELF IMPLEMENTING?**

17           A       NO, THEY'RE NOT.

18           **Q       NOW, LET'S GO BACK TO EXHIBIT 41. AND MY**  
19 **FIRST QUESTION IS: IS THERE A PLACE OR PART OF THIS**  
20 **DOCUMENT WHERE THE BOARD'S ACTION IS REFLECTED?**

21           A       YES. THE ACTION OF THE BOARD IS REFLECTED  
22                  IN THE RESOLVED PORTION OF THE RESOLUTION, THE  
23                  RESOLVED PARAGRAPHS.

24           **Q       OKAY. AND SO DIRECTING YOUR ATTENTION TO**  
25 **PAGE 2, IS THAT WHERE THOSE RESOLVED PORTIONS BEGIN?**

26           A       YES.

27           **Q       LET'S TAKE A LOOK AT A FEW OF THOSE. AND**  
28 **LET'S START AT THE FIRST RESOLVED, THEN; COULD YOU**

1 READ THE INTRODUCTION, PLEASE?

2 A FIRST RESOLVED, READS (AS READ):  
3 "THE BOARD HAS CONSIDERED  
4 THE ENTIRE DECLARATION AND HAS  
5 DETERMINED TO TAKE THE FOLLOWING  
6 ACTIONS, BASED ON THAT CONSIDERATION."

7 Q OKAY. AND THEN THERE ARE THREE POINTS  
8 ENUMERATED UNDER THAT.

9 WOULD YOU START WITH THE FIRST POINT,  
10 PLEASE.

11 A NUMBER ONE (AS READ):  
12 "ICANN SHALL CONTINUE  
13 TO REFRAIN FROM DELEGATING  
14 THE .AFRICA GTLD."

15 Q YESTERDAY WHEN WE REVIEWED THE IRP FINAL  
16 DECLARATION, WAS THAT ONE OF THE DECLARATIONS THAT  
17 THE IRP PANEL MADE?

18 A YES.

19 Q DID ICANN CHANGE ANYTHING? DID THE ICANN  
20 BOARD CHANGE ANYTHING ABOUT THE IRP PANEL'S  
21 DECLARATION ON THAT POINT?

22 A NO.

23 Q OKAY. LET'S MOVE TO THE SECOND ENUMERATED  
24 POINT. CAN YOU READ THAT.

25 A (AS READ):  
26 "ICANN SHALL PERMIT  
27 DCA'S APPLICATION TO PROCEED  
28 THROUGH THE REMAINDER OF THE NEW

1 GTLD APPLICATION PROCESS AS SET  
2 OUT BELOW."

3 Q AND IS THAT ONE OF THE DECLARATIONS THAT THE  
4 IRP PANEL MADE IN ITS DECISION?

5 A YES.

6 Q DID ICANN MATERIALLY CHANGE ANYTHING ABOUT  
7 THE IRP PANEL'S DECLARATION ON THAT POINT?

8 A NO.

9 Q NOW, WE DID HEAR DURING OPENING STATEMENTS  
10 BY DCA'S COUNSEL, SHE POINTED OUT THOSE WORDS "AS SET  
11 OUT BELOW" THAT YOU JUST READ. DID YOU SEE THOSE?

12 A YES.

13 Q WHY WAS IT NECESSARY, FROM YOUR  
14 UNDERSTANDING, FOR THE BOARD TO INCLUDE THOSE WORDS?

15 A SO I BELIEVE THAT THOSE WORDS REFERENCE ONE  
16 OF THE OTHER RESOLVED PARAGRAPHS.

17 Q OKAY. WHICH ONE?

18 A THE THIRD RESOLVED.

19 Q OKAY. WOULD YOU READ THAT FOR US, PLEASE.

20 A (AS READ):

21 "RESOLVED. THE BOARD  
22 DIRECTS THE PRESIDENT AND CEO OR  
23 HIS DESIGNEES TO TAKE ALL STEPS  
24 NECESSARY TO RESUME THE EVALUATION  
25 OF DCA'S APPLICATION FOR .AFRICA  
26 AND TO ENSURE THAT SUCH EVALUATION  
27 PROCEEDS IN ACCORDANCE WITH THE  
28 ESTABLISHED PROCESSES AS QUICKLY AS

1 POSSIBLE. SEE APPLICANT GUIDEBOOK  
2 AT NEW GTLD WEBSITE FOR ESTABLISHED  
3 PROCESSES."

4 Q AND, IN YOUR UNDERSTANDING, WHY WAS IT  
5 NECESSARY FOR THE BOARD TO INCLUDE THAT ADDITIONAL  
6 RESOLUTION?

7 A SO BACK WHEN THE BOARD ADOPTED THE GAC  
8 ADVICE IN 2013, THEY -- THE RESOLUTION AT THAT TIME  
9 DIRECTED STAFF TO STOP PROCESSING THE APPLICATION,  
10 AND THIS STAFF NEEDED ANOTHER DIRECTION FROM THE  
11 BOARD, A RESOLUTION TO DIRECT US TO RESUME PROCESSING  
12 THE APPLICATION.

13 Q OKAY. LET'S RETURN TO THE FIRST RESOLVED,  
14 AND WE WERE ON THE THIRD POINT, THE THIRD ENUMERATED  
15 POINT. COULD YOU READ THAT, PLEASE.

16 A (AS READ):

17 "NUMBER 3. ICANN SHALL  
18 REIMBURSE DCA FOR THE COSTS OF THE  
19 IRP AS SET FORTH IN PARAGRAPH 150  
20 OF THE DECLARATION."

21 Q AND WAS THAT ONE OF THE DECLARATIONS OF THE  
22 IRP PANEL?

23 A YES.

24 Q DID ICANN CHANGE ANYTHING ABOUT THE IRP  
25 PANEL'S DECLARATION ON THAT POINT?

26 A NO.

27 Q NOW, DID THE BOARD NEED TO MAKE A RESOLUTION  
28 REGARDING WHETHER THE IRP'S PANEL'S DECLARATION WAS

1 BINDING IN ORDER TO IMPLEMENT THE IRP'S FINAL  
2 DECLARATION?

3 A NO.

4 Q AND DID THE BOARD, IN FACT, ADOPT THE IRP  
5 DECLARATIONS IN FULL?

6 A IT DID.

7 Q NOW, ALSO DURING OPENING STATEMENT, I  
8 BELIEVE YOU -- WELL, LET ME ASK YOU. DID YOU HEAR  
9 COUNSEL TALK ABOUT ADDITIONAL RESOLUTIONS AND  
10 CRITICIZE THE BOARD FOR ADDING SOME ADDITIONAL  
11 RESOLUTIONS TO THIS DOCUMENT?

12 A YES. I HEARD THAT.

13 Q AND COUNSEL ARGUED THAT THAT SOMEHOW SHOWED  
14 THAT THE BOARD WAS ACTING INCONSISTENTLY OR IN  
15 DERISION OF THE IRP PANEL'S DECLARATION.

16 DO YOU AGREE WITH THAT -- DCA'S POSITION?

17 A I DON'T.

18 Q SO LET'S FIRST OF ALL MAKE SURE WE KNOW WHAT  
19 WE'RE TALKING ABOUT HERE. BACK ON PAGE 2.

20 LET'S LOOK AT, NOW, AT THE RESOLVED  
21 PARAGRAPH THAT FOLLOWS, THE SECOND ONE THAT YOU READ  
22 SO THE -- IF WE CALL IT THE SECOND FROM THE BOTTOM, I  
23 BELIEVE. LET'S -- I'M GOING TO READ THAT RESOLVED  
24 PARAGRAPH. (AS READ):

25 "RESOLVED. WITH RESPECT TO  
26 THE GAC'S CONSENSUS ADVICE IN THE  
27 BEIJING COMMUNIQUE THAT DCA'S  
28 APPLICATION FOR .AFRICA SHOULD NOT

1 PROCEED, WHICH WAS CONFIRMED IN THE  
2 LONDON COMMUNIQUE, THE BOARD WILL  
3 ASK THE GAC IF IT WISHES TO REFINE  
4 THAT ADVICE AND/OR PROVIDE THE  
5 BOARD WITH FURTHER INFORMATION  
6 REGARDING THAT ADVICE AND/OR  
7 OTHERWISE ADDRESS THE CONCERNS  
8 RAISED IN THE DECLARATION."  
9 IS THAT ONE OF THE PARAGRAPHS WE'RE  
10 REFERRING TO?

11 A YES, IT IS.

12 Q AND GO ON AND READ THE SECOND ONE WHICH  
13 FOLLOWS IT AT THE BOTTOM OF THE PAGE AT THE TOP OF  
14 PAGE 3. (AS READ):

15 "RESOLVED. IN THE EVENT THAT  
16 DCA'S APPLICATION FOR .AFRICA  
17 SUCCESSFULLY PASSES THE REMAINDER  
18 OF THE EVALUATION PROCESS, AT THAT  
19 TIME OR BEFORE, THE BOARD WILL  
20 CONSIDER ANY FURTHER ADVICE OR  
21 INFORMATION RECEIVED FROM THE GAC  
22 AND PROCEED AS NECESSARY, BALANCING  
23 ALL OF THE RELATIVE MATERIAL AND  
24 INFORMATION AND CIRCUMSTANCES.  
25 SHOULD THE BOARD UNDERTAKE ANY  
26 ACTION THAT MAY BE INCONSISTENT  
27 WITH THE GAC'S ADVICE, THE BOARD  
28 WILL FOLLOW THE ESTABLISHED PROCESS

1 SET OUT IN THE BYLAWS."

2 AND THEN IT HAS A REFERENCE TO THE BYLAWS.

3 DID I READ THAT CORRECTLY?

4 A YES.

5 Q WHAT IS YOUR UNDERSTANDING AS TO WHY THE  
6 BOARD INCLUDED THOSE TWO RESOLUTIONS?

7 A MY UNDERSTANDING IS THAT IN ADDITION TO  
8 CONSIDERING THE IRP MATTER, THE BOARD HAS A LOT OF  
9 OBLIGATIONS ON IT IT CALLED OUT IN THE BYLAWS, AND  
10 PART OF THEM ARE IN THAT SECTION OF THE BYLAWS  
11 REGARDING GAC ADVICE AND HOW IT HAS TO INTERACT WITH  
12 THE GAC IF IT PLANS TO ACT CONTRARY TO GAC ADVICE.

13 Q OKAY. LET'S GO BACK TO THE BYLAWS, EXHIBIT  
14 4. I APOLOGIZE FOR MAKING YOU FLIP AROUND IN THIS  
15 BIG BINDER.

16 AND I'M GOING TO DIRECT YOU TO PAGE 55,  
17 PLEASE.

18 A (WITNESS COMPLIES.)

19 Q AND, FIRST, LET ME ASK A MOMENT, WHEN I  
20 ASKED YOU IF THERE WERE PORTIONS OF THE BYLAWS THAT  
21 YOU WERE MORE FAMILIAR WITH, YOU MENTIONED PORTIONS  
22 OF ADVISORY COMMITTEE. IS THIS SECTION THAT STARTS  
23 ARTICLE 11 ON PAGE 55 THE SECTION, OR SECTIONS, YOU  
24 WERE REFERRING TO?

25 A YES, IT IS.

26 Q AND COULD YOU JUST READ THAT TITLE FOR THE  
27 COURT.

28 A SO "ARTICLE 11, ADVISORY COMMITTEES."

1 Q AND DOWN BELOW AT THE BOTTOM OF THIS PAGE,  
2 WHAT COMMITTEE, IN PARTICULAR, IS BEING DISCUSSED?

3 A THE GOVERNMENTAL ADVISORY COMMITTEE.

4 Q SO A MOMENT AGO IN YOUR TESTIMONY, YOU  
5 REFERENCED BYLAWS THAT YOU BELIEVED WERE THE BASIS OR  
6 THE REASON THAT THE BOARD INCLUDED THESE RESOLUTIONS  
7 IN THEIR DOCUMENT.

8 COULD YOU POINT US TO WHAT SPECIFIC  
9 PROVISIONS OF THE BYLAWS YOU'RE REFERENCING?

10 A SURE. ITEM J AND ITEM -- ON PAGE 57, PARTS  
11 J AND K.

12 Q OKAY. AND WHAT, PARTICULARLY, IN THOSE  
13 PROVISIONS ARE YOU REFERRING TO?

14 A SO THE SECOND SENTENCE OF ITEM J READS.  
15 (AS READ):

16 "IN THE EVENT THAT THE ICANN  
17 BOARD DETERMINES TO TAKE AN ACTION  
18 THAT IS NOT CONSISTENT WITH THE  
19 GOVERNMENTAL ADVISORY COMMITTEE  
20 ADVICE, IT SHALL SO INFORM THE  
21 COMMITTEE AND STATE THE REASONS WHY  
22 IT DECIDED NOT TO FOLLOW THAT  
23 ADVICE. THE GOVERNMENTAL ADVISORY  
24 COMMITTEE AND THE ICANN BOARD WILL  
25 THEN TRY IN GOOD FAITH, IN A TIMELY  
26 AND EFFICIENT MANNER, TO FIND A  
27 MUTUALLY-ACCEPTABLE SOLUTION."

28 Q OKAY. AND WHAT ABOUT SECTION K?



1           A       K CONTINUES TO SAY (AS READ) :  
2                        "IF NO SUCH SOLUTION CAN BE  
3                        FOUND, THE ICANN BOARD WILL STATE  
4                        IN ITS FINAL DECISION THE REASONS  
5                        WHY THE GOVERNMENTAL ADVISORY  
6                        COMMITTEE ADVICE WAS NOT FOLLOWED,  
7                        AND SUCH STATEMENT WILL BE WITHOUT  
8                        PREJUDICE TO THE RIGHTS OR  
9                        OBLIGATIONS OF GOVERNMENTAL  
10                      ADVISORY COMMITTEE MEMBERS WITH  
11                      REGARD TO PUBLIC POLICY ISSUES  
12                      FALLING WITHIN THEIR  
13                      RESPONSIBILITIES."

14           Q       NOW, DID YOU ALSO HEAR DCA'S COUNSEL ARGUE  
15                      THAT AT THE TIME OF THIS BOARD RESOLUTION, WHICH,  
16                      LOOKING AT EXHIBIT 41, WAS IN JULY OF 2015, THAT AT  
17                      THE TIME OF THAT BOARD RESOLUTION, THE TIME PERIOD  
18                      FOR THE GAC TO PROVIDE ADVICE ON APPLICATIONS HAD  
19                      CLOSED?

20           A       YES. I HEARD THAT.

21           Q       DO YOU AGREE WITH THAT? IS THAT AN ACCURATE  
22                      STATEMENT?

23           A       NO, IT ISN'T.

24           Q       OKAY.

25                      CAN YOU EXPLAIN YOUR ANSWER?

26           A       SO THE GUIDEBOOK DID REFERENCE THE GAC  
27                      PROVIDING ADVICE PRIOR TO EVALUATIONS BEING  
28                      COMPLETED. THE GAC CAN PROVIDE ADVICE TO THE BOARD

1 ON ANY MATTER AT ANY TIME, AND THEY DO.

2 Q NOW, IT IS TRUE THAT THE GUIDEBOOK HAS A  
3 PROVISION THAT TALKS ABOUT TIMING FOR GAC ADVICE ON  
4 APPLICATIONS; CORRECT?

5 A CORRECT.

6 Q LET'S TURN TO EXHIBIT 2, PLEASE, THE  
7 APPLICANT GUIDEBOOK. AND, PARTICULARLY, TO PAGE 150.

8 A (WITNESS COMPLIES.)

9 Q THE PROVISION THAT WE WERE JUST DISCUSSING,  
10 DOES THAT APPEAR ON THIS PAGE?

11 A YES, IT DOES.

12 Q CAN YOU IDENTIFY THAT PLEASE FOR THE COURT.

13 A FIRST FULL PARAGRAPH AT THE TOP OF 150.

14 Q AND I'LL READ THAT. (AS READ):

15 "THE GAC CAN PROVIDE ADVICE ON  
16 ANY APPLICATION. FOR THE BOARD TO  
17 BE ABLE TO CONSIDER THE GAC ADVICE  
18 DURING THE EVALUATION PROCESS, THE  
19 GAC ADVICE WOULD HAVE TO BE  
20 SUBMITTED BY THE CLOSE OF THE  
21 OBJECTION FILING PERIOD. SEE  
22 MODULE 1."

23 DID I READ THAT CORRECTLY?

24 A YES.

25 Q SO HOW IS IT, THEN, THAT YOU SAY THE GAC  
26 COULD HAVE PROVIDED ADVICE AT A TIME AFTER THE  
27 OBJECTION PERIOD?

28 A SO, LIKE I SAID, THE GAC PROVIDES THE BOARD

1     ADVISE ON ANY MATTER AT ANY TIME.  THEY'VE CONTINUED  
2     TO PROVIDE ADVICE ABOUT THE NEW GTLD AS RECENTLY AS  
3     LAST YEAR.

4           Q     SO, TO BE CLEAR, DOES THAT MEAN, WHAT YOU  
5     JUST EXPLAINED, DOES THAT MEAN THAT THE GAC COULD  
6     ISSUE ADVICE ABOUT AN APPLICATION EVEN AFTER IT HAD  
7     COMPLETED ALL OF THE EVALUATION PHASES UNDER THE  
8     GUIDEBOOK?

9           A     YES.

10          Q     AND HAS THE GAC EVER ISSUED ADVICE ABOUT AN  
11     APPLICATION AFTER THAT APPLICATION COMPLETED THE  
12     EVALUATION PANEL REVIEWS?

13          A     YES.

14          Q     I DON'T KNOW THAT YOU'LL HAVE TO TURN BACK,  
15     BUT THINKING BACK ON EXHIBIT 41, THE RESOLUTIONS, AND  
16     PARTICULARLY THOSE TWO LAST RESOLUTIONS THAT WE'VE  
17     BEEN DISCUSSING, DID EITHER OF THOSE TWO RESOLUTIONS  
18     AFFECT THE ABILITY OF ICANN TO FOLLOW THE IRP'S  
19     DECLARATION, TELLING ICANN TO REFRAIN FROM DELEGATING  
20     THE .AFRICA GTLD TO ZACR?

21          A     NO.

22          Q     DID EITHER OF THOSE TWO FINAL RESOLUTIONS  
23     AFFECT THE ABILITY OF ICANN TO FOLLOW THE IRP'S  
24     DECLARATION TELLING ICANN TO RETURN DCA'S APPLICATION  
25     TO PROCESSING?

26          A     NO.

27          Q     AND DID EITHER OF THOSE TWO RESOLUTIONS  
28     AFFECT THE ABILITY OF ICANN TO FOLLOW THE IRP'S

1       **DECLARATION TO PAY DCA'S COSTS?**

2           A       NO.

3           **Q       TO BE CLEAR, DID THE BOARD RESOLVE TO DO**  
4       **ANYTHING LESS THAN WHAT THE IRP PANEL INCLUDED IN ITS**  
5       **FINAL DECLARATION?**

6           A       NO.

7           **Q       AFTER THIS BOARD RESOLUTION WAS PASSED AND**  
8       **YOU REVIEWED IT, WHAT, IF ANYTHING, DID YOU AND YOUR**  
9       **STAFF DO IN RESPONSE?**

10          A       SO WE RESUMED PROCESSING OF DCA'S  
11       APPLICATION. WE DID A NUMBER OF THINGS. WE UPDATED  
12       THE STATUS OF THE APPLICATION; WE REACHED OUT TO THE  
13       GEOGRAPHIC NAMES PANEL THAT HAD BEEN EVALUATING DCA'S  
14       APPLICATION TO RESUME THEIR EVALUATION PROCESS; WE  
15       INFORMED THE APPLICANT AND OTHER MEMBERS OF THE  
16       CONTENTION SET OF THAT ACTION, OF THE STATUS CHANGE.

17          **Q       DID YOU -- DID ICANN OR THE PANELS, DID THEY**  
18       **RESTART DCA'S APPLICATION AT THE BEGINNING OF THE**  
19       **EVALUATION PROCESS?**

20          A       NO.

21          **Q       WHERE IN THE EVALUATION PROCESS DID ICANN**  
22       **PLACE DCA'S APPLICATION?**

23          A       RIGHT WHERE IT LEFT OFF.

24          **Q       AND WHERE WAS THAT?**

25          A       SO THAT WAS AT THE GEOGRAPHIC NAMES PANEL  
26       EVALUATION.

27          **Q       AND WHY DID YOU CHOOSE -- DID ICANN PLACE IT**  
28       **IN THAT PARTICULAR PLACE IN THE APPLICATION PROCESS?**

1           A       BECAUSE THAT WAS THE LANGUAGE OF THE -- THE  
2       IRP DECLARATION AND THE RESOLUTION BOTH SAID TO --  
3       SORRY. IT'S NOT IN FRONT OF ME.

4           **Q       YOU CAN MOVE TO 41, IF YOU'D LIKE. SORRY.**  
5       **FEEL FREE TO MOVE BACK TO THE EXHIBIT, IF IT WOULD BE**  
6       **HELPFUL.**

7           A       THANK YOU.

8                   LOOKING AT NUMBER 41, RESOLVED -- THE FIRST  
9       RESOLVED POINT 2 SAYS --

10           THE COURT:   WHAT PAGE ARE YOU ON?

11           THE WITNESS:  OH, I'M ON PAGE 2 OF THE  
12       EXHIBIT 41.

13           THE COURT:   THANK YOU.

14           THE WITNESS:  THANK YOU.

15                   NUMBER 2 UNDER THE FIRST RESOLVED READS  
16       (AS READ):

17                           "ICANN SHALL PERMIT DCA'S  
18                   APPLICATION TO PROCEED THROUGH THE  
19                   REMAINDER OF THE NEW GTLD  
20                   APPLICATION PROCESS AS SET OUT  
21                   BELOW."

22           **Q       BY -- AND SO THE PLACE THAT YOU CHOSE TO PUT**  
23       **THEM -- AT THE GEOGRAPHIC NAMES PLACE BECAUSE?**

24           A       SO THAT -- WE HAD INFORMED THE APPLICANT  
25       THAT THAT WAS THE PORTION OF -- INITIAL EVALUATION  
26       THAT WAS INCOMPLETE, AND SO THAT WAS THE ONLY PART  
27       THAT WE HAD TO FINISH IN ORDER TO COMPLETE INITIAL  
28       EVALUATION.

1 Q DO YOU KNOW WHETHER, IN FACT, THE GEOGRAPHIC  
2 NAMES REVIEW PANEL RESUMED ITS EVALUATION OF DCA'S  
3 APPLICATION?

4 A IT DID.

5 Q AND WHAT WAS THE RESULT OF THAT INITIAL  
6 EVALUATION?

7 A SO THERE'S AN INTERMEDIATE RESULT OF INITIAL  
8 EVALUATION PANELS. THEY HAVE THE OPPORTUNITY TO  
9 ISSUE CLARIFYING QUESTIONS TO THE APPLICANT, AND SO  
10 THEY DID. THEY ISSUED CLARIFYING QUESTIONS.

11 Q OKAY.

12 AND WHAT HAPPENED NEXT?

13 A SO ICANN'S STAFF RECEIVED THOSE CLARIFYING  
14 QUESTIONS FROM THE PANEL, AND WE PASSED THEM ALONG TO  
15 THE APPLICANT, DCA.

16 Q AND DID DCA RESPOND TO THOSE CLARIFYING  
17 QUESTIONS?

18 A YES, THEY DID.

19 Q AND HOW DID THEY DO SO?

20 A THEY RESPONDED THAT THEY WOULD NOT BE  
21 PROVIDING REVISED LETTERS OF SUPPORT AND THAT IN  
22 DCA'S OPINION, THE LETTERS OF SUPPORT, WHICH THEY  
23 PROVIDED IN 2012, WERE SUFFICIENT.

