

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)
Independent Review Panel**

CASE # 50 2013 001083

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

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

Represented by Mr. Arif H. Ali, Ms. Marguerite C. Walter and Ms. Erin Yates of Weil, Gotshal & Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 20005, U.S.A., and Ms. Meredith Craven of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, NY 10153, U.S.A.

And

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

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

Claimant and the Respondent are hereafter jointly referred to as the "Parties".

PROCEDURAL ORDER No. 3

1. This Procedural Order No. 3 is rendered after considering the Parties' written submissions dated 30 August 2014 and following a telephone conference call with their representatives on 1 September 2014.
2. The Parties shall adhere going forward to the following timetable agreed upon in part among themselves and in other respects completed with the Panel's assistance and direction:
 - a. Simultaneous exchange of request for documents by **2 September 2014 at 12 p.m. Eastern Time, 9:00 a.m. Pacific**

- Time.**¹ Request for documents shall be made taking into consideration ICANN's Bylaws, the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process, the International Dispute Resolution Procedures of the ICDR (Amended and Effective 1 June 2009), the ICDR Guidelines for Arbitrators concerning Exchanges of Information, and where appropriate, taking guidance from the IBA Rules on the Taking of Evidence in International Arbitration (29 May 2010) (together the "IRP Procedure Guidelines");
- b. Objections to request for documents, if any, shall be filed in accordance with the IRP Procedure Guidelines by **9 September 2014**, close of business in the location of each party's representative;
 - c. Voluntary production of documents and any application to the Panel for request for documents shall be submitted by