24 Q LET ME ASK ONE BACKGROUND QUESTION.

25 WERE CLARIFYING QUESTIONS COMMON IN THE GTLD  
26 PROCESS?

27 MS. COLON: OBJECTION, YOUR HONOR. THIS IS  
28 OUTSIDE THE SCOPE OF PHASE I.

1 THE COURT: OVERRULED.

2 THE WITNESS: CLARIFYING QUESTIONS WERE  
3 EXTREMELY COMMON. OVERALL -- OVER 90 PERCENT OF THE  
4 1930 APPLICATIONS RECEIVED CLARIFYING QUESTIONS, AND  
5 BY MY RECOLLECTION, NEARLY ALL OF THE GEOGRAPHIC  
6 APPLICATIONS RECEIVED CLARIFYING QUESTIONS.

7 Q BY MS. BURKE: SO AFTER ICANN RECEIVED DCA'S  
8 RESPONSE TO THE INITIAL CLARIFYING QUESTIONS, WHAT  
9 DID YOU DO?

10 A WE PASSED THAT RESPONSE BACK TO THE  
11 GEOGRAPHIC NAMES PANEL.

12 Q AND THEN WHAT HAPPENED NEXT?

13 A THEY -- THE GEOGRAPHIC NAMES PANEL --  
14 INTERCONNECT, THAT'S THE VENDOR -- THEY RETURNED A  
15 RESULT BACK TO US SAYING THAT THE LETTERS OF SUPPORT  
16 WERE INSUFFICIENT AND, THEREFORE, DCA DID NOT PASS  
17 THE EVALUATION FROM THE GEOGRAPHIC NAMES PANEL.

18 Q DID ICANN THEN POST THE RESULTS OF THAT  
19 INITIAL EVALUATION?

20 A YES, WE DID.

21 Q AND WHAT HAPPENED AFTER YOU POSTED THOSE  
22 RESULTS?

23 A SO WHEN AN APPLICANT FAILS INITIAL  
24 EVALUATION, WE -- IF IT'S A PART OF AN EVALUATION  
25 THAT THEY COULD FIX OR REMEDIATE, THEN WE INVITE THEM  
26 TO PARTICIPATE IN EXTENDED EVALUATION, WHICH IS WHAT  
27 WE DID.

28 Q AND DID DCA ELECT TO DO SO?

1           A       YES, THEY DID.

2           Q       **AND SO WHAT WAS THE -- WHAT HAPPENED DURING**  
3 **EXTENDED EVALUATION?**

4           A       SO, AGAIN, THE PANEL, INTERCONNECT, ISSUED  
5 CLARIFYING QUESTIONS BACK TO DCA, WHICH, AGAIN,  
6 OUTLINED THE DEFICIENCIES IN THEIR LETTERS OF  
7 SUPPORT, AND WE PASSED THOSE TO DCA.

8           Q       **DID DCA PROVIDE RESPONSES?**

9           A       DCA PROVIDED, ESSENTIALLY, THE SAME RESPONSE  
10 THAT THEY HAD IN THE INITIAL EVALUATION, WHICH WAS  
11 THAT THEY WOULDN'T BE PROVIDING REVISED LETTERS OF  
12 SUPPORT AND THAT THE LETTERS FROM 2012 WERE, IN THEIR  
13 OPINION, SUFFICIENT.

14          Q       **WHAT HAPPENED THEN TO DCA'S APPLICATION?**

15          A       SO WE PASSED THAT INFORMATION BACK TO THE  
16 PANEL, AND THEN RETURNED A FAILING RESULT OF THE  
17 EXTENDED EVALUATION.

18          Q       **SO, TO BE CLEAR, DID DCA'S APPLICATION PASS**  
19 **THE GEOGRAPHIC NAMES REVIEW?**

20          A       IT DID NOT.

21          Q       **DID YOU INFORM DCA OF THAT RESULT?**

22          A       YES, WE DID.

23          Q       **COULD DCA HAVE FILED A RECONSIDERATION**  
24 **REQUEST WHEN ITS APPLICATION DID NOT PASS GEOGRAPHIC**  
25 **NAMES REVIEW?**

26          A       YES.

27          Q       **HAD ANY OTHER APPLICANT FOR A GTLD WHO WAS**  
28 **TOLD ITS APPLICATION WOULD NOT BE APPROVED BECAUSE IT**



1 FAILED AN EVALUATION STEP, FOR EXAMPLE, EVER FILED A  
2 RECONSIDERATION REQUEST?

3 A YES. DOZENS OF THEM.

4 Q DID DCA FILE SUCH A RECONSIDERATION REQUEST?

5 A NO.

6 Q ASSUME WITH ME FOR A MOMENT THAT DCA HAD  
7 FILED A RECONSIDERATION REQUEST AND THE ICANN BOARD  
8 DENIED THAT REQUEST.

9 WOULD DCA HAVE BEEN ELIGIBLE AT THAT POINT  
10 TO FILE AN IRP?

11 A YES, THEY WOULD HAVE.

12 Q HOW IS THAT TRUE?

13 A SO THE MATTER OF THE RECONSIDERATION REQUEST  
14 WAS THE ACTIVITY OF THE ACTION OF THE STAFF OR THE  
15 PANEL THAT WAS BEING RECONSIDERED.

16 AND WHEN THE BOARD DENIED THAT ACTION AS  
17 PART OF THE RECONSIDERATION REQUEST, THAT BOARD  
18 ACTION THEN BECOMES PART OF THE CRITERIA FOR ISSUING  
19 AND INITIATING AN IRP.

20 Q HAVE ANY OTHER APPLICANTS FOR A NEW GTLD  
21 INSTITUTED AN IRP TO DISPUTE RESULTS OF THE  
22 EVALUATION OF ITS APPLICATION AFTER THE BOARD DENIED  
23 ITS RECONSIDERATION REQUEST?

24 A YES.

25 Q CAN YOU GIVE US A FEW EXAMPLES?

26 A UM, SO, THE APPLICANTS FOR SEVERAL TOP LEVEL  
27 DOMAINS, INCLUDING .HOTELS, .CHARITY, .RADIO.

28 Q AND WHEN THOSE APPLICANTS DO THAT -- WHEN

1 ANYBODY INITIATES AN IRP PROCEEDING, IS THAT PUBLIC  
2 INFORMATION?

3 A YES.

4 Q DID, IN FACT, DCA, FILE AN IRP AFTER BEING  
5 INFORMED THAT ITS APPLICATION HAD FAILED?

6 A THEY DID NOT.

7 Q WHAT DID THEY DO?

8 A THEY FILED THIS LAWSUIT.

9 MS. BURKE: MS. WILLETT, THANK YOU VERY MUCH  
10 FOR YOUR TIME.

11 THE COURT: OKAY. THANK YOU, MS. BURKE.  
12 DOES THAT COMPLETE YOUR DIRECT EXAMINATION OF THE  
13 WITNESS?

14 MS. BURKE: IT DOES, YOUR HONOR. THANK YOU.

15 THE COURT: OKAY. THANK YOU. IT'S NOW  
16 ALMOST 11:15 A.M.

17 AND DOES THE PLAINTIFF HAVE ANY  
18 CROSS-EXAMINATION FOR THE WITNESS?

19 MS. COLON: YES, YOUR HONOR.

20 THE COURT: OKAY. MS. COLON, WHAT'S YOUR  
21 TIME ESTIMATE?

22 MS. COLON: I ESTIMATE APPROXIMATELY AN  
23 HOUR.

24 THE COURT: OKAY. THANK YOU. ARE YOU READY  
25 TO PROCEED?

26 MS. COLON: YES, I AM.

27 THE COURT: OKAY. YOU MAY PROCEED WHEN  
28 YOU'RE READY, MS. COLON.

1 MS. COLON: JUST GOING TO GIVE THE WITNESS  
2 OUR EXHIBIT BINDER.

3 MR. LEVEE: DO YOU HAVE A COPY FOR US?

4 MS. COLON: NO. SORRY.  
5

6

CROSS-EXAMINATION

7 BY MS. COLON:

8 Q GOOD MORNING, MS. WILLETT.

9 A GOOD MORNING.

10 Q THE DRAFTING OF THE GUIDEBOOK AT ISSUE IN  
11 THIS CASE PREDATES YOUR TENURE AT ICANN; CORRECT?

12 A IT DOES.

13 Q AND YOU DID NOT ATTEND THE DCA IRP  
14 PROCEEDINGS; CORRECT -- THE DCA V. ICANN IRP  
15 PROCEEDING; CORRECT?

16 A CORRECT.

17 Q OTHER THAN AT THIS TRIAL, HAVE YOU REVIEWED  
18 PLEADINGS OR BRIEFS FROM THE IRP?

19 A I HAVE NOT.

20 Q COULD YOU PLEASE TURN TO EXHIBIT 18 IN THE  
21 WITNESS BINDER. IT SHOULD ALSO BE ON THE SCREEN.

22 A (WITNESS COMPLIES.)

23 Q AND DO YOU RECOGNIZE THIS DOCUMENT?

24 A IT -- I DON'T KNOW THAT I'VE EVER LOOKED AT  
25 THIS VERSION BEFORE. IT LOOKS -- SORRY.

26 Q IT APPEARS TO BE A DECLARATION ON THE IRP  
27 PROCEDURE; CORRECT?

28 A YES, IT DOES.

1 Q OKAY. AND IF YOU COULD PLEASE TURN TO PAGE  
2 15 OF THE EXHIBIT. SPECIFICALLY, PLEASE TAKE A LOOK  
3 AT PARAGRAPH 60 ON THAT PAGE.

4 A (WITNESS COMPLIES.)

5 Q HERE THE PANEL IS ORDERING THAT THE PARTIES  
6 EXCHANGE DOCUMENT REQUESTS AND PRODUCE DOCUMENTS IN  
7 RESPONSE; CORRECT?

8 A YES.

9 Q DOES THE PANEL RULE ANYWHERE ON WHETHER  
10 THESE PROCEEDINGS WILL BE THE FIRST AND LAST  
11 OPPORTUNITY THAT DCA TRUST WILL HAVE TO HAVE ITS  
12 RIGHTS DETERMINED BY AN INDEPENDENT BODY?

13 MS. BURKE: YOUR HONOR, I'M JUST GOING TO  
14 OBJECT. AS DCA'S COUNSEL JUST ELICITED, MS. WILLETT  
15 DID NOT ATTEND THE PROCEEDINGS, HAS NOT SEEN THESE  
16 DOCUMENTS BEFORE, SO SHE LACKS FOUNDATION OTHER THAN  
17 READING, AT THIS POINT IN TIME, TO ANSWER THESE  
18 QUESTIONS.

19 THE COURT: OKAY. SO, I GUESS, MS. COLON,  
20 IT'S -- I MEAN, THE DOCUMENT STATES WHAT IT STATES,  
21 AND IT SEEMS LIKE SOMETHING YOU CAN ARGUE IN CLOSING  
22 ARGUMENT.

23 MS. COLON: SURE. LET ME JUST TRY ASKING IT  
24 IN ANOTHER WAY.

25 THE COURT: THANK YOU.

26 Q BY MS. COLON: MS. WILLETT, ARE YOU AWARE OF  
27 THE IRP MAKING ANY PROCEDURAL RULING THAT THE  
28 PROCEEDINGS, THAT THE IRP PROCEEDINGS, WILL BE THE

1 FIRST AND LAST OPPORTUNITY THAT DCA TRUST HAS TO HAVE  
2 ITS RIGHTS DETERMINED BY AN INDEPENDENT BODY?

3 MS. BURKE: SAME OBJECTION, YOUR HONOR.

4 MS. COLON: YOUR HONOR, I'M JUST ASKING IF  
5 SHE'S AWARE.

6 THE COURT: OVERRULED.

7 THE WITNESS: I AM NOT AWARE. I DIDN'T READ  
8 THE -- ANY OF THE INTERMEDIATE IRP DECLARATIONS.

9 Q BY MS. COLON: OKAY. AND ARE YOU AWARE OF  
10 ANY RULING ANYWHERE IN THE IRP DECLARATIONS THAT FOR  
11 DCA AND OTHER GTLD APPLICANTS, THE IRP IS THEIR ONLY  
12 RECOURSE WITH NO OTHER LEGAL REMEDY AVAILABLE?

13 MS. BURKE: SAME OBJECTION.

14 THE COURT: OVERRULED.

15 THE WITNESS: I'M NOT AWARE.

16 Q BY MS. COLON: AND ARE YOU AWARE OF THE IRP  
17 PANEL EVER RULING THAT FOR DCA AND OTHER GTLD  
18 APPLICANTS, THE IRP IS THEIR ONLY RECOURSE; NO OTHER  
19 LEGAL REMEDY IS AVAILABLE?

20 A AGAIN, I HAVEN'T READ ALL THE FILINGS, SO I  
21 DON'T KNOW.

22 Q OKAY. COULD YOU PLEASE TURN TO JOINT  
23 EXHIBIT 33 IN THE BINDER.

24 A YES.

25 Q AND DO YOU RECOGNIZE THIS DOCUMENT?

26 A YES.

27 Q AND I BELIEVE YOU SAID EARLIER THAT YOU  
28 REVIEWED THE IRP DECLARATION AS PART OF YOUR DUTIES

1 AT ICANN; CORRECT?

2 A CORRECT.

3 Q COULD YOU PLEASE TAKE A LOOK AT PARAGRAPH  
4 19, WHICH IS ON PAGE 4.

5 A YES.

6 Q HERE THE PANEL IS REFERENCING A MAY INTERIM  
7 ORDER THAT ICANN STOP PROCESSING ANY .AFRICA  
8 APPLICATION UNTIL THE CONCLUSION OF THE IRP PROCESS;  
9 CORRECT?

10 A CORRECT.

11 Q NOW, DOES THE PANEL ALSO RULE IN THIS  
12 DECLARATION THAT ICANN SHOULD STOP PROCESSING  
13 APPLICATIONS BECAUSE THE IRP WAS THE ONLY PROCEEDING  
14 AVAILABLE TO REVIEW THE ICANN BOARD'S DECISIONS?

15 A YOU KNOW, IT'S A 65-, 63-PAGE DOCUMENT.  
16 THERE'S A LOT OF LEGAL LANGUAGE HERE. I HONESTLY  
17 DON'T RECALL THAT SPECIFICALLY.

18 Q OKAY. AND COULD YOU PLEASE TAKE A LOOK AT  
19 PARAGRAPH 150. IT'S ON PAGE 62.

20 A YES.

21 Q SO HERE THE PANEL DECLARES THAT ICANN SHOULD  
22 PAY ALL OF DCA'S IRP COSTS; CORRECT?

23 A CORRECT.

24 Q NOW, DOES THE PANEL ALSO RULE THAT THE IRP  
25 IS THE ONLY ACCOUNTABILITY MECHANISM AVAILABLE TO  
26 PARTIES SUCH AS DCA?

27 A I DON'T SEE THAT IN PARAGRAPH 150.

28 Q DO YOU RECALL WHETHER THE PANEL MADE THAT

1       **RULING?**

2           A       I DON'T RECALL.

3           **Q       OKAY.  ULTIMATELY THE ICANN BOARD GETS TO**  
4 **DECIDE WHAT THE PROPER REMEDY IS FOR AN IRP PANEL'S**  
5 **FINDING; CORRECT?**

6           A       I -- MY UNDERSTANDING IS THE BOARD GETS TO  
7 INTERPRET -- DETERMINE HOW TO IMPLEMENT THE PANEL'S  
8 RECOMMENDATIONS.

9           MS. COLON:  I'D LIKE TO LODGE WITH THE COURT  
10 THE TRIAL TRANSCRIPT FROM MARCH 1ST OF LAST YEAR.

11           THE COURT:  OKAY.  YOU MAY PROCEED.  YOU CAN  
12 HAND THAT TO THE CLERK.

13           HOW DO YOU PROPOSE TO PROCEED?  DID YOU WISH  
14 TO READ SOMETHING FROM THAT TRANSCRIPT?

15           MS. COLON:  YES, YOUR HONOR.

16           THE COURT:  WHAT PAGE AND LINE NUMBERS?

17           MS. COLON:  PAGE 125, LINE 11, THROUGH 125,  
18 LINE 13.

19           THE COURT:  OKAY.  I'LL GIVE MS. BURKE AN  
20 OPPORTUNITY TO REVIEW THAT.  LET ME KNOW IF YOU HAVE  
21 ANY OBJECTION.

22           MS. BURKE:  NO OBJECTION, YOUR HONOR.

23           THE COURT:  OKAY.  THANK YOU.  YOU MAY  
24 PROCEED, MS. COLON.

25           **Q       BY MS. COLON:  MS. WILLETT, DO YOU RECALL --**

26           THE COURT:  I'M SORRY.  WERE YOU --

27           MS. COLON:  I WAS JUST GOING TO ASK HER IF  
28 SHE RECALLED THE QUESTION.

1 THE COURT: GO AHEAD. IF YOU'RE GOING TO  
2 READ -- GO AHEAD AND PROCEED. YOU CAN ASK THE  
3 WITNESS A QUESTION. IF YOU'RE GOING TO READ FROM THE  
4 TRIAL TRANSCRIPT, BE SURE TO IDENTIFY WHAT IT IS  
5 YOU'RE READING FROM AND WHAT PAGE AND LINE NUMBERS;  
6 OKAY?

7 MS. COLON: SURE.

8 Q BY MS. COLON: MS. WILLETT, DO YOU RECALL  
9 THIS TESTIMONY THAT I'M ABOUT TO READ FROM THE TRIAL  
10 TRANSCRIPT AT PAGE 125, LINE 11 THROUGH 125, LINE 13?

11 AND THIS IS FROM THE MARCH 1ST, 2018,  
12 JUDICIAL ESTOPPEL TRIAL IN THIS MATTER. (AS READ):

13 QUESTION: "BUT IT IS ALSO ONE THAT  
14 THE BOARD GETS TO DECIDE WHAT THE  
15 FINAL REMEDY IS; RIGHT?"

16 ANSWER: "YES."

17 DO YOU RECALL THAT TESTIMONY?

18 A YES. THIS REFRESHES MY RECOLLECTION.

19 Q AND YOU WERE BEING TRUTHFUL AT THE TIME;  
20 CORRECT?

21 A YES.

22 Q AND YOU READ THE RESOLUTIONS THAT THE ICANN  
23 BOARD MADE ABOUT THE PROCESSING OF DCA'S APPLICATION  
24 AFTER THE IRP'S FINAL DECLARATION; CORRECT?

25 A I'M SORRY. COULD YOU RESTATE THAT?

26 Q SURE.

27 YOU READ THE RESOLUTIONS THAT THE ICANN  
28 BOARD MADE ABOUT THE PROCESSING OF DCA'S APPLICATION



1 AFTER THE IRP'S FINAL DECLARATION; CORRECT?

2 A YES.

3 Q AND THE RESOLUTIONS DON'T SAY ANYTHING ABOUT  
4 THE PANEL'S DECISION BEING BINDING; CORRECT?

5 A CORRECT.

6 Q BUT THE IRP PANEL FOUND THAT THE PANEL'S  
7 DECLARATION WAS BINDING; CORRECT?

8 A CORRECT.

9 Q ALL RIGHT. I'D LIKE TO TAKE A LOOK AT  
10 EXHIBIT 41, PLEASE.

11 A (WITNESS COMPLIES.)

12 Q IF YOU COULD PLEASE TURN TO PAGE 2 OF THE  
13 EXHIBIT.

14 NOW, JUST TO CLARIFY, THESE ARE THE BOARD  
15 RESOLUTIONS THAT YOU WENT OVER WITH YOUR COUNSEL A  
16 FEW MOMENTS AGO; CORRECT?

17 A CORRECT.

18 Q AND I BELIEVE YOUR COUNSEL HAD DIRECTED YOUR  
19 ATTENTION TO THE RESOLUTION ON PAGE 2, NUMBERED  
20 2015.07.15.01 TOWARDS THE MIDDLE OF THE PAGE.

21 DO YOU SEE THAT?

22 A YES, I DO.

23 Q AND YOU SAID THAT YOU BELIEVED THAT THE "SET  
24 OUT BELOW" LANGUAGE IN THE SECOND PARAGRAPH OF THAT  
25 RESOLUTION REFERRED TO THE THIRD RESOLUTION ON THE  
26 PAGE; CORRECT?

27 A CORRECT.

28 Q BUT THAT SECOND POINT DOESN'T ACTUALLY REFER

1 TO ANY SPECIFIC RESOLUTION; ISN'T THAT CORRECT?

2 A CORRECT.

3 Q I'D LIKE TO TAKE A LOOK AT THE SECOND  
4 RESOLUTION NUMBERED 2015.07.16.02.

5 THAT LANGUAGE DIDN'T APPEAR IN THE IRP FINAL  
6 DECLARATION, DID IT?

7 A NO.

8 Q AND PLEASE TAKE A LOOK AT RESOLUTION  
9 2015.07.16.04.

10 A YES.

11 Q THAT LANGUAGE DIDN'T APPEAR IN THE FINAL  
12 DECLARATION; CORRECT?

13 A THAT'S CORRECT.

14 Q AND IF YOU TAKE A LOOK AT RESOLUTION  
15 2015.07.05 --

16 A YES.

17 Q -- THAT LANGUAGE DOESN'T COME FROM THE IRP'S  
18 PANEL'S FINAL DECLARATION; CORRECT?

19 A CORRECT.

20 Q NOW, THE REASON THAT THE BOARD VOTES ON THE  
21 IRP'S DECLARATION IS BECAUSE THE IRP'S DECISION OR  
22 DECLARATION ISN'T SELF-IMPLEMENTING; CORRECT?

23 A CORRECT.

24 Q AND YOU SAID EARLIER THAT THE ICANN BOARD  
25 DIDN'T HAVE TO ACCEPT THE IRP'S PANEL AS BINDING;  
26 RIGHT?

27 A NO. TO IMPLEMENT IT, THEY DID NOT.

28 Q I'M SORRY?

1 A NO, THEY DID NOT.

2 Q OKAY. AND THAT'S BECAUSE THE BYLAWS SAY  
3 THAT THE IRP DECLARATION IS MERELY PRECEDENTIAL;  
4 CORRECT?

5 A YES. THAT'S MY UNDERSTANDING.

6 Q THE BYLAWS DON'T SAY THAT THE IRP  
7 DECLARATION IS BINDING; CORRECT?

8 A CORRECT.

9 Q YOU'RE NOT AWARE OF ANY MECHANISM AVAILABLE  
10 AT THE TIME THE IRP DECLARATION WAS ISSUED FOR ANY  
11 APPLICANT TO APPEAL AN IRP RULING; RIGHT?

12 A I'M NOT AWARE.

13 Q AND AT THE TIME OF THE FILING OF THIS  
14 LAWSUIT IN 2016, HAD YOU EVER HEARD OF ANYONE GOING  
15 THROUGH AN IRP APPEAL?

16 A I HAD NOT.

17 Q AND YOU'RE UNAWARE OF ANY PROCEDURE BY WHICH  
18 A PARTY THAT PREVAILS IN THE IRP CAN GO INTO COURT  
19 AND ENFORCE THE IRP RULING; CORRECT?

20 A COULD YOU RESTATE THAT?

21 Q SURE.

22 YOU'RE UNAWARE OF ANY PROCEDURE BY WHICH A  
23 PARTY THAT PREVAILS IN THE IRP CAN GO INTO COURT AND  
24 ENFORCE THE IRP RULING; CORRECT?

25 A CORRECT.

26 Q AND SWITCHING GEARS A LITTLE BIT, THE GAC  
27 EXISTS BECAUSE ICANN'S BYLAWS MANDATE ITS EXISTENCE;  
28 CORRECT?

1 A CORRECT.

2 Q AND ICANN CHOOSES WHETHER OR NOT TO FOLLOW  
3 THE ADVICE THAT THE GAC ISSUES; CORRECT?

4 A YOU MEAN THE ICANN BOARD? YES.

5 Q COULD WE TURN -- THIS ISN'T IN THE  
6 EXHIBIT BINDER, UNFORTUNATELY, BUT WE'LL PULL IT UP  
7 ON THE SCREEN FOR YOU. AND IF YOU STILL HAVE ICANN'S  
8 BINDERS UP THERE, IT MIGHT BE IN THERE.

9 BUT TURNING TO EXHIBIT 2, WHICH IS THE  
10 DETAILED APPLICANT GUIDEBOOK, SECTION 1.1.26 ON PAGE  
11 12.

12 A YES.

13 Q THIS IS THE OBJECTION ADVICE LANGUAGE THAT  
14 YOU WENT OVER WITH YOUR COUNSEL A FEW MINUTES AGO  
15 WITH REGARD TO GAC ADVICE; CORRECT?

16 A NO. I DON'T THINK WE REVIEWED PAGE 12.

17 Q YOU SPOKE ABOUT AN OBJECTION PERIOD;  
18 CORRECT?

19 A I DID. I THINK I WAS LOOKING AT MODULE 3.

20 Q OKAY. THAT'S FINE.

21 HOW LONG IS THAT OBJECTION PERIOD?

22 A SO THE -- THE OBJECTION PERIOD, I'D HAVE TO  
23 LOOK AT ALL THE DETAILS IN THE GUIDEBOOK, BUT WHEN  
24 THE GUIDEBOOK WAS WRITTEN AND ADOPTED, MY  
25 RECOLLECTION IS THAT THE OBJECTION PERIOD WAS  
26 INTENDED TO BE ABOUT FIVE OR SIX MONTHS. I BELIEVE  
27 IT WAS SUPPOSED TO ORIGINALLY END IN NOVEMBER --  
28 OCTOBER/NOVEMBER OF 2012. THE REASON I DON'T HAVE A

1 CLEAR RECOLLECTION IS BECAUSE WE CHANGED THAT, AND  
2 THAT OBJECTION PERIOD WAS ACTUALLY EXTENDED UNTIL  
3 MARCH, I WANT TO SAY THE APPROXIMATE MARCH TIMEFRAME  
4 OF 2013.

5 SO, AGAIN, IT WAS PART OF -- BECAUSE WE HAD  
6 RECEIVED ALMOST 2000 APPLICATIONS INSTEAD OF 500 --

7 Q THANK YOU.

8 THE OBJECTION PERIOD HAD CLOSED BEFORE THE  
9 IRP ISSUED ITS FINAL DECLARATION; CORRECT?

10 A YES.

11 Q TURNING BACK TO THE IRP PANEL'S FINAL  
12 DECLARATION, THE IRP PANEL FOUND THAT ICANN DIDN'T  
13 EVEN INVESTIGATE THE GAC'S ADVICE TO STOP PROCESSING  
14 DCA'S APPLICATION BEFORE IT ACCEPTED THE GAC ADVICE;  
15 CORRECT?

16 A WHAT EXHIBIT ARE WE ON?

17 Q I'M JUST DISCUSSING THE IRP'S FINAL  
18 DECLARATION.

19 MS. BURKE: EXHIBIT 33.

20 THE COURT: DID YOU WISH TO REFER THE  
21 WITNESS TO AN EXHIBIT?

22 Q BY MS. COLON: WELL, DO YOU RECALL THAT THE  
23 IRP PANEL FOUND THAT ICANN DIDN'T EVEN INVESTIGATE  
24 THE GAC'S ADVICE TO STOP PROCESSING DCA'S APPLICATION  
25 BEFORE IT ACCEPTED THE GAC'S ADVICE?

26 A I'M NOT SURE IF I RECALL THAT GIVEN  
27 LANGUAGE.

28 Q GO AHEAD.

1 A I'M HAPPY TO LOOK AT A PARAGRAPH.

2 Q SURE. OKAY. LET'S TURN TO PARAGRAPH 113,  
3 AND LET ME KNOW IF THAT REFRESHES --

4 THE COURT: LET'S MAKE IT -- WHICH EXHIBIT?

5 MS. COLON: SORRY. EXHIBIT 33.

6 Q BY MS. COLON: PLEASE TURN TO PARAGRAPH 113  
7 WHICH IS ON PAGE 53, AND LET ME KNOW IF THAT  
8 REFRESHES YOUR RECOLLECTION.

9 I'M SORRY. PARAGRAPH 111.

10 A (REVIEWING DOCUMENT.)

11 I'M THERE.

12 Q YOU CAN START.

13 A COULD YOU REPEAT THE QUESTION? I'M SORRY.

14 Q SURE.

15 YOU CAN START READING IN THAT PARAGRAPH.

16 THE RELEVANT PORTION OF THE DECLARATION CONTINUES TO  
17 ABOUT PARAGRAPH 115.

18 AND THE QUESTION IS WHETHER YOU RECALL THE  
19 IRP PANEL FINDING THAT ICANN SHOULD HAVE INVESTIGATED  
20 GAC'S ADVICE BEFORE DECIDING TO STOP THE PROCESSING  
21 OF DCA'S APPLICATION.

22 THE COURT: SO, I'M SORRY. WHAT -- SO  
23 YOU'RE REFERRING THE WITNESS TO EXHIBIT 33?

24 MS. COLON: CORRECT.

25 THE COURT: WHAT PAGE OR PAGES?

26 MS. COLON: PAGE 53, BEGINNING AT PARAGRAPH  
27 111, THROUGH PAGE 54.

28 THE WITNESS: (REVIEWING DOCUMENT.)

1 I'M SORRY. I DON'T -- IN PARAGRAPH 115, I  
2 SEE THAT THE PANEL DECLARES THAT BOTH THE ACTIONS AND  
3 INACTIONS OF THE BOARD WERE INCONSISTENT WITH THE  
4 BYLAWS, BUT I DON'T QUITE SEE THE LANGUAGE YOU WERE  
5 REFERRING TO.

6 Q BY MS. COLON: SURE.

7 IF YOU LOOK BACK AT 113, PARAGRAPH 113 ON  
8 PAGE 53, DO YOU SEE WHERE THE PANEL SAYS (AS READ):

9 "IN LIGHT OF THE CLEAR  
10 TRANSPARENCY OBLIGATION PROVISIONS  
11 FOUND IN ICANN'S BYLAWS, THE PANEL  
12 WOULD HAVE EXPECTED THE ICANN BOARD  
13 TO, AT A MINIMUM, INVESTIGATE THE  
14 MATTER FURTHER BEFORE REJECTING DCA  
15 TRUST'S APPLICATION"?

16 A YES, I SEE THAT.

17 Q AND DO YOU RECALL THE PANEL -- DOES THAT  
18 REFRESH YOUR RECOLLECTION AS TO THE PANEL'S FINDING  
19 ON THAT ISSUE?

20 A YES.

21 Q OKAY. SWITCHING GEARS AGAIN, THE ICANN  
22 STAFF WAS INVOLVED WITH THE PROCESSING OF THE  
23 APPLICATIONS FOR .AFRICA; CORRECT?

24 A CORRECT.

25 Q AND DO YOU RECALL THAT A MEMBER OF THE ICANN  
26 STAFF WROTE AN ENDORSEMENT LETTER FOR DCA'S  
27 COMPETITOR ZACR TO SUBMIT TO THE AUC FOR SIGNATURE?

28 A SO IT'S NOT QUITE THAT SIMPLE. MAY I

1 EXPLAIN?

2 Q NO. IF YOU COULD PLEASE JUST ANSWER WHETHER  
3 YOU RECALL THAT LETTER.

4 MS. BURKE: OBJECTION.

5 THE COURT: OKAY. OBJECTION OVERRULED.

6 SO I'LL ASK THE WITNESS TO FOCUS ON THE  
7 QUESTIONS THAT COUNSEL IS ASKING AND JUST ANSWER  
8 THOSE AS DIRECTLY AS YOU CAN. AND IF THE QUESTION  
9 FAIRLY CALLS FOR A "YES" OR "NO," TO ANSWER THAT  
10 "YES" OR "NO," IF YOU'RE ABLE TO.

11 AND I'M SURE YOUR COUNSEL CAN FOLLOW UP WITH  
12 ANY REDIRECT EXAMINATION, IF THEY WISH TO.

13 ALL RIGHT. MS. COLON, YOU MAY CONTINUE.

14 MS. COLON: SURE.

15 Q BY MS. COLON: DO YOU RECALL THAT A MEMBER  
16 OF THE ICANN STAFF WROTE AN ENDORSEMENT LETTER FOR  
17 DCA'S COMPETITOR, ZACR, TO SUBMIT TO THE AUC FOR  
18 SIGNATURE?

19 A YES. WE DRAFTED A TEMPLATE.

20 Q DO YOU RECALL ANY OTHER INSTANCE OF ICANN  
21 STAFF DRAFTING A TEMPLATE LETTER FOR ANY OTHER GTLD  
22 APPLICANT?

23 A SO THERE IS A TEMPLATE AS TO WHAT A LETTER  
24 OF SUPPORT WOULD LOOK LIKE IN THE APPLICANT  
25 GUIDEBOOK. I DON'T RECALL A SPECIFIC EXAMPLE OF  
26 DRAFTING A -- AN ALTERNATE LETTER.

27 Q ICANN DIDN'T JUST REFER ZACR TO A TEMPLATE  
28 IN THE GUIDEBOOK; CORRECT?



1           A       WE DID THAT AS WELL.

2           Q       BUT ICANN DRAFTED A SEPARATE LETTER FOR  
3 ZACR; CORRECT?

4           A       YES.

5           Q       YOU'RE FAMILIAR WITH THE ICC; CORRECT?

6           A       YES.

7           Q       THAT IS THE GEOGRAPHIC NAMES PANEL; CORRECT?

8           A       YES. IT'S INTERCONNECT.

9           Q       YES.

10                   THE ICC REQUESTED INPUT FROM THE ICANN STAFF  
11 AS TO HOW TO INTERPRET ICANN'S 60 PERCENT ENDORSEMENT  
12 REQUIREMENT; CORRECT?

13           A       YES.

14           Q       AND ICANN GAVE THE ICC DIRECTION ON HOW TO  
15 ISSUE CLARIFYING QUESTIONS FOR .AFRICA; CORRECT?

16           A       WE GAVE ALL PANELS INPUT ON CLARIFYING  
17 QUESTIONS, YES.

18           Q       ICANN GAVE ICC DIRECTION ON HOW TO ISSUE  
19 CLARIFYING QUESTIONS FOR .AFRICA IN PARTICULAR;  
20 CORRECT?

21           A       YES.

22           Q       AND ICANN DIRECTED ICC TO REFRAIN FROM  
23 CONTACTING THE AUC REGARDING ITS ENDORSEMENTS OF THE  
24 .AFRICA APPLICANTS DIRECTLY; CORRECT?

25           A       YES, WE DID.

26           Q       ICANN HAD THE AUTHORITY TO REMOVE ICC  
27 PANELISTS FROM THE REVIEW PANEL PURSUANT TO ITS  
28 CONTRACT; CORRECT?

1 A CORRECT.

2 Q I'D LIKE TO TALK ABOUT THE IRP A LITTLE BIT.  
3 THE IRP RULES ONLY ALLOW THE IRP TO MAKE A  
4 DETERMINATION AS TO WHETHER THE ICANN BOARD'S CONDUCT  
5 IS CONSISTENT OR INCONSISTENT WITH THE BYLAWS AND  
6 ARTICLES OF INCORPORATION; CORRECT?

7 A CORRECT.

8 Q AND THAT MEANS THAT AN IRP CANNOT REVIEW A  
9 THIRD PARTY DECISION, LIKE A DECISION BY THE ICC;  
10 CORRECT?

11 A WELL, NOT DIRECTLY.

12 Q YOU AGREE THAT THE IRP RULES LIMIT IRP  
13 DECISIONS TO WHETHER ICANN BOARD CONDUCT IS  
14 CONSISTENT OR INCONSISTENT WITH THE ICANN BYLAWS AND  
15 ARTICLES OF INCORPORATION; CORRECT?

16 A THE 2013 BYLAWS, CORRECT.

17 Q YES. THOSE WERE THE BYLAWS IN EFFECT AT THE  
18 TIME OF THE IRP AT ISSUE HERE; CORRECT?

19 A YES.

20 Q I'D LIKE TO TAKE A LOOK AT EXHIBIT 4. THESE  
21 ARE THE BYLAWS THAT YOU JUST REFERENCED; CORRECT?

22 A CORRECT.

23 Q COULD YOU PLEASE TURN TO PAGE 11 OF THE  
24 BYLAWS.

25 A YES.

26 Q NOW, THIS PAGE DISCUSSES REQUESTS FOR  
27 RECONSIDERATION; CORRECT?

28 A CORRECT.

1 Q A REQUEST FOR A RECONSIDERATION IS ACCEPTED  
2 OR DENIED ENTIRELY BY ICANN; CORRECT?

3 A BY THE ICANN BOARD OR COMMITTEE, YES.

4 Q OKAY.

5 THERE'S NO INDEPENDENT DECISIONMAKER --  
6 DECISIONMAKER INDEPENDENT OF ICANN INVOLVED WITH THAT  
7 DECISION; CORRECT?

8 A CORRECT.

9 Q AND IT'S TRUE AT THE TIME OF THE DECISION OF  
10 THE IRP, THE IRP PANEL WAS LIMITED TO RULING ON  
11 ISSUES WHERE A PERSON SUFFERED INJURY OR HARM  
12 DIRECTLY AND CAUSALLY CONNECTED TO THE BOARD'S  
13 ALLEGED VIOLATION OF THE BYLAWS OR THE ARTICLE OF  
14 INCORPORATION AND NOT AS A RESULT OF THIRD PARTIES  
15 ACTING IN LIGHT OF THE BOARD'S ACTION; CORRECT?

16 A I DON'T REMEMBER ALL THAT LANGUAGE. I'D  
17 HAVE TO LOOK AT THAT PART OF THE BYLAWS.

18 Q OKAY. FAIR ENOUGH. LET ME ASK IT THIS WAY.

19 AN IRP PANEL WILL NOT MAKE A FINDING AS TO  
20 WHETHER AN ICANN STAFF DECISION WAS APPROPRIATE OR  
21 FAIR; CORRECT?

22 A I DON'T THINK SO.

23 Q AND THAT'S BECAUSE AN IRP WILL ONLY MAKE A  
24 FINDING WITH REGARD TO ICANN BOARD ACTION; CORRECT?

25 A YES. THAT'S MY UNDERSTANDING.

26 Q THE ICANN BOARD DIDN'T MAKE A DECISION ABOUT  
27 WHETHER THE DCA APPLICATION PASSED THE GEOGRAPHIC  
28 NAMES REVIEW; CORRECT?

1 A CORRECT.

2 Q AND TURNING BACK TO EXHIBIT 33, PLEASE TAKE  
3 A LOOK AT PAGE 62. ACTUALLY, SORRY, LET'S START AT  
4 PAGE 61 AT PARAGRAPH 149. IF YOU COULD JUST REREAD  
5 PARAGRAPH 149 FOR ME.

6 A YES.

7 OH, OUT LOUD?

8 Q NO. TO YOURSELF IS FINE.

9 A OKAY. I READ IT.

10 Q OKAY. DO YOU SEE THE PART WHERE THE IRP  
11 SAYS THAT ICANN SHOULD PERMIT DCA -- DCA'S TRUST  
12 APPLICATION TO PROCEED THROUGH THE REMAINDER OF THE  
13 NEW GTLD APPLICATION PROCESS?

14 A I DO.

15 Q THE IRP PANEL DOESN'T SAY HERE OR ELSEWHERE  
16 EXACTLY WHERE IN THE PROCESS DCA'S APPLICATION SHOULD  
17 GO; CORRECT?

18 A NOT -- NO. IT DOESN'T SPECIFY WHICH PLACE  
19 IN THE PROCESS.

20 Q THE IRP IN THIS CASE COST APPROXIMATELY  
21 \$300,000 BEFORE ATTORNEYS' FEES; CORRECT?

22 A I THINK IT WAS 400,000.

23 Q SEVERAL HUNDREDS OF THOUSANDS OF DOLLARS;  
24 CORRECT?

25 A A LOT OF MONEY.

26 Q AND IT LASTED ABOUT 20 MONTHS?

27 A YES.

28 Q YOU'VE NEVER HEARD OF AN APPLICANT FILING A

1 SECOND IRP AGAINST ICANN, HAVE YOU?

2 A ON THE SAME MATTER? NO. ON OTHER MATTERS,  
3 I'D HAVE TO GO BACK AND LOOK.

4 Q YOU DON'T SPECIFICALLY RECALL ANY?

5 A I DON'T RECALL.

6 Q AS YOU SIT HERE TODAY?

7 A NO.

8 Q OKAY. AND YOU DON'T KNOW OF AN INSTANCE OF  
9 AN IRP PANEL DECIDING WHETHER ICANN'S LITIGATION  
10 WAIVER IS ENFORCEABLE; CORRECT?

11 A CORRECT.

12 Q I'D LIKE TO LOOK AT EXHIBIT 2, MODULE 6,  
13 WHICH IS -- BEGINS AT PAGE 332 OF THE GUIDEBOOK.

14 A I'M THERE. THANK YOU.

15 Q ARE YOU GENERALLY FAMILIAR WITH MODULE 6?

16 A YEAH. GENERALLY.

17 Q OKAY. AND DO YOU KNOW WHETHER MODULE 6 IS  
18 REFERENCED IN ICANN'S BYLAWS?

19 A I DON'T BELIEVE SO.

20 Q AND IT'S NOT REFERENCED IN ICANN'S ARTICLES  
21 OF INCORPORATION, EITHER; CORRECT?

22 A NOT THAT I KNOW OF.

23 Q SO RULING ON THE ENFORCEABILITY OF MODULE 6  
24 IN THE GUIDEBOOK WOULD BE OUTSIDE THE SCOPE OF THE  
25 IRP'S JURISDICTION TO RULE ON ICANN'S BYLAWS OR  
26 ARTICLES OF INCORPORATION; CORRECT?

27 MS. BURKE: OBJECTION. CALLS FOR A LEGAL  
28 CONCLUSION.

1 THE COURT: SUSTAINED.

2 Q BY MS. COLON: YOU DON'T KNOW OF AN INSTANCE  
3 OF ANYONE CHALLENGING THE APPLICATION OF THE WAIVER  
4 IN MODULE 6 OF THE GUIDEBOOK IN ANY ICANN  
5 ACCOUNTABILITY PROCESS, DO YOU?

6 A NOT THAT I'M AWARE OF.

7 Q ICANN HAS HUNDREDS OF MILLIONS OF DOLLARS IN  
8 ASSETS; CORRECT?

9 A CORRECT.

10 Q YESTERDAY YOU MENTIONED SOME INTERNAL  
11 ACCOUNTABILITY MECHANISMS AT ICANN OTHER THAN THE  
12 IRP.

13 DO YOU REMEMBER THAT DISCUSSION, GENERALLY?

14 A YES.

15 Q AND WITH RESPECT TO THE OMBUDSMAN WHICH YOU  
16 DISCUSSED, THE ICANN BOARD DOESN'T HAVE TO FOLLOW THE  
17 OMBUDSMAN'S RECOMMENDATION; CORRECT?

18 A CORRECT.

19 Q AND WITH REGARD TO THE REQUEST FOR  
20 RECONSIDERATION, I THINK WE DISCUSSED THIS ALREADY,  
21 BUT ICANN GETS TO DECIDE WHETHER OR NOT TO ACCEPT OR  
22 REJECT A REQUEST FOR RECONSIDERATION; CORRECT?

23 A CORRECT.

24 Q AND THE COOPERATIVE ENGAGEMENT PROCESS, OR  
25 THE CEP, AS ITS REFERRED TO, IS A VOLUNTARY PROCESS  
26 WHERE THERE'S NO DECISIONMAKER, OTHER THAN THE  
27 PARTIES THEMSELVES, IF THEY AGREE TO SOMETHING; IS  
28 THAT CORRECT?

1           A        THAT'S MY UNDERSTANDING.

2                    MS. COLON:    OKAY.    I HAVE NO FURTHER  
3                    QUESTIONS, YOUR HONOR.

4                    THE COURT:    OKAY.    THANK YOU, MS. COLON.  
5                    THE COURT NOTES IT'S LITTLE AFTER 11:45 A.M.

6                    MS. BURKE, DO YOU HAVE ANY REDIRECT  
7                    EXAMINATION.

8                    MS. BURKE:    I DO.    VERY BRIEF, YOUR HONOR.

9                    THE COURT:    OKAY.    THANK YOU.    WHAT'S YOUR  
10                   TIME ESTIMATE?

11                   MS. BURKE:    PROBABLY LESS THAN FIVE MINUTES.

12                   THE COURT:    OKAY.    THANK YOU.    YOU MAY  
13                   PROCEED WHEN YOU'RE READY.

14                   MS. BURKE:    THANK YOU.

15

16                                    REDIRECT EXAMINATION

17                   BY MS. BURKE:

18                   Q        MS. WILLETT, A MOMENT AGO, DCA'S COUNSEL,  
19                   MS. COLON, ASKED YOU IF AN IRP PANEL COULD CONSIDER  
20                   OR MAKE A DECISION ABOUT WHETHER THE STAFF, ICANN  
21                   STAFF, HAD ACTED FAIRLY.

22                                    DO YOU RECALL THAT QUESTION?

23                   A        YES.

24                   Q        AND YOU INDICATED THEY COULD NOT; CORRECT?

25                   A        CORRECT.

26                   Q        COULD THE IRP PANEL CONSIDER AND GIVE AN  
27                   OPINION THAT THE BOARD SHOULD HAVE CORRECTED AN  
28                   ACTION OR DECISION OF A VENDOR?

1 A YES.

2 Q HAVE THEY, IN FACT, DONE SO?

3 A YES.

4 Q CAN YOU GIVE ME AN EXAMPLE, PLEASE?

5 A I --

6 Q LET ME ASK -- YOU MENTIONED EARLIER  
7 .CHARITY. WAS ONE OF THE ISSUES IN THE .CHARITY IRP  
8 ABOUT A VENDOR ACTION?

9 MS. COLON: OBJECTION, YOUR HONOR. LEADING.

10 THE COURT: SUSTAINED.

11 Q BY MS. BURKE: GO BACK TO MY OTHER  
12 QUESTION -- THAT YOU HAVE GIVEN EXAMPLES EARLIER  
13 ABOUT IRP'S -- WERE ANY OF THOSE INVOLVING  
14 CIRCUMSTANCES WHERE THE IRP PANEL WAS ASKED TO TELL  
15 THE BOARD THAT IT SHOULD HAVE CORRECTED A DECISION OF  
16 A VENDOR?

17 A YES.

18 Q DO YOU HAVE ANY EXAMPLES THAT COME TO MIND  
19 AS YOU SIT THERE?

20 A SO THE EXAMPLES THAT I USED EARLIER --  
21 HOTELS, CHARITY, RADIO, SPORTS -- THOSE WERE ALL  
22 ABOUT THE OUTCOME OF THE COMMUNITY, AS I RECOLLECT.  
23 THEY WERE ABOUT THE OUTCOME OF THE COMMUNITY PRIORITY  
24 EVALUATION, AND THE IRP, I THINK IN ALMOST ALL THOSE  
25 CASES, CHANGED THE OUTCOME. THE QUESTION -- SAID THE  
26 BOARD SHOULD HAVE QUESTIONED THE OUTCOME OF THE PANEL  
27 RESULT.

28 Q AND CAN AN IRP PANEL ALSO CONSIDER AND ISSUE



1 A DECLARATION THAT THE BOARD SHOULD HAVE GRANTED A  
2 RECONSIDERATION REQUEST ABOUT STAFF ACTION?

3 A THAT'S MY UNDERSTANDING.

4 MS. BURKE: THANK YOU VERY MUCH. NO FURTHER  
5 QUESTIONS.

6 MS. COLON: COULD I HAVE ONE MINUTE FOR  
7 REDIRECT?

8 THE COURT: OKAY. I'LL GRANT YOU THAT,  
9 MS. COLON.

10 MS. COLON: THANK YOU, YOUR HONOR. JUST ONE  
11 QUESTION.

12 THE COURT: SO THIS IS ACTUALLY, I GUESS,  
13 TECHNICALLY, RECROSS-EXAMINATION.

14 MS. COLON: OKAY.

15 THE COURT: THAT'S OKAY. IT'S ABOUT -- I  
16 NOTE IT'S ABOUT 11:50 A.M. YOU MAY PROCEED,  
17 MS. COLON.

18

19 RECROSS-EXAMINATION

20 BY MS. COLON:

21 Q THE ICANN BOARD DIDN'T DECIDE WHETHER TO  
22 REJECT OR ULTIMATELY REJECT OR ACCEPT DCA'S  
23 APPLICATION; CORRECT?

24 A YOU MEAN AFTER THE IRP?

25 Q CORRECT.

26 A NO. THEY DIDN'T MAKE A DECISION. THEY  
27 DIDN'T MAKE A RESOLUTION, NO.

28 Q THEY DIDN'T ACTUALLY DECIDE WHETHER OR NOT

1 DCA'S APPLICATION PASSED OR FAILED; CORRECT?

2 A SO THE BOARD HAS AN OVERSIGHT ACTION, AND  
3 THEY'RE INFORMED OF ALL OF THE RESULTS AND OUTCOMES.  
4 SO THEY WERE -- THEY DIDN'T TAKE AN ACTION. THEY  
5 DIDN'T MAKE A RESOLUTION. BUT THEY WERE AWARE OF THE  
6 STAFF ACTION AND THE OUTCOME OF THE EVALUATION.

7 Q OKAY. SO THEY WERE INFORMED OF THE OUTCOME  
8 OF THE EVALUATION, BUT THEY DIDN'T ACTUALLY DECIDE  
9 WHETHER DCA PASSED OR FAILED; CORRECT?

10 A CORRECT.

11 MS. COLON: OKAY. NO FURTHER QUESTIONS.

12 THE COURT: OKAY. THANK YOU, MS. COLON.  
13 DOES THAT COMPLETE THE EXAMINATION OF THIS WITNESS?

14 MR. LEVEE: IT DOES, YOUR HONOR.

15 MS. BURKE: YES.

16 THE COURT: OKAY. THANK YOU. MAY THE  
17 WITNESS BE EXCUSED?

18 MR. LEVEE: YES, WITH OUR THANKS.

19 THE COURT: AND MS. COLON?

20 MS. COLON: YES. THANK YOU.

21 THE COURT: OKAY. THANK YOU.

22 THE WITNESS: THANK YOU.

23 THE COURT: MS. WILLETT, YOU'RE EXCUSED.  
24 THANK YOU.

25 ALL RIGHT. MR. LEVEE, DOES THE DEFENDANT  
26 HAVE ANY OTHER EVIDENCE TO PRESENT IN ITS  
27 CASE-IN-CHIEF?

28 MR. LEVEE: ICANN RESTS, YOUR HONOR.

1 THE COURT: OKAY. THANK YOU.

2 SO DEFENDANT ICANN HAS RESTED ITS CASE.

3 AND SO NOW WE'LL TURN TO THE PLAINTIFF'S  
4 CASE-IN-CHIEF.

5 DO YOU WISH TO CALL YOUR -- DO YOU HAVE ANY  
6 WITNESSES YOU WISH TO CALL?

7 MS. COLON: YES, YOUR HONOR. WE'D LIKE TO  
8 CALL AKRAM ATALLAH.

9 THE COURT: OKAY. THANK YOU.

10 THANK YOU, SIR. I'LL ASK YOU TO COME UP TO  
11 THE WITNESS STAND. IF YOU COULD STAND AND RAISE YOUR  
12 RIGHT HAND TO BE SWORN BY THE CLERK.

13 THE CLERK: GOOD MORNING, SIR.

14 THE WITNESS: GOOD MORNING.

15 THE CLERK: DO YOU SOLEMNLY STATE THAT THE  
16 TESTIMONY YOU'RE ABOUT TO GIVE IN THE CAUSE NOW  
17 PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE  
18 WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU  
19 GOD?

20 THE WITNESS: I DO.

21 THE CLERK: THANK YOU, SIR. HAVE A SEAT.  
22 AND WOULD YOU PLEASE STATE AND SPELL YOUR  
23 FULL NAME.

24 THE WITNESS: AKRAM JOSEPH ATALLAH.

25 A-K-R-A-M, J-O-S-E-P-H, A-T-A-L-L-A-H.

26 ///

27 ///

28 ///

1 AKRAM JOSEPH ATTALAH,  
2 CALLED AS A WITNESS BY THE PLAINTIFF,  
3 WAS SWORN AND TESTIFIED AS FOLLOWS:  
4

5 DIRECT EXAMINATION

6 BY MS. COLON:

7 Q GOOD MORNING, ALMOST AFTERNOON, MR. ATALLAH.

8 A GOOD MORNING.

9 Q YOU FIRST STARTED AT ICANN IN SEPTEMBER 2010  
10 AS ITS CHIEF OPERATING OFFICER; CORRECT?

11 A YES.

12 Q AND YOU HELD THAT POSITION FOR ABOUT THREE  
13 YEARS?

14 A YES.

15 Q IN JUNE OF 2013, YOU BECAME THE PRESIDENT OF  
16 THE GLOBAL DOMAINS DIVISION OF ICANN; CORRECT?

17 A YES.

18 Q WHEN DID YOU LEAVE THAT POSITION?

19 A IN LAST OCTOBER.

20 Q OCTOBER OF?

21 A 2018.

22 Q OKAY. AND WHERE DO YOU CURRENTLY WORK?

23 A I WORK AT DONUTS, INC.

24 Q WHAT IS YOUR POSITION THERE?

25 A CEO.

26 Q LET'S GO BACK TO YOUR LAST JOB AT ICANN AS  
27 PRESIDENT OF THE GLOBAL DOMAINS DIVISION.

28 WHAT DOES THE GLOBAL DOMAINS DIVISION DO?

1           A       SO THE GLOBAL DOMAINS DIVISION HAS THE  
2       RESPONSIBILITIES FOR THE CONTRACTED PARTIES,  
3       BASICALLY. "CONTRACTED PARTIES," MEANING REGISTRIES  
4       AND REGISTRARS. WE ENTERED INTO CONTRACTS WITH THEM.  
5       WE ACTUALLY HELP THEM MAINTAIN COMPLIANCE WITH THEIR  
6       CONTRACTS.

7                       WE ENGAGE WITH THEM ON POLICIES THAT NEEDED  
8       IMPLEMENTATION, SO WHENEVER THE COMMUNITY DEVELOPED  
9       THE POLICY AND THE BOARD APPROVED THESE POLICIES, WE  
10      ACTUALLY MADE SURE THAT THEY HAD A WAY TO IMPLEMENT  
11      THEIR POLICIES IN THEIR CONTRACTS.

12           Q       THANK YOU.

13                       YOU WERE INTERIM PRESIDENT AND CEO OF ICANN  
14      FROM MARCH 2016 UNTIL MAY 2016; CORRECT?

15           A       YES. AND PREVIOUSLY AS WELL, SO.

16           Q       AND YOU WERE AT THE ICANN BOARD MEETING  
17      WHERE THE DECISION WAS MADE REGARDING WHETHER TO  
18      ADOPT THE IRP; CORRECT?

19           A       YES.

20           Q       WAS THERE A DISCUSSION ABOUT WHETHER OR NOT  
21      THE PANEL'S RULING SHOULD BE ADOPTED BY ICANN AT THAT  
22      MEETING?

23           A       I DON'T RECALL, BUT I RECALL THAT THE BOARD  
24      ADOPTED THE IRP RULINGS.

25           Q       LET ME JUST TURN BACK TO THE MARCH 1ST TRIAL  
26      TRANSCRIPT IN THIS CASE.

27                       THE COURT: SO CAN YOU JUST IDENTIFY WHAT  
28      THE DOCUMENT IS?

1 MS. COLON: YES. IT'S THE MARCH 1ST TRIAL  
2 TRANSCRIPT.

3 THE COURT: SO IS THIS THE REPORTER'S  
4 TRANSCRIPT OF PROCEEDINGS FOR THURSDAY, MARCH 1,  
5 2018, IN THIS CASE?

6 MS. COLON: YES, YOUR HONOR. AND I WOULD  
7 LIKE TO READ INTO THE TRANSCRIPT BEGINNING AT PAGE  
8 44, LINE 3 THROUGH 5 AND, AGAIN, PAGE 129, LINES 2  
9 THROUGH 5.

10 THE COURT: OKAY. I'LL GIVE DEFENSE COUNSEL  
11 AN OPPORTUNITY TO REVIEW THOSE PASSAGES. AND LET ME  
12 KNOW IF YOU HAVE ANY OBJECTIONS.

13 MS. BURKE: YOUR HONOR, I THINK WE NEED THE  
14 PAGES AGAIN BECAUSE --

15 MR. LEVEE: THE FIRST PAGE, I THINK, IS  
16 NOT -- WAS A DIFFERENT WITNESS.

17 MS. BURKE: AND HALFWAY THROUGH A QUESTION.

18 THE COURT: ALL RIGHT. SO I'LL ASK  
19 MS. COLON TO CHECK THE PAGE AND LINE NUMBERS SHE'S  
20 ASKING TO READ FROM FROM THE MARCH 1, 2018,  
21 REPORTER'S TRANSCRIPT.

22 MS. COLON: YES. (REVIEWING DOCUMENT.)

23 ACTUALLY, LET'S JUST TAKE PAGE 129, LINE 2,  
24 THROUGH 129, LINE 9.

25 MR. LEVEE: NO OBJECTION, YOUR HONOR.

26 THE COURT: OKAY. THANK YOU.

27 YOU MAY PROCEED, MS. COLON.

28 Q BY MS. COLON: (AS READ):

1 QUESTION: "YOU WERE PRESENT AT THE  
2 BOARD MEETING WHERE THE BOARD  
3 CONSIDERED THE RESULTS OF THE  
4 .AFRICA IRP?"

5 ANSWER: "YES."

6 QUESTION: "WAS THERE A DISCUSSION  
7 ABOUT WHETHER OR NOT THE PANEL'S  
8 RULING SHOULD BE ADOPTED BY ICANN  
9 AT THAT MEETING?"

10 ANSWER: "YES."

11 I'D LIKE TO TURN NOW --

12 THE COURT: I'M SORRY. WHICH PAGE AND LINE  
13 NUMBERS WERE THOSE?

14 MS. COLON: SURE. PAGE 129, LINE 2, TO PAGE  
15 129, LINE 9.

16 THE COURT: OKAY. THANK YOU.

17 Q BY MS. COLON: I'D LIKE TO TURN NOW TO  
18 EXHIBIT 41.

19 A (WITNESS COMPLIES.)

20 Q THESE ARE THE BOARD RESOLUTIONS FROM THE  
21 MEETING WE JUST REFERENCED; CORRECT?

22 A CORRECT.

23 Q AND THE BOARD RESOLUTIONS REGARDING HOW TO  
24 HANDLE DCA'S APPLICATION AFTER THE IRP PANEL'S  
25 RULINGS INCLUDED LANGUAGE THAT DID NOT COME FROM THE  
26 IRP PANEL'S FINAL DECLARATION; CORRECT?

27 A CORRECT.

28 Q THE LANGUAGE IN -- I'M GOING TO START WITH

1 RESOLUTION 2015.07.16.02.

2 THE COURT: I'M SORRY. COULD YOU JUST  
3 REFER, FIRST, TO THE PAGE NUMBER?

4 MS. COLON: SURE. LOOKING ON PAGE 2, MY  
5 QUESTION IS GOING TO BE DIRECTED AT RESOLUTIONS  
6 2015.07.16.02 THROUGH RESOLUTION 2015.07.16.05, WHICH  
7 CONTINUES ON TO PAGE 3.

8 Q BY MS. COLON: AND JUST TO SAVE US SOME TIME  
9 HERE, THAT -- THE LANGUAGE IN THOSE RESOLUTIONS DOES  
10 NOT COME FROM THE LANGUAGE IN THE IRP PANEL'S FINAL  
11 DECLARATION; CORRECT?

12 A CORRECT.

13 Q DCA'S APPLICATION FAILED AFTER IT DIDN'T  
14 PASS THE ICC'S EXTENDED EVALUATION PROCESS; CORRECT?

15 A CORRECT.

16 Q AND THE ICC, AND NOT THE BOARD, REJECTED  
17 DCA'S APPLICATION; CORRECT?

18 A THEY REJECTED THE GEOGRAPHIC PANEL -- YEAH.  
19 THAT TEST, YES.

20 Q THE ICC, AND NOT THE BOARD, REJECTED THE --  
21 REJECTED DCA'S APPLICATION WITH RESPECT TO THE  
22 GEOGRAPHIC NAME REVIEW OF ITS APPLICATION; CORRECT?

23 A YES. THAT TEST, YES.

24 Q THE BOARD DIDN'T MAKE A FORMAL DECISION OR  
25 RESOLVE TO REJECT DCA'S APPLICATION?

26 A I DON'T RECALL THAT THEY DID.

27 MS. COLON: LET ME LODGE MR. ATALLAH'S  
28 DEPOSITION TRANSCRIPT, PLEASE.



1 THE COURT: YOU CAN HAND THAT TO THE CLERK.

2 MS. COLON: SORRY, YOUR HONOR. I THINK WE  
3 NEED ONE SECOND TO PULL ANOTHER COPY.

4 THE COURT: OKAY. YOU KNOW SOMETHING, I  
5 NOTE IT'S NOW A MINUTE AFTER NOON. SO WOULD THIS BE  
6 A GOOD TIME TO STOP FOR LUNCH?

7 MS. COLON: YES, IT WOULD, YOUR HONOR.

8 THE COURT: OKAY. SO WE'RE GOING TO STOP AT  
9 THIS TIME, TAKE OUR LUNCH BREAK AND RESUME THE MATTER  
10 AT 1:30 TODAY.

11 THANK YOU. WE'RE OFF THE RECORD.

12 MS. BURKE: THANK YOU, YOUR HONOR.

13

14 (AT 12:01 P.M. THE LUNCH BREAK WAS TAKEN.)

15

16

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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 FRIDAY, FEBRUARY 8,  
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: 1:42 P.M.

14  
15 THE COURT: ALL RIGHT. WE'RE BACK ON THE  
16 RECORD IN DOTCONNECTAFRICA TRUST VERSUS INTERNET  
17 CORPORATION FOR ASSIGNED NAMES AND NUMBERS.

18 AND WE'RE RETURNING AFTER OUR NOON BREAK.  
19 IT'S NOW ABOUT 1:40 P.M., AND I NOTE THAT COUNSEL ARE  
20 AT THEIR PLACES AT COUNSEL TABLE AND ALSO THE  
21 WITNESS -- HOW DO YOU PRONOUNCE YOUR NAME? IS IT  
22 MR. ATALLAH?

23 THE WITNESS: YES.

24 THE COURT: OKAY. MR. ATALLAH IS AT HIS  
25 PLACE AT THE WITNESS STAND. THANK YOU.

26 AND WHEN WE TOOK OUR BREAK, NOON BREAK,  
27 MS. COLON WAS CONDUCTING HER DIRECT EXAMINATION OF  
28 THE WITNESS.

1 DO YOU HAVE ANY FURTHER DIRECT EXAMINATION  
2 OF THE WITNESS, MS. COLON?

3 MS. COLON: I DO, YOUR HONOR.

4 THE COURT: OKAY.

5 MS. COLON: AND, ACTUALLY, I THINK WE WERE  
6 IN THE MIDST OF TRYING TO LODGE A DEPOSITION  
7 TRANSCRIPT BEFORE THE BREAK, SO WE'D LIKE TO DO THAT  
8 NOW.

9 THE COURT: OKAY. THANK YOU. YOU MAY DO  
10 SO.

11 MS. COLON: I GUESS WE'VE ALREADY LODGED IT.  
12 AND THAT WAS THE DEPOSITION OF AKRAM ATALLAH  
13 ON OCTOBER 5TH, 2016.

14 Q BY MR. BROWN: SO, MR. ATALLAH, I THINK WHEN  
15 WE LEFT OFF, I HAD ASKED YOU WHETHER THE BOARD MADE A  
16 FORMAL DECISION TO RESOLVE -- MADE A FORMAL DECISION  
17 OR RESOLVE TO REJECT DCA'S APPLICATION.

18 AND I BELIEVE YOU STATED THAT YOU DIDN'T  
19 RECALL; IS THAT CORRECT?

20 A YEAH.

21 Q OKAY.

22 MS. COLON: SO I'D LIKE TO READ INTO THE  
23 TRANSCRIPT TESTIMONY FROM MR. ATALLAH'S DEPOSITION  
24 BEGINNING AT PAGE 50, LINE 17, AND ENDING AT PAGE 51,  
25 LINE 7.

26 THE COURT: ALL RIGHT. I'LL GIVE DEFENSE  
27 COUNSEL AN OPPORTUNITY TO REVIEW THOSE EXCERPTS AND  
28 LET ME KNOW IF THEY HAVE ANY OBJECTION.

1 MR. LEVEE: (REVIEWING DOCUMENT.)

2 MS. COLON: I'M SORRY. 50, LINE 12, TO 51,  
3 LINE 7.

4 MR. LEVEE: 51/12?

5 YOUR HONOR, I DON'T HAVE OBJECTIONS. I  
6 THINK THERE IS A QUESTION AS TO WHAT TIME PERIOD  
7 COUNSEL'S QUESTION IS REFERRING TO. I DON'T WANT TO  
8 COACH THE WITNESS, SO I'LL JUST LEAVE IT AT THAT;  
9 THAT THERE ARE DIFFERENT TIMES THAT MS. COLON HAS  
10 BEEN REFERRING TO. AND IF SHE COULD CLARIFY  
11 PRECISELY WHAT TIME SHE'S REFERRING TO, THEN I  
12 THINK --

13 THE COURT: IN HER LAST QUESTION?

14 MR. LEVEE: PLEASE.

15 THE COURT: OKAY. ARE YOU ABLE TO DO THAT,  
16 MS. COLON?

17 MS. COLON: SURE. SO THE LAST QUESTION IS  
18 REFERRING TO ANY POINT IN TIME.

19 **Q BY MS. COLON: THE BOARD NEVER MADE A FORMAL**  
20 **DECISION OR RESOLUTION TO ULTIMATELY REJECT DCA'S**  
21 **APPLICATION; CORRECT?**

22 A CORRECT. AND I AGREED WITH YOU. THAT'S WHY  
23 -- I MEANT I DIDN'T RECALL THEM SAYING THAT; DOING  
24 THAT.

25 **Q OKAY. IN OTHER WORDS --**

26 A I'M NOT AWARE OF THEM DOING THAT.

27 **Q OKAY. THANK YOU.**

28 MS. COLON: I DON'T NEED TO READ IN THE

1 TESTIMONY, YOUR HONOR.

2 THE COURT: OKAY. THANK YOU, MS. COLON.

3 Q BY MS. COLON: AND THERE WAS A TEAM OF NEW  
4 GTLD PROGRAM STAFF THAT REVIEWED THE ICC DECISION;  
5 CORRECT?

6 A YES.

7 Q AND AN APPLICANT CAN'T USE THE IRP TO  
8 CHALLENGE AN ICC DECISION ABOUT AN APPLICATION;  
9 CORRECT?

10 A CORRECT.

11 Q AND UNTIL OCTOBER 1ST, 2016, IT WAS ICANN'S  
12 POSITION THAT IRP DECISIONS WERE NOT BINDING ON  
13 ICANN; RIGHT?

14 A CORRECT.

15 Q BECAUSE ON OCTOBER 1ST, 2016, ICANN'S BYLAWS  
16 CHANGED TO MAKE IRP DECISIONS BINDING; CORRECT?

17 A CORRECT.

18 Q AND ON OCTOBER 1ST, 2016, THE IRP BETWEEN  
19 ICANN AND DCA HAD ALREADY CONCLUDED; CORRECT?

20 A CORRECT.

21 Q AND, IN FACT, THIS LITIGATION HAD ALREADY  
22 BEGUN; CORRECT?

23 A CORRECT.

24 Q ICANN ASKED FOR ZACR'S OPINION ON HOW TO  
25 PROCESS DCA'S APPLICATION AFTER THE IRP DECLARATION  
26 AND BEFORE THE BOARD'S MEETING ABOUT THE IRP  
27 DECLARATION; CORRECT?

28 A CAN YOU POINT ME TO THE LANGUAGE YOU'RE

1 REFERRING TO? BECAUSE I DON'T REMEMBER THE EXACT  
2 DETAILS OF THAT.

3 MS. COLON: OKAY. THIS HAS NOT YET BEEN  
4 MARKED AS AN EXHIBIT, YOUR HONOR, BUT I WOULD LIKE TO  
5 SHOW THE WITNESS.

6 THE COURT: WHAT IS IT? FIRST OF ALL,  
7 IDENTIFY WHAT IT IS --

8 MS. COLON: SURE.

9 THE COURT: -- AND THEN IF YOU COULD EXPLAIN  
10 WHAT THE PURPOSE IS THAT YOU'RE SHOWING IT TO THE  
11 WITNESS.

12 MS. COLON: THIS WOULD BE PLAINTIFF'S  
13 EXHIBIT 137. AND IT IS A JULY 13TH, 2015, LETTER  
14 FROM AKRAM ATALLAH TO NEIL DUNDAS AT ZACR.

15 THE COURT: OKAY. THAT WILL BE MARKED AS  
16 137 FOR IDENTIFICATION.

17  
18 (PLAINTIFF'S EXHIBIT NO. 137, A  
19 LETTER FROM A. TO N. DUNDAS DATED  
20 7-13-15, WAS MARKED FOR  
21 IDENTIFICATION.)

22  
23 THE COURT: DID YOU GIVE A COPY TO DEFENSE  
24 COUNSEL?

25 MS. COLON: YES.

26 THE COURT: OKAY. I'LL GIVE DEFENSE COUNSEL  
27 AN OPPORTUNITY TO LOOK AT IT.

28 MR. LEVEE: I'VE REVIEWED IT, YOUR HONOR.

1       THANK YOU.

2                   THE COURT:    OKAY.    THANK YOU.

3                   MS. COLON:    CAN I APPROACH THE WITNESS WITH  
4       THE EXHIBIT?

5                   THE COURT:    YOU MAY.

6                   MS. COLON:    THANK YOU.

7                   THE WITNESS:   THANK YOU.

8                   (REVIEWING DOCUMENT.)    THANK YOU.

9           **Q       BY MS. COLON:    THIS IS YOUR SIGNATURE AT THE**  
10   **BOTTOM OF THIS DOCUMENT; CORRECT?**

11           A       YES.

12           **Q       AND DO YOU NOW RECALL SEEKING ZACR'S INPUT**  
13   **INTO THE PROCESSING OF THE DCA APPLICATION AFTER THE**  
14   **IRP DECLARATION?**

15           A       YOU KNOW, THE ISSUE IS THE PROCESSING.    WE  
16   WERE NOT ASKING THEM TO TELL US HOW TO PROCESS THE  
17   APPLICATION.    WE WERE ASKING THEM IF THEY HAD ANY  
18   INPUT TO THE BOARD BEFORE THE BOARD DECIDES ON HOW TO  
19   MOVE FORWARD ADOPTING THE -- HOW TO MOVE FORWARD FROM  
20   THE DECLARATION OF THE IRP.

21           **Q       WHAT INPUT WERE YOU SEEKING FROM ZACR AT**  
22   **THAT POINT?**

23           A       I THINK THAT ANY INPUT THEY HAVE COULD  
24   ACTUALLY BE -- I COULD SPECULATE THEY WOULD WANT TO  
25   SUE US; I COULD SPECULATE THAT THEY WOULD WANT TO DO  
26   SOMETHING ELSE.    SO THE BOARD WANTS TO KNOW WHERE ALL  
27   THE PARTIES STAND BEFORE THEY DECIDE ON A COURSE OF  
28   ACTION.

1 Q ICANN ALSO SOUGHT IN THIS LETTER THE INPUT  
2 OF ZACR ON THE IRP'S DECLARATION; CORRECT?

3 A YES.

4 Q AND YOU ASKED ZACR TO SUBMIT ITS INPUT  
5 BEFORE THE BOARD'S MEETING ON JULY 15TH, 2015;  
6 CORRECT?

7 A YES.

8 Q DO YOU RECALL THAT ZACR ADVISED ICANN TO  
9 REJECT DCA'S APPLICATION?

10 A YES. I DON'T RECALL IN PARTICULAR, BUT IT  
11 DOESN'T SURPRISE ME THAT THEY WOULD, SO...

12 MS. COLON: OKAY. I'D LIKE TO SHOW THE  
13 WITNESS ANOTHER EXHIBIT. THIS WOULD BE PLAINTIFF'S  
14 EXHIBIT 138.

15 THE COURT: OKAY. SO 137 IS NOT IN  
16 EVIDENCE.

17 MS. COLON: I'D LIKE TO ADMIT IT INTO  
18 EVIDENCE.

19 THE COURT: ANY OBJECTION?

20 MR. LEVEE: NO, YOUR HONOR.

21 THE COURT: EXHIBIT 137 IS RECEIVED INTO  
22 EVIDENCE.

23

24 (PLAINTIFF'S EXHIBIT NO. 137  
25 WAS RECEIVED IN EVIDENCE.)

26

27 THE COURT: ALL RIGHT. SO THE NEXT DOCUMENT  
28 IS MARKED AS EXHIBIT 138 FOR IDENTIFICATION.



1 CAN YOU JUST BRIEFLY DESCRIBE WHAT IT IS?

2 MS. COLON: YES. THIS IS A JULY 15TH, 2015,  
3 LETTER FROM, I BELIEVE IT IS LUCKY MASILELA AT ZACR,  
4 TO STEVE CROCKER AT ICANN.

5 THE COURT: OKAY. THANK YOU.

6

7 (PLAINTIFF'S EXHIBIT NO. 138, A  
8 LETTER FROM L. MASILELA TO  
9 S. CROCKER DATED 7-15-15, WAS  
10 MARKED FOR IDENTIFICATION.)

11

12 MS. COLON: AND I WOULD ALSO MOVE TO ADMIT  
13 THIS EXHIBIT INTO EVIDENCE.

14 THE COURT: ANY OBJECTION?

15 MR. LEVEE: HANG ON ONE SECOND, YOUR HONOR.  
16 COULD WE GET A FOUNDATIONAL QUESTION OR TWO  
17 TO MAKE SURE THE WITNESS HAS SEEN IT?

18 THE COURT: OKAY.

19 MR. LEVEE: IT'S NOT ADDRESSED TO HIM.

20 THE COURT: OKAY. DO YOU OBJECT ON THAT  
21 BASIS?

22 MR. LEVEE: I DO.

23 THE COURT: SUSTAINED.

24 **Q BY MS. COLON: OKAY. MR. ATALLAH, DO YOU**  
25 **SEE ON THE LAST --**

26 THE COURT: ALL RIGHT. SO YOU'VE PUT BEFORE  
27 THE WITNESS EXHIBIT 138?

28 MS. COLON: YES, YOUR HONOR.

1 Q BY MS. COLON: DO YOU SEE ON THE LAST PAGE  
2 OF THIS -- WELL, ACTUALLY, IT'S PAGE 8, MR. ATALLAH,  
3 YOUR NAME AS THE SECOND BULLET ON THE COPY LIST?

4 A UH-HUH.

5 Q SO --

6 THE COURT: I'M SORRY. IS THAT YES?

7 THE WITNESS: YES.

8 THE COURT: OKAY. SO IT'S IMPORTANT TO MAKE  
9 A CLEAR RECORD IF YOU -- SAY YES OR NO. THANK YOU.

10 Q BY MS. COLON: SO WERE YOU COPIED ON THIS  
11 LETTER?

12 A YES.

13 Q DONNA.MASON@ICANN.ORG -- WAS THAT YOUR  
14 ASSISTANT?

15 A YES.

16 Q AND DO YOU RECALL RECEIVING THIS LETTER?

17 A I DON'T RECALL, BUT I'M SURE I DID RECEIVE  
18 IT.

19 Q OKAY.

20 MS. COLON: I WOULD NOW MOVE TO ADMIT THIS  
21 DOCUMENT INTO EVIDENCE BASED ON MR. ATALLAH'S  
22 TESTIMONY THAT HE RECEIVED IT.

23 THE COURT: ANY OBJECTION?

24 MR. LEVEE: NO OBJECTION.

25 THE COURT: OKAY. EXHIBIT 138 IS RECEIVED  
26 INTO EVIDENCE.

27 ///

28 ///

1 (PLAINTIFF'S EXHIBIT NO. 138  
2 WAS RECEIVED IN EVIDENCE.)

3

4 Q BY MS. COLON: MR. ATALLAH, DO YOU SEE ON  
5 PAGE 7 OF THIS DOCUMENT AT PARAGRAPH 36 THAT ZACR  
6 STATES THAT, "EVEN IF THE DCA APPLICATION SHOULD  
7 PROCEED TO INITIAL EVALUATION, IT SHOULD FAIL"?

8 A YES, I DO.

9 Q AND, MR. ATALLAH, DO YOU RECALL THAT DCA  
10 REQUESTED AS AN ALTERNATIVE REMEDY FROM THE IRP THAT  
11 IT WOULD RECEIVE AN 18-MONTH EXTENSION TO COLLECT  
12 ENDORSEMENTS FOR ITS APPLICATION?

13 A YES.

14 Q AND DO YOU SEE IN PARAGRAPH 6 ON PAGE 2 OF  
15 THIS DOCUMENT THAT ZACR STATES IT WOULD STRONGLY  
16 OPPOSE ANY CONSIDERATION TO GRANT DCA AN EXTENSION IN  
17 ORDER TO SUPPLEMENT THEIR APPLICATION?

18 A YES.

19 Q AND ZACR IS -- ZACR WAS THE ONLY OTHER  
20 APPLICANT FOR .AFRICA OTHER THAN DCA; CORRECT?

21 A THAT IS CORRECT.

22 MS. COLON: I HAVE NO FURTHER QUESTIONS AT  
23 THIS TIME, YOUR HONOR.

24 THE COURT: OKAY. THANK YOU, MS. COLON.  
25 THE COURT NOTES IT'S ABOUT 1:55 P.M.

26 AND MR. LEVEE OR MS. BURKE, DO YOU HAVE ANY  
27 CROSS-EXAMINATION OF THE WITNESS?

28 MR. LEVEE: I DO, YOUR HONOR.

1 THE COURT: OKAY. YOU MAY PROCEED WHEN  
2 YOU'RE READY, MR. LEVEE.

3 MR. LEVEE: THANK YOU.  
4

5 CROSS-EXAMINATION

6 BY MR. LEVEE:

7 Q MR. ATALLAH, LET'S START WITH THAT LETTER  
8 THAT WAS MARKED RIGHT AT THE END OF YOUR EXAMINATION,  
9 EXHIBIT 138.

10 DO YOU HAVE THAT IN FRONT OF YOU?

11 A YES, SIR.

12 Q DID ICANN'S DECISION THAT DCA'S APPLICATION  
13 DID NOT PASS THE GEOGRAPHIC NAMES COMMITTEE HAVE  
14 ANYTHING TO DO WITH THE CONTENTS OF EXHIBIT 138?

15 A NO.

16 Q DID ICANN CHANGE THE TIMING OF THE REVIEW  
17 ASSOCIATED WITH DCA'S APPLICATION AT THE REQUEST OF  
18 OR BECAUSE OF ANY OF THE CONTENTS OF EXHIBIT 138?

19 MS. COLON: OBJECTION, YOUR HONOR. LACKS  
20 FOUNDATION.

21 THE COURT: OVERRULED.

22 THE WITNESS: NO.

23 Q BY MR. LEVEE: DID -- TO YOUR KNOWLEDGE DID  
24 DCA EVER FORMALLY REQUEST OF ICANN, OUTSIDE OF THE  
25 IRP CONTEXT, AN 18-MONTH EXTENSION OF TIME TO OBTAIN  
26 LETTERS OF SUPPORT?

27 A NOT TO MY KNOWLEDGE.

28 Q MS. COLON ALSO ASKED YOU WHETHER AN

1 APPLICANT CAN CHALLENGE THE DECISION OF A VENDOR SUCH  
2 AS THE ICC.

3 DO YOU RECALL THAT QUESTION?

4 A YES, SIR.

5 Q AND YOU SAID NO; RIGHT?

6 A RIGHT.

7 Q IF AN APPLICANT -- STRIKE THAT.

8 IF A VENDOR MAKES A RECOMMENDATION WITH  
9 RESPECT TO AN APPLICATION, AND THE APPLICANT DOES NOT  
10 LIKE WHAT THE VENDOR HAS TO SAY, CAN THE APPLICANT  
11 THEN FILE A REQUEST FOR RECONSIDERATION?

12 A YES.

13 Q AND WHO OR WHAT CONSIDERS A REQUEST FOR  
14 RECONSIDERATION?

15 A THE BOARD GOVERNANCE COMMITTEE.

16 Q AND IF THE BOARD GOVERNANCE COMMITTEE  
17 REJECTS THE REQUEST FOR RECONSIDERATION, CAN THE  
18 APPLICANT THEN FILE AN IRP?

19 A YES.

20 Q YOU WERE HERE FOR MS. WILLETT'S TESTIMONY  
21 THIS MORNING?

22 A YES.

23 Q AND DID YOU HEAR HER GIVE EXAMPLES OF  
24 SITUATIONS WHERE THE APPLICANT HAD -- THE APPLICATION  
25 HAD FAILED DUE TO A DECISION BY ONE OF THE VENDORS,  
26 AND THE APPLICANT HAD THEN FILED A REQUEST FOR  
27 RECONSIDERATION AND THEN ULTIMATELY AN IRP?

28 A YES.

1 Q AND IS THAT CONSISTENT WITH YOUR  
2 UNDERSTANDING THAT, IN THIS INSTANCE, HAD DCA FILED A  
3 REQUEST FOR RECONSIDERATION AFTER THE ICC'S DECISION  
4 REJECTING ITS GEOGRAPHIC REVIEW PANEL -- OR THE  
5 GEOGRAPHIC REVIEW PORTION OF ITS APPLICATION, THAT  
6 DCA THEN COULD HAVE FILED A SECOND IRP?

7 A YES.

8 Q YOU WERE SHOWN EXHIBIT 41, SO LET ME ASK YOU  
9 TO TAKE A LOOK AT THAT. THAT'S THE FINAL RESOLUTION  
10 OF THE BOARD.

11 NOW, WERE YOU ACTUALLY AT THE MEETING OF THE  
12 ICANN BOARD WHEN IT CONSIDERED THE FINAL IRP  
13 DECLARATION IN THE DCA MATTER?

14 A YES.

15 Q AND YOU HEARD MS. WILLETT GO THROUGH THE  
16 RESOLUTIONS; RIGHT?

17 A YES.

18 Q OKAY. AND THERE ARE A NUMBER OF RESOLUTIONS  
19 THAT ADDRESS THE POSSIBILITY OF REFERRING THE MATTER  
20 HAVING DISCUSSIONS WITH THE GAC; RIGHT?

21 A YES.

22 Q WHY DID THE BOARD INCLUDE IN THE BOARD  
23 RESOLUTION ADOPTING THE FINAL IRP PANEL'S DECLARATION  
24 INFORMATION ABOUT THE POSSIBILITY OF DISCUSSIONS WITH  
25 THE GAC?

26 A SO WHEN THE BOARD ISSUES RESOLUTIONS, THEY  
27 ACTUALLY ARE TALKING TO MORE THAN JUST IRP PANEL.  
28 THEY'RE TALKING TO ALL OF THEIR CONSTITUENTS,

1 INCLUDING THE GAC IN THIS INSTANCE.

2 AND BECAUSE WE HAD AN IRP DECLARATION THAT  
3 PRACTICALLY CONTRADICTED PREVIOUS GAC ADVICE, THE  
4 BOARD WANTED TO ASSURE THE GAC THAT AT THIS POINT WE  
5 HAVE NOT ACTUALLY -- WE'RE NOT ACTING IN  
6 CONTRADICTION TO THE GAC ADVICE YET AND, THEREFORE,  
7 TO MAKE SURE THAT THE GAC DOES NOT START ACTING ON  
8 THIS RESOLUTION AS IF THEY ARE NOT -- THE BOARD  
9 WANTED TO MAKE SURE THAT THE GAC UNDERSTANDS THAT THE  
10 BOARD WILL ENGAGE WITH THE GAC DISCUSSIONS AS PER THE  
11 PROCESS IN THE BYLAWS IF WE GET TO CROSS THAT -- AND  
12 GO AGAINST THEIR GAC ADVICE.

13 Q SO IF DCA'S APPLICATION HAD PASSED THE  
14 GEOGRAPHIC NAMES REVIEW, THEN IT WOULD HAVE BEEN --  
15 IT WOULD HAVE PASSED ALL OF THE REQUIREMENTS; RIGHT?

16 A YES.

17 Q AND THAT WOULD HAVE PUT ICANN IN THE  
18 POSITION WHERE IT HAD TWO APPLICANTS THAT HAD PASSED  
19 ALL THE REQUIREMENTS; RIGHT?

20 A THAT IS CORRECT.

21 Q AND IT ALSO WOULD HAVE PUT ICANN IN THE  
22 POSITION WHERE IT WOULD HAVE POTENTIALLY ACTED  
23 CONTRARY TO GAC ADVICE IF THE GAC HAD NOT CHANGED ITS  
24 ADVICE; IS THAT RIGHT?

25 A THAT'S CORRECT.

26 Q NOW, WHAT DO THE BYLAWS SAY YOU HAVE TO DO  
27 IN THAT SITUATION?

28 A SO THERE'S A PROCESS FOR THE BOARD TO GO

1 AGAINST THE GAC ADVICE. AND THE PROCESS REQUIRES THE  
2 BOARD TO ENGAGE WITH THE GAC IN A CONSULTATION AND --  
3 IN TRYING TO FIND A WORKABLE SOLUTION BEFORE THEY CAN  
4 ACTUALLY CONTRADICT THE GAC ADVICE AND ACT AGAINST  
5 THE GAC ADVICE.

6 Q OKAY. NOW, IN THIS INSTANCE, DID THAT EVER  
7 HAPPEN?

8 A IN THIS PARTICULAR INSTANCE? NO.

9 Q AND WHY DID IT NOT HAPPEN?

10 A BECAUSE WE WERE NOT YET AT THE CROSSROADS.  
11 SO WHEN WE ASKED THE -- WHEN WE FULFILLED  
12 THE REQUIREMENTS OF THE IRP PANEL, WE WERE ASKING FOR  
13 THE CONTINUATION OF THE PROCESSING OF THE APPLICATION  
14 THROUGH THE GEOGRAPHIC PANEL.

15 HAD WE GOTTEN A RESULT THAT SAYS IT PASSED,  
16 THEN WE WOULD HAVE TO START THINKING ABOUT HOW TO  
17 DEAL WITH THE GAC.

18 Q OKAY. AND, TO YOUR UNDERSTANDING, DID THE  
19 INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,  
20 IN EVALUATING THE GEOGRAPHIC PANEL SITUATION, DID IT  
21 TAKE INTO ACCOUNT ANY ADVICE FROM THE GAC?

22 A NO. IT'S NOT SUPPOSED TO.

23 Q DID IT TAKE INTO ACCOUNT ANY ADVICE FROM  
24 ZACR?

25 A NO.

26 Q DID THE BOARD ADOPT THE IRP PANEL'S FINAL  
27 DECLARATION AND ITS RECOMMENDATIONS IN FULL?

28 A YES.



1 Q DID THE BOARD RESOLVE TO DO ANYTHING LESS  
2 THAN WHAT THE IRP PANEL HAD INCLUDED IN ITS FINAL  
3 DECLARATION?

4 A NO.

5 Q LET ME CHANGE SUBJECTS WITH YOU.  
6 DO YOU RECALL WHEN THE FIRST DRAFT OF THE  
7 APPLICANT GUIDEBOOK WAS PREPARED?

8 A NO. I WASN'T THERE. I WASN'T AT ICANN AT  
9 THE TIME.

10 Q IN -- WELL, DO YOU KNOW WHETHER THE GAC WAS  
11 ONE OF THE ENTITIES THAT PROVIDED COMMENTS TO THE  
12 APPLICANT GUIDEBOOK?

13 MS. COLON: OBJECTION, YOUR HONOR. LACKS  
14 FOUNDATION. THE WITNESS JUST STATED HE WASN'T THERE  
15 WHEN THE GUIDEBOOK WAS DRAFTED.

16 THE COURT: SUSTAINED.

17 Q BY MR. LEVEE: I NEED TO LAY A BETTER  
18 QUESTION, MR. ATALLAH.

19 WHEN DID YOU JOIN ICANN?

20 A IN SEPTEMBER 2010.

21 Q OKAY. AND WERE THERE DRAFTS OF THE  
22 GUIDEBOOK STILL BEING WORKED ON AT THAT TIME?

23 A YES.

24 Q WERE YOU INVOLVED IN MEETINGS AND  
25 CONSULTATIONS REGARDING WHAT THE GUIDEBOOK WOULD SAY?  
26 THE FINAL GUIDEBOOK?

27 A YES. I ATTENDED SOME OF THOSE MEETINGS.

28 Q OKAY. AND WERE YOU INVOLVED IN A PARTICULAR

1 SITUATION WHERE THE GAC HAD PROVIDED COMMENTS TO ONE  
2 OF THE DRAFTS OF THE GUIDEBOOK?

3 A YES. THE GAC PROVIDED A LOT OF COMMENTS.

4 Q OKAY. LET ME GET EXHIBIT 62.

5 MR. LEVEE: MAY I, YOUR HONOR?

6 THE COURT: ARE YOU APPROACHING THE WITNESS?

7 MR. LEVEE: YES, I AM.

8 THE COURT: AND FOR WHAT PURPOSE?

9 MR. LEVEE: WELL, ACTUALLY, LET ME LAY A  
10 FOUNDATION.

11 Q BY MR. LEVEE: WELL, WERE YOU INVOLVED IN A  
12 DIALOGUE BETWEEN ICANN BOARD MEMBERS AND ICANN STAFF  
13 ON THE ONE HAND AND MEMBERS OF THE ICANN COMMUNITY  
14 AND MEMBERS OF THE GAC WITH RESPECT TO CONCERNS THAT  
15 THE GAC HAD EXPRESSED CONCERNS REGARDING A DRAFT OF  
16 THE GUIDEBOOK?

17 A YES.

18 Q AND DID THAT OCCUR SHORTLY AFTER YOU JOINED  
19 ICANN?

20 A YES.

21 Q AND WAS THERE -- WERE THERE NOTES KEPT OF  
22 THESE MEETINGS?

23 A YES.

24 Q AND WAS THERE SOMETHING CALLED A "SCORE  
25 CARD" PREPARED?

26 A YES.

27 Q WHAT WAS THE PURPOSE OF THE SCORE CARD?

28 A SO THE GAC PROVIDED CONCERNS ABOUT THE NEW

1 GTLD PROGRAM, I WANT TO SAY MAYBE, LIKE, CLOSE TO 80  
2 DIFFERENT ISSUES.

3 SO IN ORDER FOR ICANN TO MOVE FORWARD WITH  
4 THE PROGRAM, THEY NEEDED TO EITHER AGREE WITH THE GAC  
5 ON THEIR CONCERNS AND INCLUDE THEM IN THE NEW GTLD  
6 PROGRAM OR REJECT THEM.

7 SO THEY STARTED A CONSULTATION WITH THE GAC  
8 IN BRUSSELS WHEN WE MET WITH THEM, AND WE BROKE INTO  
9 SEPARATE TEAMS AND ADDRESSED A LOT OF THESE ISSUES  
10 OVER TIME UNTIL EVERYTHING WAS RESOLVED BEFORE THE  
11 PROGRAM COULD CONTINUE.

12 Q THANK YOU.

13 MR. LEVEE: YOUR HONOR, WHAT I'D LIKE TO DO  
14 IS HAND UP EXHIBIT 62 TO THE WITNESS. IF I MAY  
15 APPROACH.

16 THE COURT: OKAY. IS THIS A NEW EXHIBIT?

17 MR. LEVEE: IT IS, YOUR HONOR.

18 THE COURT: OKAY. SO YOU'RE GOING TO MARK  
19 THIS DOCUMENT AS EXHIBIT 62 FOR IDENTIFICATION.

20 CAN YOU JUST DESCRIBE WHAT IT IS.

21 MR. LEVEE: IT'S THE SCORE CARD THAT  
22 MR. ATALLAH JUST REFERENCED.

23 THE COURT: OKAY. THANK YOU.

24  
25 (DEFENDANT'S EXHIBIT NO. 62, THE  
26 SCORE CARD, WAS MARKED FOR  
27 IDENTIFICATION.)

28 ///

1 THE COURT: YOU MAY APPROACH THE WITNESS.

2 THE WITNESS: THANK YOU.

3 Q BY MR. LEVEE: MR. ATALLAH, DO YOU RECOGNIZE  
4 EXHIBIT 62?

5 A YES.

6 Q AND IS IT IN FACT THE SCORE CARD THAT YOU  
7 WERE TALKING ABOUT BEFORE?

8 A YES.

9 Q AND WHAT -- LOOKING AT PAGE 1, WHAT IS THE  
10 APPROXIMATE DATE OF THIS DOCUMENT?

11 A THE FINAL DOCUMENT I THINK WAS 12 APRIL  
12 2011.

13 Q AND AS YOU FLIP THROUGH IT -- WELL, LET ME  
14 DO THIS. FIRST, LET ME --

15 THE COURT: I'M SORRY TO INTERRUPT YOU. SO  
16 I WANT TO MAKE SURE -- PLAINTIFF'S COUNSEL RECEIVED A  
17 COPY OF THIS?

18 MS. COLON: YES.

19 MR. LEVEE: YES, YOUR HONOR. AND I WAS JUST  
20 GOING TO ASK IT TO BE ADMITTED INTO EVIDENCE.

21 THE COURT: OKAY. THANK YOU.

22 AND HAVE YOU HAD A CHANCE TO REVIEW IT,  
23 MS. COLON AND MR. BROWN?

24 MR. BROWN: YES, WE'VE LOOKED AT IT. I  
25 DON'T KNOW WHAT THE PURPOSE OF IT IS FOR RELEVANCE,  
26 BUT I DON'T, IN PRINCIPLE, HAVE AN OBJECTION TO IT.

27 THE COURT: OKAY. THANK YOU.

28 MR. LEVEE.

1 MR. LEVEE: MAY I HAVE IT ADMITTED INTO  
2 EVIDENCE, YOUR HONOR?

3 THE COURT: ANY OBJECTION?

4 MR. BROWN: NO, OTHER THAN WE RESERVE THE  
5 RIGHT TO OBJECT TO QUESTIONS AND THE USAGE OF IT  
6 BASED ON RELEVANCE BECAUSE I'M NOT SURE -- IT'S A  
7 LONG DOCUMENT, AND WE HAVEN'T SEEN THE PURPOSE OF IT  
8 YET.

9 THE COURT: OKAY. THANK YOU.

10 MR. LEVEE, YOU WANT TO SAY SOMETHING?

11 MR. LEVEE: ONLY THAT I'M ABOUT TO ESTABLISH  
12 THE RELEVANCE.

13 THE COURT: OKAY.

14 MR. LEVEE: HARD TO DO WITHOUT HAVING THE  
15 DOCUMENT IN FRONT OF THE WITNESS.

16 THE COURT: ALL RIGHT. EXHIBIT 62 IS  
17 RECEIVED INTO EVIDENCE.

18 MR. LEVEE: THANK YOU, YOUR HONOR.

19

20 (DEFENDANT'S EXHIBIT NO. 62 WAS  
21 RECEIVED IN EVIDENCE.)

22

23 Q BY MR. LEVEE: MR. ATALLAH, WOULD YOU TURN  
24 TO PAGE 31 OF TRIAL EXHIBIT 62?

25 A YES.

26 Q DO YOU SEE ON THE LEFT -- THERE'S MULTIPLE  
27 COLUMNS; RIGHT?

28 A YES.

1 Q AND THERE'S A COLUMN MARKED "9, LEGAL  
2 RECOURSE FOR APPLICATIONS."

3 DO YOU SEE THAT?

4 A YES.

5 Q NOW, IN THE -- CAN YOU JUST DESCRIBE -- I  
6 DON'T WANT THIS TO BE TOO MUCH OF A NARRATIVE. I'LL  
7 TRY TO ASK YOU SPECIFIC QUESTIONS.

8 BUT WHAT IS IN THE LEFT-HAND COLUMN WHERE IT  
9 SAYS, "SEEK LEGAL ADVISE AND MAJOR JURISDICTION  
10 COMMUNIQUES."

11 WHAT'S THE GUTS OF THAT LANGUAGE?

12 A SO THAT'S THE CONCERN OF THE GAC ABOUT THE  
13 WAY THE NEW GTLD PROGRAM IS ADDRESSING WHAT RECOURSE  
14 DOES APPLICANTS HAVE IF THEY DON'T LIKE AN OUTCOME IN  
15 THE APPLICATION PROCESS.

16 Q OKAY. AND WAS THE GAC CONCERNED OR WAS PART  
17 OF THE GAC'S CONCERN RELATED TO THE SCOPE OF THE  
18 COVENANT NOT TO SUE?

19 A YES. THIS -- THEIR CONCERN WAS THAT IF THEY  
20 DON'T HAVE THE ABILITY TO SUE, THEN WHAT OTHER  
21 MECHANISMS DO THEY HAVE?

22 Q OKAY. AND THEN TAKE A LOOK ON THE  
23 RIGHT-HAND COLUMN UNDER WHERE IT SAYS, "NOTES." IT  
24 SAYS "NOTES" ON THE TOP RIGHT.

25 THERE ARE TWO PARAGRAPHS, AND LET ME READ  
26 THOSE. THE FIRST PARAGRAPH SAYS (AS READ):

27 "AS DISCUSSED WITH THE GAC,  
28 ICANN HAS EXAMINED THESE LEGAL

1                   QUESTIONS CAREFULLY AND,  
2                   CONSIDERING THE RESULTS OF THESE  
3                   EXAMINATIONS, STILL ADHERES TO THIS  
4                   PROVISION."

5                   LET ME STOP THERE. IS THE "PROVISION" THE  
6                   TERMS AND CONDITIONS INCLUDING THE WAIVER?

7                   A        YES.

8                   MS. COLON: OBJECTION, YOUR HONOR. WE'RE  
9                   GETTING OUTSIDE THE SCOPE OF MY DIRECT HERE.

10                  THE COURT: OKAY. OVERRULED.

11                  Q        BY MR. LEVEE: THE SECOND SENTENCE SAYS  
12                  (AS READ):

13                                "ICANN WILL CLARIFY THAT  
14                                IN THE" -- I DIDN'T READ IT RIGHT SO I'M  
15                                GOING TO START IT AGAIN.

16                                "ICANN WILL CLARIFY IN THE  
17                                APPLICANT GUIDEBOOK THAT IF ICANN  
18                                DEVIATES FROM ITS AGREED PROCESSES  
19                                IN COMING TO A DECISION, ICANN'S  
20                                INTERNAL ACCOUNTABILITY MECHANISMS  
21                                WILL ALLOW COMPLAINTS TO BE HEARD."  
22                                DID I READ THAT CORRECTLY?

23                  A        YES.

24                  Q        SO EXPLAIN THE CRUX OF WHAT'S HAPPENING  
25                  HERE.

26                  A        SO, BASICALLY, TO ADDRESS THE CONCERN OF THE  
27                  GAC, ICANN HAD AGREED TO ALLOW APPLICANTS TO USE  
28                  ACCOUNTABILITY MECHANISMS AVAILABLE IN THE BYLAWS

1 DURING THE PROGRAM.

2 Q SO THE ACCOUNTABILITY MECHANISMS ARE THE  
3 ONES WE'VE BEEN DISCUSSING THROUGH THE TRIAL, THE  
4 IRP?

5 A THE RECONSIDERATION REQUESTS AND OMBUDSMAN.

6 Q THANK YOU. AND, THEN, LET ME READ THE NEXT  
7 PARAGRAPH IN THAT TEXT BOX (AS READ):

8 "IN ITS RESPONSE, THE GAC  
9 STATED THAT IT, QUOTE, 'WELCOMES  
10 THE BOARD'S CLARIFICATION THAT THE  
11 LEGAL IMPLICATIONS OF THE CLAUSE  
12 HAVE BEEN CONSIDERED FOR VARIOUS  
13 JURISDICTIONS. THE GAC APPRECIATES  
14 THE BOARD'S NOTICE THAT THE  
15 APPLICANT GUIDEBOOK WILL BE AMENDED  
16 TO CLARIFY THAT INTERNAL  
17 ACCOUNTABILITY MECHANISMS WILL  
18 ALLOW COMPLAINTS TO BE HEARD.' "  
19 SO, AGAIN, WHAT'S THE CRUX OF WHAT'S  
20 HAPPENING THERE?

21 A SO, BASICALLY, THE GAC IS SATISFIED THAT BY  
22 ALLOWING LANGUAGE IN THE GUIDEBOOK THAT ALLOWS  
23 APPLICANTS TO USE THE ACCOUNTABILITY MECHANISM  
24 AVAILABLE THROUGH THE BYLAWS, THAT THE APPLICANTS  
25 HAVE THE RIGHT TO BE HEARD.

26 Q AND, SO, FOLLOWING THESE SERIES -- BY THE  
27 WAY, WHERE WERE THESE MEETINGS?

28 A IN BRUSSELS.



1 Q AND YOU PERSONALLY ATTENDED?  
2 A YES.  
3 Q AND WERE THERE OTHER BOARD MEMBERS?  
4 A YES.  
5 Q WERE THERE MEMBERS OF ICANN STAFF?  
6 A YES.  
7 Q WERE THERE MEMBERS OF THE GAC?  
8 A YES.  
9 Q WERE THERE MEMBERS OF THE ICANN COMMUNITY?  
10 A YES.  
11 Q AT THE END OF THE -- THIS SERIES OF  
12 MEETINGS, DID YOU UNDERSTAND AS TO THIS PARTICULAR  
13 ISSUE -- THAT IS, THE SCOPE OF THE LITIGATION  
14 WAIVER -- THAT THE GAC WAS COMFORTABLE PROCEEDING  
15 WITH THE CURRENT DRAFT?  
16 A YES.  
17 Q OKAY. LET ME SHOW YOU, VERY BRIEFLY, THE  
18 LAST EXHIBIT.  
19 MR. LEVEE: THIS IS A NEW EXHIBIT, YOUR  
20 HONOR. IT'S EXHIBIT 63.  
21 THE COURT: CAN YOU JUST BRIEFLY DESCRIBE  
22 WHAT IT IS?  
23 MR. LEVEE: I CAN, YOUR HONOR. IT IS A --  
24 AN APRIL 2011 DISCUSSION DRAFT OF THE APPLICANT  
25 GUIDEBOOK. AND, IN PARTICULAR, MODULE 6.  
26 MS. COLON: YOUR HONOR, I WOULD OBJECT TO  
27 THE USE OF THIS EXHIBIT. I DIDN'T DISCUSS MODULE 6  
28 IN MY DIRECT OF MR. ATALLAH.

1 THE COURT: OKAY. I DON'T -- I'M GOING TO  
2 OVERRULE THE OBJECTION FOR NOW, BUT YOU CAN -- I  
3 DON'T KNOW HOW MR. LEVEE IS GOING TO TRY TO USE IT,  
4 SO...

5 MR. LEVEE: MAY I RESPOND, YOUR HONOR?

6 THE COURT: YOU MAY.

7 MR. LEVEE: DURING HER EXAMINATION,  
8 MS. BEKELE TOOK THE POSITION THAT THE GAC WAS VERY  
9 UPSET WITH THE LANGUAGE OF THE COVENANT NOT TO SUE,  
10 SO I'M ADDRESSING IT NOW.

11 I COULD, IF THERE WAS AN OBJECTION TO SCOPE  
12 THAT YOUR HONOR WAS CONCERNED ABOUT, SIMPLY CALL  
13 MS. BEKELE AS A REBUTTAL WITNESS.

14 I'M ALMOST DONE, AND I WILL BE DONE IN THE  
15 NEXT THREE MINUTES, BUT THAT'S HOW I WOULD INTEND TO  
16 HANDLE IT.

17 THE COURT: OKAY. THE OBJECTION IS  
18 OVERRULED.

19 YOU MAY PROCEED, MR. LEVEE.

20 MR. LEVEE: OKAY.

21 Q BY MR. LEVEE: MR. ATALLAH, ARE YOU FAMILIAR  
22 WITH THE APRIL 2011 DISCUSSION DRAFT OF THE APPLICANT  
23 GUIDEBOOK?

24 A MAY I SEE IT?

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

26 THE COURT: YOU MAY.

27 MR. LEVEE: THANK YOU.

28 THE WITNESS: THANK YOU.

1 THE COURT: YOU'VE PUT BEFORE THE WITNESS  
2 WHAT'S BEEN MARKED AS EXHIBIT 63 FOR IDENTIFICATION.

3 Q BY MR. LEVEE: OKAY. BEFORE WE TALK ABOUT  
4 THE EXHIBIT, LET ME JUST ASK YOU TO CONFIRM THAT IT  
5 IS WHAT I SAID IT WAS; NAMELY, THE PORTION THE MODULE  
6 6 PORTION OF THE APRIL 2011 DISCUSSION DRAFT OF THE  
7 APPLICANT GUIDEBOOK?

8 A YES.

9 MR. LEVEE: YOUR HONOR, I MOVE TO ADMIT  
10 EXHIBIT 63.

11 THE COURT: ANY OBJECTION?

12 MR. BROWN: NO.

13 THE COURT: OKAY. EXHIBIT 63 IS RECEIVED  
14 INTO EVIDENCE. THANK YOU.

15

16 (DEFENDANT'S EXHIBIT NO. 63 WAS  
17 RECEIVED IN EVIDENCE.)

18

19 Q BY MR. LEVEE: OKAY. SO MR. ATALLAH, LET'S  
20 FIRST ESTABLISH, IF YOU LOOK AT PAGE 3 OF THE  
21 EXHIBIT --

22 A YES.

23 Q LET'S FIRST ESTABLISH THAT THIS IS MODULE 6  
24 THAT WE'VE BEEN TALKING ABOUT?

25 A YES.

26 Q OKAY. AND THEN IF YOU WOULD TURN TO PAGE 4,  
27 YOU SEE PARAGRAPH 6?

28 A YES.

1 Q AND YOU SEE WHERE IT SAYS, "APPLICANT HEREBY  
2 RELEASES ICANN"?

3 A YES.

4 Q I'M NOT GOING TO READ THE WHOLE THING, BUT  
5 IS THAT THE LANGUAGE OF THE COVENANT NOT TO SUE WE'VE  
6 BEEN DISCUSSING DURING THE TRIAL?

7 A YES.

8 Q OKAY. AND NOW TURN THE PAGE.  
9 DO YOU SEE WHERE THERE IS INFORMATION,  
10 WORDS, THAT ARE UNDERSCORED AND IN ALL CAPS?

11 A YES.

12 Q I'M GOING TO READ THEM. MAKE SURE THAT I  
13 READ THEM CORRECTLY. (AS READ:)

14 "PROVIDED THAT APPLICANT MAY  
15 UTILIZE ANY ACCOUNTABILITY  
16 MECHANISM SET FORTH IN ICANN'S  
17 BYLAWS FOR PURPOSES OF CHALLENGING  
18 ANY FINAL DECISION MADE BY ICANN  
19 WITH RESPECT TO THE APPLICATION.  
20 APPLICANT ACKNOWLEDGES THAT ANY  
21 ICANN- AFFILIATED PARTY IS AN  
22 EXPRESS THIRD-PARTY BENEFICIARY OF  
23 THIS SECTION 6 AND MAY ENFORCE EACH  
24 PROVISION OF THIS SECTION 6 AGAINST  
25 APPLICANT."

26 DID I READ THAT CORRECTLY?

27 A YES.

28 Q SO WAS THIS THE LANGUAGE THAT THE GAC HAD

1 REQUESTED TO BE INCLUDED IN THE COVENANT NOT TO SUE?

2 A YES.

3 Q AND IS THIS -- WAS THIS LANGUAGE ULTIMATELY  
4 IN THE FINAL VERSION OF THE GUIDEBOOK AS OF THE TIME  
5 THAT APPLICATIONS WERE RECEIVED?

6 A YES, IT WAS.

7 MR. LEVEE: I HAVE NO FURTHER QUESTIONS,  
8 YOUR HONOR.

9 THE COURT: OKAY. THANK YOU.

10 MS. COLON, DO YOU HAVE ANY REDIRECT  
11 EXAMINATION?

12 MS. COLON: I DO, YOUR HONOR.

13 THE COURT: OKAY. YOU MAY PROCEED.

14 AND THE COURT NOTES IT'S A LITTLE AFTER  
15 2:15 P.M.

16

17 REDIRECT EXAMINATION

18 BY MS. COLON:

19 Q MR. ATALLAH, CAN I GET YOU TO TURN BACK TO  
20 EXHIBIT 41, PLEASE?

21 A YES.

22 Q AND COULD YOU PLEASE TURN TO THE SECOND PAGE  
23 TO RESOLUTION 2015.07.16.04?

24 A OKAY. I'M THERE.

25 Q AND THAT RESOLUTION READS (AS READ):

26 "WITH RESPECT TO THE GAC'S  
27 CONSENSUS ADVICE AND THE BEIJING  
28 COMMUNIQUE THAT DCA'S APPLICATION

1 FOR .AFRICA SHOULD NOT PROCEED,  
2 WHICH WAS CONFIRMED IN THE LONDON  
3 COMMUNIQUE, THE BOARD WILL ASK THE  
4 GAC IF IT WISHES TO REFINE THAT  
5 ADVICE AND/OR PROVIDE THE BOARD  
6 WITH FURTHER INFORMATION REGARDING  
7 THAT ADVICE AND/OR OTHERWISE  
8 ADDRESS THE CONCERNS RAISED IN THE  
9 DECLARATION."

10 NOW, THE GAC CONSENSUS ADVICE REFERENCED IN  
11 THAT RESOLUTION WAS THE GAC ADVICE AT ISSUE DURING  
12 THE IRP; CORRECT?

13 A I'M SORRY. THE GAC ADVICE ISSUED IN THE  
14 IRP?

15 Q THE GAC ADVICE THAT'S REFERENCED IN THIS  
16 RESOLUTION?

17 A YES.

18 Q THE GAC CONSENSUS ADVICE AND THE BEIJING  
19 COMMUNIQUE?

20 A YES.

21 Q THAT WAS THE GAC ADVICE THAT WAS DISCUSSED  
22 DURING THE IRP; CORRECT?

23 A YES. YES.

24 Q AND THIS RESOLUTION WAS TO BE ACTED ON  
25 BEFORE ANY ULTIMATE DECISION IN DCA'S APPLICATION;  
26 CORRECT?

27 A I'M NOT SURE. I THINK THAT THE GAC -- THAT  
28 THE BOARD WAS ASKING THE GAC IF THEY WANTED TO

1 PROVIDE ANY ADDITIONAL ADVICE NOW THAT THEY ARE AWARE  
2 OF THE PANEL'S -- OF THE IRP PANEL'S RESULTS.

3 Q THEY WERE NOT -- THE BOARD WAS NOT  
4 INSTRUCTING THAT ICANN SHOULD WAIT UNTIL AFTER THERE  
5 WAS A DECISION ON DCA'S APPLICATION TO CONSIDER GAC  
6 ADVICE; CORRECT?

7 A I'M -- CAN YOU REPEAT THE QUESTION?

8 Q SURE. THIS RESOLUTION WAS A RESOLUTION THAT  
9 WAS TO TAKE EFFECT IMMEDIATELY AFTER IT WAS MADE;  
10 CORRECT?

11 A IT'S A REQUEST FOR THE GAC SO YES.

12 MS. COLON: OKAY. NO FURTHER QUESTIONS,  
13 YOUR HONOR.

14 THE COURT: ALL RIGHT. THANK YOU,  
15 MS. COLON.

16 MAY THE WITNESS BE EXCUSED? MS. COLON?

17 MS. COLON: YES, AS FAR AS I'M CONCERNED.

18 THE WITNESS: THANK YOU.

19 THE COURT: AND MR. LEVEE?

20 MR. LEVEE: YES. THANK YOU, YOUR HONOR.

21 THE COURT: OKAY. THANK YOU, MR. ATALLAH,  
22 AND YOU'RE EXCUSED.

23 THE WITNESS: THANK YOU VERY MUCH.

24 THE COURT: THANK YOU, SIR.

25 ALL RIGHT. MR. BROWN, MS. COLON, IS THERE  
26 ANY OTHER EVIDENCE THAT THE PLAINTIFF WISHES TO  
27 PRESENT IN ITS CASE-IN-CHIEF?

28 MS. COLON: YES, YOUR HONOR. I BELIEVE THE

1 ISSUE OF THE DEPOSITION DESIGNATIONS ARE STILL  
2 PENDING.

3 THE COURT: CORRECT. OKAY. THANK YOU.  
4 SO THE COURT -- DID YOU FILE THE AMENDED  
5 ORDER?

6 THE CLERK: YES, YOUR HONOR.

7 THE COURT: DO YOU HAVE A COPY OF THAT?

8 THE CLERK: YES.

9 THE COURT: OKAY. THANK YOU FOR RAISING  
10 THAT, MS. COLON.

11 SO THE COURT, OVER THE LUNCH HOUR, PREPARED  
12 AN AMENDED ORDER ON OBJECTIONS TO DCA DEPOSITION  
13 DESIGNATIONS AND ICANN'S COUNTER-DESIGNATIONS, AND  
14 THAT ORDER HAS BEEN FILED. I SIGNED IT. IT'S BEEN  
15 SIGNED TODAY. I THINK IT NEEDS TO BE DATED.

16 THE CLERK: OKAY, YOUR HONOR.

17 THE COURT: AND, SO, THAT ORDER IS THE  
18 COURT'S RULINGS ON PLAINTIFF'S REQUEST THAT THE COURT  
19 RECONSIDER SOME OF ITS RULINGS ON OBJECTIONS TO DCA  
20 DEPOSITION DESIGNATIONS AND ICANN'S  
21 COUNTER-DESIGNATIONS IN THE COURT'S ORDER THAT WAS  
22 ISSUED FEBRUARY 6, 2019.

23 AFTER HEARING THE OPENING STATEMENTS AND  
24 HEARING OTHER EVIDENCE PRESENTED IN THE CASE, I DID  
25 RECONSIDER SOME OF MY RULINGS ON THE OBJECTIONS TO  
26 DCA'S DEPOSITION DESIGNATIONS AND ICANN'S  
27 COUNTER-DESIGNATIONS, AND MY RULINGS, AFTER  
28 RECONSIDERING THOSE OBJECTIONS, ARE NOW SET FORTH IN



1 THE AMENDED ORDER THAT IS FILED TODAY, FEBRUARY 8,  
2 2019.

3 AND I REALIZE THE CLERK JUST HANDED YOU  
4 THOSE, SO IF YOU WANT TO TAKE A FEW-MINUTES' BREAK TO  
5 REVIEW THEM, I'LL ALLOW YOU TO DO THAT.

6 YOU WANT TO DO THAT?

7 MS. COLON: YES, YOUR HONOR. AND IF I MAY  
8 SUGGEST THAT WE READ INTO -- READ FOR THE COURT  
9 REPORTER THE DEPOSITION DESIGNATIONS THAT HAVE BEEN  
10 ADMITTED, I THINK THAT WOULD BE HELPFUL FOR THE  
11 RECORD.

12 THE COURT: THAT HAVE BEEN ADMITTED?

13 MS. COLON: RIGHT. IN THE NEW ORDER.

14 THE COURT: YES. THAT'S WHAT -- THAT'S HOW  
15 I WOULD ENVISION THAT YOU WOULD PROCEED, IS THAT THE  
16 PARTY OFFERING THE DESIGNATIONS ACTUALLY READ THEM  
17 INTO THE RECORD.

18 MS. COLON: OKAY.

19 THE COURT: ALL RIGHT. AND SO -- AND THEN  
20 AS A LOGISTICAL MATTER, WHAT YOU WILL NEED TO DO -- I  
21 EXPECT COUNSEL TO MEET AND CONFER ABOUT THIS OVER THE  
22 BREAK WE'RE ABOUT TO TAKE -- IS TO THEN PREPARE A  
23 LIST SEQUENTIALLY OF THE PAGE AND LINE NUMBERS OF THE  
24 DEPOSITION EXCERPTS FOR DR. STEPHEN CROCKER AND MIKE  
25 SILBER THAT BOTH SIDES ARE REQUESTING OR THAT THE  
26 COURT HAS RULED ON THAT MAY BE ADMITTED INTO  
27 EVIDENCE.

28 MS. COLON: OKAY.

1 THE COURT: AND, SO, THEN YOU HAVE A  
2 COMPLETE LIST. BECAUSE SOME OF THE OBJECTIONS, I'VE  
3 EXCLUDED CERTAIN EXCERPTS, SO YOU SHOULD PREPARE A  
4 NEW LIST THAT YOU BOTH AGREE ON ACCURATELY REFLECTS  
5 THE COURT'S ORDERS ON THE OBJECTIONS TO THE  
6 DEPOSITION DESIGNATIONS; OKAY?

7 MS. COLON: OKAY. THANK YOU, YOUR HONOR.

8 THE COURT: ANYTHING ELSE BEFORE WE TAKE A  
9 BREAK?

10 MR. LEVEE: ONE OTHER THING, YOUR HONOR.

11 MR. BROWN AND I WERE SPEAKING OVER THE LUNCH  
12 BREAK ABOUT HOW WE PROCEED FROM HERE WITH RESPECT TO  
13 PHASE I. IN CASE YOUR HONOR HAS GUIDANCE YOU WANT TO  
14 GIVE TO US, WE CAN ALSO TALK ABOUT THAT OVER THE  
15 BREAK.

16 THE COURT: OKAY. THANK YOU. THAT'S A GOOD  
17 IDEA.

18 ONCE BOTH PARTIES REST THEIR CASES, THEN  
19 WHAT I INTEND TO DO IS ORDER THAT -- AS I MENTIONED  
20 EARLIER, THAT CLOSING ARGUMENTS BE PRESENTED BY  
21 WRITTEN BRIEFS. AND SO I WOULD ASK COUNSEL TO MEET  
22 AND CONFER AND SEE IF YOU AGREE -- I WOULD PREFER  
23 THAT YOU FILE SIMULTANEOUS BRIEFS, MEANING THAT EACH  
24 SIDE FILES ONE BRIEF, AND THAT YOU -- COURT SETS A  
25 DEADLINE, A BRIEFING SCHEDULE, A DEADLINE FOR BOTH  
26 SIDES TO FILE THEIR BRIEFS SO THAT WAY THEY CAN BOTH  
27 FILE THEM ON THE SAME DAY.

28 SO I WOULD ASK THAT YOU MEET AND CONFER

1 ABOUT THOSE LOGISTICS, INCLUDING THE DATE.

2 MR. LEVEE: WE'VE ALREADY DONE THAT.

3 THE COURT: OH, GREAT. OKAY. SUPER. AND  
4 THE -- ALSO, WHAT I PLAN TO DO IS ORDER THAT THE  
5 BRIEFS BE LIMITED -- HAVE A PAGE LIMIT NOT TO EXCEED  
6 15 PAGES.

7 MR. LEVEE: COUNSEL AND I HAD AGREED THAT IF  
8 THAT WAS YOUR -- THAT IF YOUR PREFERENCE WAS  
9 SIMULTANEOUS BRIEFS, WE WERE COMFORTABLE WITH THAT.

10 AND WE HAD ALSO AGREED TO ASK YOUR HONOR TO  
11 HAVE THOSE BRIEFS FILED THREE WEEKS FROM TODAY, WHICH  
12 WOULD GIVE US A CHANCE TO GET THE FINAL TRANSCRIPTS  
13 AND ORGANIZE OURSELVES.

14 WE HAD ALSO DISCUSSED A DIFFERENT PAGE  
15 LIMIT, AND THE PAGE LIMIT WE HAD DISCUSSED WAS 35  
16 PAGES.

17 MR. BROWN: THAT'S WHAT WE HAD DISCUSSED,  
18 BUT, YOU KNOW, WE'RE WILLING TO LIVE WITH WHATEVER  
19 YOUR HONOR ULTIMATELY DECIDES.

20 THE COURT: OKAY. I'LL CONSIDER IT. MY  
21 INITIAL REACTION IS I DON'T -- I MEAN, WE HAVE  
22 EXCELLENT ATTORNEYS ON BOTH SIDES HERE, AND THIS IS A  
23 BIFURCATED TRIAL ON A LIMITED ISSUE, WHICH IS AN  
24 AFFIRMATIVE DEFENSE OF JUDICIAL ESTOPPEL. SO I  
25 DON'T -- I DON'T KNOW THAT -- DID YOU SAY 35 PAGES?

26 MR. LEVEE: I DID. AND, OBVIOUSLY, YOU  
27 KNOW, EVEN 30 WOULD BE GREAT.

28 BECAUSE THERE ARE FIVE ELEMENTS TO THE

1 JUDICIAL ESTOPPEL TEST, AND, BECAUSE THE PARTIES  
2 APPEAR TO DISPUTE EACH OF THE FIVE, WHEN WE DID THIS  
3 LAST TIME, IT TOOK A LITTLE MORE THAN 15 PAGES TO LAY  
4 OUT OUR THOUGHTS ON THE VARIOUS ELEMENTS. SO THAT  
5 WAS MY CONCERN WITH SOMETHING SHORTER.

6 THE COURT: OKAY. I'LL CONSIDER THAT OVER  
7 THE BREAK, BUT THE TIME FRAME YOU'RE TALKING ABOUT  
8 SEEMS FINE --

9 MR. LEVEE: THANK YOU.

10 THE COURT: -- AS FAR AS THREE WEEKS BECAUSE  
11 I KNOW THAT YOU'LL NEED TO OBTAIN THE REPORTER'S  
12 TRANSCRIPTS.

13 I ALSO WANTED TO ADDRESS -- AND MAYBE WE CAN  
14 ADDRESS THIS -- WELL, WE'LL ADDRESS THIS AT THE END  
15 AFTER DEFENSE CLOSES THEIR CASE, BUT I WAS GOING TO  
16 ASK IF THE PARTIES WILL STIPULATE TO PROVIDE A --  
17 COPIES OF THE REPORTER'S TRANSCRIPTS TO THE COURT SO  
18 THAT IT CAN -- AND THEN IF YOU STIPULATE TO THAT,  
19 THEN YOU'LL PROVIDE THEM -- WE'LL SET A DEADLINE FOR  
20 YOU TO PROVIDE THEM. PROBABLY, YOU KNOW, A WEEK  
21 BEFORE YOUR -- WELL, I GUESS YOU SHOULD PROBABLY TALK  
22 TO THE REPORTER AND FIND OUT WHEN YOU EXPECT TO GET  
23 THE REPORTER'S TRANSCRIPT.

24 MR. LEVEE: WE'VE DONE THAT. WE EXPECT TO  
25 HAVE THEM BY THE END OF NEXT WEEK.

26 THE COURT: OKAY. SO WE CAN TALK ABOUT  
27 THOSE TIMELINES. THOSE ARE THE MAIN THINGS, THE  
28 ELEMENTS OF THE ORDER I WOULD MAKE AT THE COMPLETION

1 OF THE PRESENTATION OF EVIDENCE WHEN BOTH SIDES END  
2 THEIR CASE.

3 MR. LEVEE: WE HAVE ONE OTHER EVIDENTIARY  
4 ISSUE.

5 MS. BURKE: WHICH I WANT TO RAISE SIMPLY  
6 BECAUSE I THINK WE NEED TO MEET AND CONFER ON THIS  
7 BREAK AS WELL.

8 THE CLERK WAS KIND ENOUGH TO HAND US BOTH A  
9 COPY OF THE EXHIBIT LIST WITH THE COURT'S INSERTS AS  
10 TO WHAT'S IN. THERE ARE A COUPLE THINGS THAT WE  
11 THINK ARE IN ERROR IN THAT.

12 THE COURT: IN WHAT?

13 MS. BURKE: IN ERROR. THERE ARE A COUPLE  
14 MISTAKES WE THINK IN THERE. FOR EXAMPLE, ONE  
15 EXHIBIT WE BELIEVE IS ADMITTED THAT ISN'T INDICATED  
16 AND SO --

17 THE COURT: I'M SORRY. ON WHICH DOCUMENT?

18 MS. BURKE: THIS IS THE EXHIBIT LIST AS  
19 MARKED BY THE CLERK FOR WHAT IS ADMITTED AND ON WHAT  
20 DATES. SO I JUST WANT TO MAKE SURE -- AND WE'LL MEET  
21 AND CONFER OVER THE BREAK WITH COUNSEL, BUT THEN WE'D  
22 LIKE TO ADDRESS THOSE WITH YOUR HONOR AFTER THE  
23 BREAK.

24 THE COURT: THAT'S FINE. I WOULD EXPECT  
25 COUNSEL TO MEET AND CONFER ABOUT THAT AND THEN ALSO  
26 CONFER WITH THE CLERK WHEN YOU'RE ON YOUR BREAK AND  
27 THEN LET ME KNOW WHEN YOU'RE READY TO PROCEED.

28 MS. BURKE: THANK YOU, YOUR HONOR.

1 THE COURT: SO WE'LL GO OFF THE RECORD AT  
2 THIS TIME. SO COUNSEL CAN MEET AND CONFER ON ALL  
3 THOSE ISSUES. THANK YOU.

4 MR. LEVEE: THANK YOU, YOUR HONOR.

5

6 (A RECESS WAS TAKEN.)

7

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

12 SO DID COUNSEL GET A CHANCE TO MEET AND  
13 CONFER OVER THE BREAK?

14 MR. BROWN: YES, YOUR HONOR.

15 MS. COLON: YES, YOUR HONOR. AND WE'RE IN  
16 AGREEMENT ABOUT THE COURT'S RULING.

17 THE COURT: OKAY. THANK YOU.

18 ALL RIGHT. SO WE'RE STILL -- THE PLAINTIFF  
19 IS STILL PRESENTING ITS CASE-IN-CHIEF.

20 AND, MS. COLON, DO YOU WISH TO READ INTO THE  
21 RECORD CERTAIN DEPOSITION EXCERPTS THAT ARE  
22 DESIGNATED BY BOTH SIDES?

23 MS. COLON: YES, YOUR HONOR. I WAS PLANNING  
24 TO READ THE QUESTIONS, AND MS. OZUROVICH WAS GOING TO  
25 READ THE ANSWERS, IF THAT'S OKAY WITH THE COURT.

26 THE COURT: THAT WOULD BE FINE. ONE MOMENT,  
27 PLEASE.

28 DID YOU PREPARE A LIST OF THE EXCERPTS THAT

1 YOU'RE GOING TO READ FROM EACH OF THE DEPOSITION  
2 TRANSCRIPTS?

3 MS. COLON: YES, WE DID, YOUR HONOR.

4 THE COURT: OKAY. ONE MOMENT, PLEASE.

5 OKAY. FOR THE DEPOSITION TRANSCRIPT OF  
6 STEPHEN CROCKER DATED JANUARY 12, 2018, WHAT ARE THE  
7 DEPOSITION EXCERPTS? LIKE, PAGE AND LINE NUMBER THAT  
8 YOU INTEND TO READ INTO THE RECORD.

9 MS. COLON: YES, YOUR HONOR. FOR CROCKER,  
10 IT IS: PAGE 8, LINE 9 THROUGH LINE 21; PAGE 9, LINE  
11 17, THROUGH PAGE 12, LINE 4; PAGE 62, LINE 12 THROUGH  
12 LINE 15; PAGE 62, LINE 24, THROUGH PAGE 63, LINE 4;  
13 PAGE 64, LINE 7 THROUGH LINE 14; PAGE 74, LINE 13  
14 THROUGH LINE 17; PAGE 75, LINE 6 THROUGH LINE 9;  
15 PAGE 79, LINE 20, THROUGH PAGE 80, LINE 4; PAGE 80,  
16 LINE 7 THROUGH LINE 9.

17 AND THAT'S EVERYTHING FOR CROCKER.

18 THE COURT: OKAY. THANK YOU.

19 AND FOR THE DEPOSITION EXCERPTS THAT BOTH  
20 SIDES INTEND TO READ FOR THE DEPOSITION OF MIKE  
21 SILBER TAKEN ON MAY 9, 2018, COULD YOU PLEASE STATE  
22 THE PAGE AND LINE NUMBERS THAT YOU'RE GOING TO READ  
23 INTO THE RECORD?

24 MS. COLON: YES.

25 PAGE 22, LINE 20 TO LINE 23; PAGE 22, LINE  
26 24, THROUGH PAGE 23, LINE 3; PAGE 23, LINE 4 THROUGH  
27 LINE 10; PAGE 24, LINE 10 THROUGH LINE 19; PAGE 29,  
28 LINE 20 THROUGH LINE 23; PAGE 117, LINE 14 THROUGH

1 LINE 23; PAGE 144, LINE 21, THROUGH PAGE 145, LINE 8;  
2 AND THAT IS EVERYTHING FOR SILBER.

3 THE COURT: OKAY. THANK YOU.

4 AND, MS. OZUROVICH?

5 MS. OZUROVICH: YES.

6 THE COURT: DO YOU AGREE WITH THOSE LISTS OF  
7 DESIGNATIONS?

8 MS. OZUROVICH: I DO, YOUR HONOR.

9 THE COURT: OKAY. THANK YOU.

10 SO AT THIS TIME ARE YOU READY TO PROCEED  
11 THEN, BOTH OF YOU, WITH THE READING OF THOSE EXCERPTS  
12 FROM THE DEPOSITION TRANSCRIPTS?

13 MS. COLON: YES, YOUR HONOR.

14 THE COURT: OKAY. THANK YOU. SO I'M GOING  
15 TO ASK YOU TO IDENTIFY THE DEPOSITION TRANSCRIPTS.

16 SO THE FIRST ONE WILL BE DEPOSITION  
17 TRANSCRIPT OF STEPHEN CROCKER, THE DEPOSITION TAKEN  
18 ON JANUARY 12, 2018, AND THEN PLEASE STATE THE PAGE  
19 AND LINE NUMBERS YOU'RE GOING TO READ, AND THEN READ  
20 THEM INTO THE RECORD.

21 AND, THEN, FOR THE NEXT EXCERPT, AGAIN STATE  
22 THE PAGE AND LINE NUMBERS YOU'RE GOING TO READ AND  
23 THEN READ THAT IN THE RECORD; OKAY?

24 MS. COLON: OKAY, YOUR HONOR.

25 OKAY. SO THIS IS THE DEPOSITION OF STEPHEN  
26 D. CROCKER.

27 THE COURT: ONE MOMENT, PLEASE.

28 OKAY. YOU MAY PROCEED.



1 MS. COLON: THIS IS THE DEPOSITION OF  
2 STEPHEN D. CROCKER TAKEN JANUARY 12TH, 2013. THE  
3 FIRST EXCERPT I WILL READ IS FROM PAGE 8, LINE 9  
4 THROUGH LINE 21. (AS READ):

5 QUESTION: "AND YOU MENTIONED YOUR  
6 WORK WITH THE ICANN BOARD.  
7 ARE YOU STILL A MEMBER OF THE ICANN  
8 BOARD?"

9 "I AM NOT.

10 "WHEN WAS THE LAST TIME YOU  
11 WERE A MEMBER OF THE ICANN BOARD?"

12 THE COURT: OKAY. LET'S START OVER.

13 CAN I ASK THAT YOU STATE "QUESTION" BEFORE  
14 YOU READ THE QUESTION, AND, THEN, WHEN MS. OZUROVICH  
15 READS THE ANSWER, IF YOU STATE "ANSWER," THEN READ  
16 THE ANSWER; OKAY?

17 MS. OZUROVICH: SURE.

18 THE COURT: OKAY? OKAY. THANK YOU, BOTH.

19 MS. COLON: OKAY. PICKING UP AT PAGE 8,  
20 LINE 12.

21 THE COURT: SO LET'S START OVER AT PAGE 8,  
22 LINE 9. IF YOU COULD START OVER AND THEN BE SURE TO  
23 SAY "QUESTION" AND "ANSWER" BEFORE YOU STATE THE  
24 QUESTION AND ANSWER.

25 MS. COLON: OKAY. PAGE 8, LINE 9.

26 (AS READ):

27 QUESTION: "AND YOU MENTIONED YOUR  
28 WORK WITH THE ICANN BOARD. ARE YOU

1 STILL A MEMBER OF THE ICANN BOARD?"

2 MS. OZUROVICH: ANSWER: "I AM  
3 NOT."

4 MS. COLON: QUESTION: "WHEN WAS  
5 THE LAST TIME YOU WERE A MEMBER OF  
6 THE ICANN BOARD?"

7 MS. OZUROVICH: ANSWER: "MY  
8 SERVICE CONCLUDED NOVEMBER 3RD, I  
9 THINK, AT THE ANNUAL GENERAL  
10 MEETING OF THE LAST ICANN MEETING."

11 MS. COLON: QUESTION: "SO THAT'S  
12 NOVEMBER 3RD, 2017?"

13 MS. OZUROVICH: ANSWER: "YES."

14 MS. COLON: QUESTION: "OKAY. AND  
15 CAN YOU JUST TAKE ME THROUGH THE  
16 HISTORY OF YOUR POSITIONS AT ICANN  
17 FROM THE BEGINNING UNTIL 2017?"

18 MS. OZUROVICH: ANSWER: "SURE."

19 AND THE NEXT EXCERPT WE WILL READ IS FROM  
20 PAGE 9, LINE 17 THROUGH PAGE 12, LINE 4.

21 MS. OZUROVICH: AND THIS IS A CONTINUATION  
22 OF MY PRIOR ANSWER, WHICH IS (AS READ):

23 "MY INITIAL INVOLVEMENT WITH  
24 ICANN, I WAS INVITED TO CHAIR THE  
25 NEWLY FORMED SECURITY AND STABILITY  
26 ADVISORY COMMITTEE. I BEGAN THAT  
27 WORK IN 2002. THAT COMMITTEE WAS  
28 FORMED PRETTY MUCH IN DIRECT

1       RESPONSE TO 9/11.

2               "ICANN, LIKE MANY, MANY  
3       ORGANIZATIONS, SAID, OH, SECURITY  
4       IS IMPORTANT.  THEY HAD A MEETING  
5       THAT I DIDN'T ATTEND IN NOVEMBER, I  
6       BELIEVE, OF 2001, BROUGHT TOGETHER  
7       VARIOUS EXPERTS.  AND ONE OF THE  
8       OUTCOMES WAS THE DECISION TO FORM  
9       THIS COMMITTEE THAT I'VE DESCRIBED,  
10       AND VARIOUS PEOPLE WERE RECRUITED.  
11       AND THE CHAIRMAN OF THE BOARD AT  
12       THE TIME, VINT CERIF, ASKED ME IF I  
13       WOULD CHAIR IT AND JUST GET IT  
14       GOING.  SIX MONTHS, HE SAID, WHICH  
15       I KNEW WAS AN UNDERESTIMATE BY  
16       QUITE A BIT.  SO -- SO, AS I SAID,  
17       MY INITIAL INVOLVEMENT WITH ICANN  
18       WAS CHAIRING THIS NEWLY FORMED  
19       COMMITTEE, WHICH IS ONE OF THE  
20       SO-CALLED ADVISORY COMMITTEES.

21               "THE ICANN STRUCTURE, AS YOU  
22       PROBABLY UNDERSTAND, THERE'S PAID  
23       STAFF EMPLOYEES, THERE'S A BOARD,  
24       AND THEN THERE IS A SET OF  
25       SUPPORTING ORGANIZATIONS AND  
26       ADVISORY COMMITTEES THAT ARE A  
27       FORMAL PART OF THE ORGANIZATION.

28               "AND, SO, I WAS FORTUNATE TO

1 ENTER AT A REASONABLY SENIOR  
2 POSITION IN A SENSE. WITHIN A YEAR  
3 THERE WAS A NEW SET OF BYLAWS THAT  
4 WERE TAKING EFFECT, AND ONE OF THE  
5 RESULTS WAS THE CREATION OF A  
6 NON-VOTING LIAISON POSITION ON THE  
7 BOARD FOR EACH OF THE ADVISORY  
8 COMMITTEES. OUR COMMITTEE WAS  
9 STILL IN A FAIRLY NASCENT STATE.  
10 MANY OF THE PEOPLE DIDN'T REALLY  
11 WANT TO GET TOO CLOSE TO THE  
12 INTERNAL POLITICS, AND I FOUND  
13 MYSELF DOUBLE-HATTED WITH -- AS  
14 CHAIRING THE COMMITTEE AND ALSO  
15 BEING THE LIAISON ON THE BOARD, TWO  
16 DISTINCT JOBS, AND THAT PERSISTED  
17 FOR SEVERAL YEARS.

18 "AND I HAVE TO THINK FOR A  
19 MINUTE TO GET THE TIMING RIGHT, BUT  
20 THE BROAD ARC IS THAT EVENTUALLY I  
21 PUT MY HAT IN TO BECOME A MEMBER OF  
22 THE BOARD -- REGULAR VOTING MEMBER  
23 OF THE BOARD. AND THAT TRANSACTION  
24 TOOK PLACE IN 2008. LATE 2008.  
25 AND I ACTUALLY CONTINUED AS CHAIR  
26 OF THE BOARD BUT OBVIOUSLY HAD  
27 STOPPED BEING THE LIAISON FOR THE  
28 COMMITTEE AT THAT POINT.

1           "AND THEN I DON'T REMEMBER THE  
2       PRECISE TIMING, ALTHOUGH IT'S EASY  
3       TO FIND OUT. AT SOME POINT I  
4       STEPPED DOWN AS CHAIR OF THE -- AS  
5       CHAIR OF SSAC. AND -- AND THEN IN  
6       LATE 2010 I BECAME VICE CHAIR OF  
7       THE BOARD.

8           "AND THEN ABOUT SIX MONTHS  
9       LATER I BECAME CHAIR OF THE BOARD.  
10      SO I BECAME CHAIR OF THE BOARD WHEN  
11      MY PREDECESSOR, PETER DENGATE  
12      THRUSH, LEFT THE BOARD WHICH I --  
13      WHICH I BELIEVE WAS JUNE 2011. AND  
14      I REMAINED CHAIR OF THE BOARD FROM  
15      THEN UNTIL I LEFT THE BOARD IN LATE  
16      2017.

17           "WHEN YOU'RE ON THE BOARD AS A  
18      VOTING MEMBER, YOU HAVE THREE-YEAR  
19      TERMS, AND THERE'S A MAXIMUM OF  
20      THREE OF THOSE, AND I RAN OUT THE  
21      CLOCK."

22      MS. COLON: QUESTION: "AND ARE YOU  
23      INVOLVED WITH DOING ANY WORK FOR  
24      ICANN FORMALLY OR INFORMALLY AT  
25      THIS POINT?"

26      MS. OZUROVICH: ANSWER: "I'M NOT  
27      INVOLVED IN ANY FORMAL WORK. MY  
28      POSTURE IS THAT IT'S IMPORTANT TO

1 GET OFF THE STAGE AND ALSO NOT  
2 BECOME AN EMPLOYEE OR CONSULTANT.

3 "THERE'S SOME CONVERSATIONS  
4 I'M STILL INVOLVED IN, A COUPLE OF  
5 TECHNICAL MATTERS THAT -- OF HAVING  
6 INFORMAL CONVERSATIONS OF THAT."

7 MS. COLON: OKAY. THE NEXT EXCERPT I WILL  
8 READ IS FROM PAGE 62, LINE 12 THROUGH LINE 15. AND  
9 THEN THE ANSWER CONTINUES AT PAGE 62, LINE 24 THROUGH  
10 PAGE 63, LINE 4. (AS READ):

11 QUESTION: "WAS THERE A FEELING --  
12 YOU KNOW, YOU WERE A BOARD MEMBER  
13 AT THE TIME. WAS IT YOUR SENSE  
14 THAT THE BOARD FELT THAT THE PANEL  
15 IN .AFRICA WAS NOT HELPFUL TO  
16 ICANN?"

17 MS. OZUROVICH: ANSWER: "I  
18 CERTAINLY DON'T WANT TO SPEAK FOR  
19 THE BOARD. SPEAKING FOR MYSELF, I  
20 VIEW THE IRP AS AN INTEGRAL AND  
21 IMPORTANT PART OF THE OVERALL  
22 PROCESS. AND, SO, WITHOUT SPEAKING  
23 ABOUT ANY PARTICULAR DECISION OR  
24 ANY PARTICULAR ACTION, THEIR  
25 EXISTENCE AND THEIR PARTICIPATION  
26 IS DEFINITELY HELPFUL TO ICANN"

27 MS. COLON: THE NEXT EXCERPT IS PAGE 64,  
28 LINE 7 THROUGH LINE 14. (AS READ):

1 QUESTION: "DID YOU EVER EXPRESS AN  
2 OPINION TO ANY OTHER BOARD MEMBER  
3 ON THE IRP'S PANEL'S DECISION ON  
4 .AFRICA?"

5 MS. OZUROVICH: ANSWER: "I GUESS I  
6 MIGHT HAVE SAID SOMETHING FAIRLY  
7 NARROW ABOUT IT."

8 MS. COLON: QUESTION: "WHAT WOULD  
9 YOU HAVE SAID?"

10 MS. OZUROVICH: ANSWER: "ON THE  
11 ORDER THAT IT'S IMPORTANT THAT WE  
12 PAY ATTENTION TO THE IRP DECISION  
13 AND GIVE IT APPROPRIATE WEIGHT."

14 MS. COLON: THE NEXT EXCERPT WILL BE FROM  
15 PAGE 74, LINE 13 THROUGH LINE 17. (AS READ):

16 QUESTION: "DO YOU RECALL WHETHER  
17 THE BOARD PASSED A RESOLUTION ON  
18 THE IRP PANEL'S DECISION ON THE  
19 .AFRICA CASE?"

20 MS. OZUROVICH: ANSWER: "WELL THE  
21 KEY THING -- YES. THE KEY THING  
22 WAS TO ACCEPT THE PANEL'S DECISION  
23 AND TO MOVE FORWARD."

24 MS. COLON: THE NEXT EXCERPT WILL BE FROM  
25 PAGE 75, LINE 6 THROUGH LINE 9. (AS READ):

26 QUESTION: "OKAY. SO AT THE TIME  
27 IT WAS THE BOARD'S POSITION THAT  
28 THE IRP PANEL'S RULING WAS NOT

1 BINDING ON THE BOARD?"

2 MS. OZUROVICH: ANSWER: "CORRECT."

3 MS. COLON: THE NEXT EXCERPT WILL BE FROM  
4 PAGE 79, LINE 20, THROUGH PAGE 80, LINE 4.

5 (AS READ):

6 QUESTION: "AFTER THE BOARD  
7 RESOLVED TO ACCEPT THE IRP PANEL'S  
8 DECISION, WHAT STEPS DID ICANN TAKE  
9 TO THEN IMPLEMENT THE IRP PANEL'S  
10 DECISION?"

11 MS. OZUROVICH: ANSWER: "I BELIEVE  
12 IT WAS AS STRAIGHTFORWARD AS  
13 SAYING, OKAY, PUT THE DCA  
14 APPLICATION BACK INTO THE -- INTO  
15 PROCESS. PUT IT BACK INTO THE  
16 QUEUE AND PROCESS IT -- CONTINUE  
17 PROCESSING IT."

18 MS. COLON: QUESTION: "AND GIVEN  
19 THAT THE BOARD AT THE TIME DID  
20 NOT" -- OOPS. SORRY.

21 QUESTION: "AND GIVEN THAT THE  
22 BOARD AT THE TIME DID NOT FEEL THAT  
23 THE IRP PANEL DECISION WAS BINDING,  
24 DID THE BOARD MODIFY THE PANEL'S  
25 FINDING IN ANY WAY?"

26 MS. OZUROVICH: AND THEN THE ANSWER  
27 CONTINUES AS PAGE 80, LINE 7 THROUGH 9. (AS READ):

28 ANSWER: "I DON'T RECALL ENOUGH OF



1 THE PRECISE DETAILS, SO THERE'S --  
2 I DON'T RECALL, BUT NOT TO MY  
3 RECOLLECTION."

4 MS. COLON: AND THOSE ARE ALL OF THE  
5 EXCERPTS FOR CROCKER.

6 THE COURT: OKAY. SO THAT COMPLETES THE  
7 READING OF THE EXCERPTS OF THE DEPOSITION OF  
8 DR. STEPHEN CROCKER. THANK YOU.

9 ALL RIGHT. AND YOU MAY PROCEED WITH THE  
10 READING OF THE EXCERPTS FROM THE DEPOSITION OF MIKE  
11 SILBER TAKEN ON MAY 9, 2018, IN THIS ACTION.

12 MS. COLON: THE FIRST EXCERPT FROM SILBER'S  
13 DEPOSITION WILL BE PAGE 22, LINE 20 THROUGH LINE 23.  
14 (AS READ):

15 QUESTION: "ASIDE FROM THE  
16 ORGANIZATIONS THAT YOU MENTIONED  
17 EARLIER, YOU'RE ALSO A BOARD MEMBER  
18 OF ICANN; CORRECT?"

19 MS. OZUROVICH: ANSWER: "CORRECT."

20 MS. COLON: THE NEXT EXCERPT WILL BE FROM  
21 PAGE 22, LINE 24, TO PAGE 23, LINE 3. (AS READ):

22 QUESTION: "OKAY. AND HOW LONG  
23 HAVE YOU BEEN AN ICANN BOARD  
24 MEMBER?"

25 MS. OZUROVICH: ANSWER: "IT'S  
26 ALMOST NINE YEARS."

27 MS. COLON: QUESTION: "SINCE 2009?"

28 MS. OZUROVICH: ANSWER: "CORRECT."

1 MS. COLON: THE NEXT EXCERPT WILL BE FROM  
2 PAGE 23, LINE 4 THROUGH LINE 10. (AS READ):

3 QUESTION: "AND YOU ARE CURRENTLY A  
4 MEMBER OF THE NEW GTLD PROGRAM  
5 COMMITTEE?"

6 MS. OZUROVICH: ANSWER: "THE NGCP  
7 HAS BEEN COLLAPSED AS BEST AS I  
8 RECALL. SORRY. I THINK WE  
9 MOTHBALLED IT. I DON'T THINK WE  
10 DISPOSED OF IT ENTIRELY, BUT IT  
11 DOESN'T OPERATE AT THE MOMENT. BUT  
12 PREVIOUSLY I WAS A MEMBER OF THE  
13 NGCP."

14 MS. COLON: THE NEXT EXCERPT IS AT PAGE 24,  
15 LINE 10 THROUGH LINE 19. (AS READ):

16 QUESTION: "WHEN DID THAT CONFLICT  
17 ASSESSMENT TAKE PLACE?"

18 MS. OZUROVICH: ANSWER: "IT WAS  
19 AROUND THE TIME THAT THE COMMITTEE  
20 WAS CONSTITUTED. IT WAS IN THE  
21 PROCESS OF CONSTITUTION. I NEED TO  
22 GO BACK AND LOOK AT THE -- AGAIN,  
23 THE BOARD RESOLUTION SETTING UP THE  
24 COMMITTEE TO GIVE YOU AN EXACT  
25 DATE."

26 MS. COLON: "DO YOU RECALL A YEAR  
27 THAT TOOK PLACE?"

28 MS. OZUROVICH: ANSWER: "IF I

1                   RECALL CORRECTLY, THAT WAS IN 2011.  
2                   BUT, AGAIN, I NEED TO  
3                   DOUBLE-CHECK."  
4                   MS. COLON: THE NEXT EXCERPT IS AT PAGE 29,  
5 LINE 20 THROUGH 23. (AS READ):  
6                   QUESTION: "WHEN DOES YOUR CURRENT  
7                   TERM AS AN ICANN BOARD MEMBER END?"  
8                   MS. OZUROVICH: ANSWER: "IT'S THE  
9                   AGM THIS YEAR, SO IT WILL BE IN  
10                  OCTOBER THIS YEAR."  
11                  MS. COLON: THE NEXT EXCERPT IS AT PAGE 117,  
12 LINE 14 THROUGH LINE 23. (AS READ):  
13                  QUESTION: "WHAT DO YOU RECALL  
14                  ABOUT WHAT THE BOARD DISCUSSED?"  
15                  MS. OZUROVICH: ANSWER: "THE BOARD  
16                  DISCUSSED THE DECLARATION, THE  
17                  REQUIREMENTS IN TERMS OF OUR  
18                  BYLAWS, THE APPLICANT GUIDEBOOK.  
19                  THERE WERE SOME QUESTIONS AROUND  
20                  THE FACT THE PANEL HAD MADE THE  
21                  DECLARATION BINDING WHILE THE  
22                  BYLAWS INDICATE THAT IT'S NOT  
23                  BINDING. THERE WAS A DISCUSSION AS  
24                  TO WHAT THAT WOULD MEAN, AND THEN  
25                  THERE WAS A DECISION TAKEN TO  
26                  ACCEPT THE FINDINGS AND THEN TO  
27                  MOVE FORWARD."  
28                  MS. COLON: THE LAST EXCERPT FOR SILBER IS

1 AT PAGE 144, LINE 21, THROUGH PAGE 145, LINE 8.

2 (AS READ):

3 QUESTION: "AND I'M GOING TO  
4 INTRODUCE EXHIBIT 20. THIS IS AN  
5 E-MAIL THAT YOU WROTE; CORRECT?"

6 MS. OZUROVICH: ANSWER: "CORRECT."

7 MS. COLON: QUESTION: "AND DO YOU  
8 AGREE WITH YOUR STATEMENT TOWARDS  
9 THE BOTTOM OF THIS E-MAIL THAT THE  
10 PANEL LIMITED ITS FINDINGS TO THE  
11 MANNER IN WHICH THE GAC ADVICE WAS  
12 TREATED ONLY?"

13 MS. OZUROVICH: ANSWER: "THAT IS  
14 MY UNDERSTANDING."

15 THE COURT: ALL RIGHT. DOES THAT COMPLETE  
16 THE READING OF THE DEPOSITION EXCERPTS DESIGNATED BY  
17 BOTH SIDES THAT THE COURT HAS APPROVED?

18 MS. COLON: YES, YOUR HONOR.

19 MS. OZUROVICH: YES, YOUR HONOR.

20 THE COURT: OKAY. THANK YOU, BOTH.

21 ALL RIGHT. IS THERE ANY OTHER EVIDENCE THAT  
22 THE PLAINTIFF WISHES TO PRESENT IN ITS CASE?

23 MS. COLON: NO, YOUR HONOR.

24 THE COURT: OKAY. DOES THE PLAINTIFF REST  
25 ITS CASE ON PHASE I OF THE BIFURCATED TRIAL ON THE  
26 ISSUE OF AFFIRMATIVE DEFENSE OF JUDICIAL ESTOPPEL?

27 MS. COLON: YES, YOUR HONOR.

28 THE COURT: OKAY. THANK YOU.

1 MR. LEVEE, DOES THE DEFENDANT HAVE ANY  
2 REBUTTAL CASE?

3 MR. LEVEE: NO, YOUR HONOR.

4 THE COURT: OKAY. THANK YOU.

5 SO BOTH SIDES HAVE RESTED THEIR CASES.  
6 AND -- PLAINTIFF RESTS ITS CASE -- PLAINTIFF HAS  
7 RESTED ITS CASE AS WELL?

8 MR. LEVEE: WELL, ICANN IS THE DEFENDANT.

9 THE COURT: I'M SORRY. DEFENDANT.

10 MR. LEVEE: YES. DEFENDANT ICANN HAS RESTED  
11 ITS CASE.

12 THE COURT: OKAY. THANK YOU. THANK YOU  
13 VERY MUCH.

14 ALL RIGHT. SO THE PRESENTATION OF EVIDENCE  
15 HAS BEEN COMPLETED. BOTH PLAINTIFF AND DEFENDANT  
16 ICANN HAVE RESTED THEIR CASES.

17 AND, SO, NOW, THE COURT IS GOING TO ORDER  
18 THAT CLOSING ARGUMENTS BE PRESENTED BY WRITTEN  
19 CLOSING-ARGUMENT BRIEFS.

20 AND DID YOU GET A CHANCE TO TALK OVER THE  
21 BREAK ABOUT THE LOGISTICS ON THE BRIEFS AS FAR AS A  
22 DATE WHEN YOU BOTH AGREE THEY SHOULD BE FILED?

23 MR. BROWN: I THINK WE'RE IN AGREEMENT THAT  
24 IT WOULD BE THREE WEEKS FROM TODAY AS WE DISCUSSED  
25 EARLIER.

26 MR. LEVEE: YES, YOUR HONOR.

27 THE COURT: OKAY. GREAT. APPRECIATE THAT.  
28 SO DO BOTH SIDES AGREE AND STIPULATE THAT

1 PLAINTIFF DCA AND DEFENDANT ICANN WILL EACH FILE ONE  
2 CLOSING ARGUMENT BRIEF NO LATER THAN  
3 MARCH 1, 2019?

4 PLAINTIFF?

5 MR. BROWN: YES, YOUR HONOR. THAT'S FINE.

6 THE COURT: THANK YOU.

7 AND DEFENDANT ICANN?

8 MR. LEVEE: YES, YOUR HONOR.

9 THE COURT: OKAY. THANK YOU. IT IS SO  
10 ORDERED.

11 AND THE COURT ORDERS THAT THE -- I'VE GIVEN  
12 SOME THOUGHT TO THE REQUEST FOR -- TO EXPAND THE PAGE  
13 LIMITATION.

14 I'M GOING TO ORDER THAT EACH SIDE'S CLOSING  
15 ARGUMENT BRIEF SHALL NOT EXCEED 20 PAGES IN LENGTH.

16 AND THE COURT ALSO ORDERS THAT EACH SIDE  
17 SHALL LODGE A COURTESY COPY, HARD COPY OF -- COURTESY  
18 COPY OF THEIR CLOSING ARGUMENT BRIEF DIRECTLY IN  
19 DEPARTMENT 53 NO LATER THAN APRIL 4, 2019. THAT'S --  
20 BECAUSE MARCH 1 IS A FRIDAY, SO -- I'M SORRY. APRIL  
21 2. THAT'S THE NEXT COURT DAY.

22 MR. BROWN: YOUR HONOR, I THINK YOU MAY HAVE  
23 MISSPOKEN. MARCH? THE FIRST MONDAY IN MARCH, I  
24 BELIEVE.

25 THE COURT: LET ME SEE. I'M SORRY. YOU'RE  
26 RIGHT. I WAS LOOKING AT THE WRONG MONTH. THANK YOU.  
27 MARCH 4. THANK YOU.

28 OKAY. SO JUST TO BE CLEAR, THE COURT ALSO

1 ORDERS EACH PARTY TO FILE A COURTESY COPY OF THEIR  
2 CLOSING ARGUMENT BRIEF -- TO ACTUALLY LODGE IT  
3 DIRECTLY IN DEPARTMENT 53 NO LATER THAN MARCH 4,  
4 2019. THANK YOU FOR THE CORRECTION.

5 ALL RIGHT. AND DO PLAINTIFF AND DEFENDANT  
6 ICANN STIPULATE TO PROVIDE COPIES OF THE REPORTER'S  
7 TRANSCRIPTS FOR PHASE I OF THE BIFURCATED TRIAL TO  
8 THE COURT?

9 MS. COLON: YES, YOUR HONOR.

10 MR. BROWN: YES.

11 THE COURT: AND DEFENSE?

12 MR. LEVEE: YES, YOUR HONOR. OF COURSE.

13 THE COURT: THANK YOU. I APPRECIATE THAT.  
14 WHEN WILL YOU RECEIVE THE TRANSCRIPTS? DO  
15 YOU KNOW?

16 MR. LEVEE: BY ONE WEEK FROM TODAY.

17 THE COURT: OKAY. HOW ABOUT LODGING THE  
18 TRANSCRIPTS WITH THE COURT -- COPIES OF THE  
19 REPORTER'S TRANSCRIPTS WITH THE COURT NO LATER THAN  
20 FEBRUARY 22. THAT WOULD BE TWO WEEKS FROM TODAY.

21 MR. BROWN: THAT'S FINE, YOUR HONOR.

22 MR. LEVEE: THAT'S FINE, YOUR HONOR.

23 THE COURT: THAT WORKS FOR BOTH SIDES?

24 MR. LEVEE: I ASSUME YOU DON'T WANT BOTH  
25 SIDES TO LODGE --

26 THE COURT: NO. IF YOU WANT ME TO ORDER ONE  
27 OF YOU, THAT WILL BE FINE.

28 MR. BROWN: I THINK WE CAN WORK THIS OUT.

1 THE COURT: I THINK SO, TOO.

2 MR. LEVEE: JUST TO BE CLEAR, SINCE WE'RE  
3 THE MOVING PARTY ON THE AFFIRMATIVE DEFENSE, WE'RE  
4 HAPPY TO LODGE IT.

5 THE COURT: OKAY. I APPRECIATE THAT. THE  
6 ORDER -- THAT WAS AMBIGUOUS, ACTUALLY.

7 SO -- ALL RIGHT. SO THE COURT ORDERS --  
8 PURSUANT TO STIPULATION OF THE PARTIES, THE COURT  
9 ORDERS PLAINTIFF -- I'M SORRY.

10 MR. BROWN: WOULD BE DEFENDANT.

11 THE COURT: DEFENDANT. YEAH.

12 DEFENDANT, ICANN, TO LODGE COPIES OF THE  
13 REPORTER'S TRANSCRIPTS FOR PHASE I OF THE BIFURCATED  
14 TRIAL IN DEPARTMENT 53 NO LATER THAN FEBRUARY 22,  
15 2019.

16 I'M GOING TO CONTINUE THE TRIAL ON PHASE I  
17 OF THE BIFURCATED TRIAL TO APRIL 4, 2019.

18 IS THAT DATE AVAILABLE FOR BOTH SIDES?

19 MR. LEVEE: IN TERMS OF APPEARING IN COURT,  
20 YOUR HONOR?

21 THE COURT: YES.

22 MR. LEVEE: IF YOU WOULD HOLD ONE SECOND.

23 THE COURT: I'LL EXPLAIN WHAT THE PURPOSE OF  
24 THAT IS IN A MOMENT.

25 MR. BROWN: LET ME JUST DOUBLE-CHECK AS  
26 WELL.

27 MS. COLON: APRIL 4TH, YOUR HONOR?

28 THE COURT: YES.



1 MR. BROWN: I'M AVAILABLE ON THE 4TH.

2 MR. LEVEE: AS AM I.

3 THE COURT: OKAY. THANK YOU.

4 SO THE COURT CONTINUES THE TRIAL ON PHASE I  
5 OF THE BIFURCATED TRIAL TO APRIL 4TH, 2019, AT 10:00  
6 A.M.

7 THE COURT ALSO CONTINUES THE TRIAL SETTING  
8 CONFERENCE REGARDING PHASE II ON THE REMAINING ISSUES  
9 OF THE TRIAL ON THE SAME DATE, APRIL 4, 2019, AT  
10 10:00 A.M.

11 SO THE CONTINUED TRIAL, I'M NOT GOING TO  
12 RECEIVE ANYMORE EVIDENCE. THE EVIDENCE --  
13 PRESENTATION OF EVIDENCE HAS BEEN CLOSED.

14 IT'S POSSIBLE THAT I MAY -- I'M CONTINUING  
15 IT TO THAT DATE BECAUSE IT'S POSSIBLE AFTER I REVIEW  
16 THE CLOSING ARGUMENT BRIEFS, I MAY HAVE SOME  
17 QUESTIONS FOR COUNSEL ON APRIL 4.

18 ALTERNATIVELY, I MAY BE READY TO ANNOUNCE MY  
19 TENTATIVE DECISION ON THAT DATE, AND I MAY ANNOUNCE  
20 IT THAT DATE.

21 ALTERNATIVELY, I MAY DECIDE BEFORE THAT DATE  
22 THAT I HAVE ENOUGH INFORMATION AND UNDERSTANDING OF  
23 THE ISSUES TO ISSUE A TENTATIVE DECISION, AND THE  
24 COURT MAY EXERCISE ITS DISCRETION TO TAKE THE MATTER  
25 UNDER SUBMISSION BEFORE APRIL 4, 2019, AND ISSUE A  
26 TENTATIVE DECISION WITHOUT FURTHER ARGUMENT; OKAY?

27 MR. LEVEE: IF WE HAVEN'T HEARD FROM THE  
28 COURT, WOULD IT BE YOUR INTENTION ON APRIL 4 THAT YOU

1 WOULD ISSUE A TENTATIVE AND COUNSEL WOULD ARGUE THE  
2 TENTATIVE THAT DAY?

3 THE COURT: PROBABLY WOULDN'T ISSUE A  
4 TENTATIVE. IF I HAVE QUESTIONS -- IT'S POSSIBLE.  
5 ALL OF THOSE ARE A POSSIBILITY. I COULD ISSUE A  
6 TENTATIVE.

7 BUT IF YOU HAVEN'T HEARD FROM THE COURT,  
8 THEN WHAT'S MOST LIKELY IS I MAY HAVE QUESTIONS FOR  
9 YOU ON APRIL 4 --

10 MR. LEVEE: THANK YOU.

11 THE COURT: -- TO ADDRESS.

12 MR. LEVEE: THANK YOU.

13 MR. BROWN: THANK YOU, YOUR HONOR.

14 THE COURT: BUT IF BOTH COUNSEL WANT TO CALL  
15 THE CLERK AND FIND OUT THE STATUS OF THE MATTER AS  
16 APRIL 4 APPROACHES, YOU'RE WELCOME TO DO THAT. YOU  
17 CAN JOINTLY CALL THE CLERK.

18 MR. BROWN: OKAY. THANK YOU.

19 THE COURT: OKAY. I THINK THAT COVERS  
20 EVERYTHING FOR TODAY.

21 IS THERE ANYTHING ELSE WE NEED TO ADDRESS,  
22 MR. BROWN OR MS. COLON?

23 MR. BROWN: I DON'T BELIEVE SO.

24 MS. COLON: I DON'T THINK SO, YOUR HONOR.

25 THE COURT: OKAY. THANK YOU.

26 MR. LEVEE OR MR. BURKE.

27 MR. LEVEE: WE ARE GOOD, YOUR HONOR. THANK  
28 YOU.

1 MS. BURKE: THANK YOU.

2 THE COURT: OKAY. THANK YOU, EVERYONE.

3 SO AT THE END OF THE SESSION TODAY, I'M  
4 GOING TO ASK COUNSEL FOR BOTH SIDES TO SEE THE CLERK  
5 ABOUT LOGISTICS FOR -- ON HANDLING THE EXHIBITS AND  
6 TO MAKE SURE -- MAYBE YOU'VE ALREADY DONE THAT, BUT  
7 ALSO TO MAKE SURE THAT THE CLERK HAS ALL OF THE  
8 EXHIBITS AS WELL; OKAY?

9 MS. BURKE: YES, YOUR HONOR.

10 THE COURT: OKAY. BOTH SIDES WAIVE NOTICE  
11 OF THE COURT 'S ORDERS MADE TODAY?

12 PLAINTIFF?

13 MR. BROWN: YES.

14 MS. COLON: YES, YOUR HONOR.

15 THE COURT: DEFENDANT ICANN?

16 MR. LEVEE: YES, YOU YOUR HONOR.

17 MS. BURKE: YES.

18 THE COURT: THANK YOU, EVERYONE.

19 AND BY THE WAY, I APPRECIATE THE  
20 PROFESSIONALISM BY BOTH SIDES; THE CIVILITY IN HOW  
21 YOU TREATED THE WITNESSES, TREATED EACH OTHER, AND  
22 THE VERY HIGH LEVEL OF PRACTICE THAT I SAW ON BEHALF  
23 OF ALL -- BY ALL OF THE ATTORNEYS, AND I APPRECIATE  
24 THAT.

25 MS. BURKE: THANK YOU, YOUR HONOR.

26 MR. BROWN: THANK YOU, YOUR HONOR.

27 MS. COLON: THANK YOU, YOUR HONOR.

28 MR. LEVEE: THANK YOU, YOUR HONOR.

1 THE COURT: WE'RE OFF THE RECORD.

2

3 (AT 3:33 P.M. THE PROCEEDING CONCLUDED.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

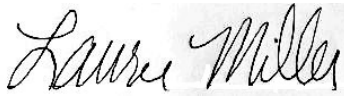
FOR THE COUNTY OF LOS ANGELES

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 313 THROUGH 427,  
COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE  
PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE  
ABOVE-ENTITLED CAUSE ON FEBRUARY 8, 2019.

DATED THIS 13TH DAY OF FEBRUARY, 2019.

  
\_\_\_\_\_, CSR #6457  
LAURIE MILLER, COURT REPORTER

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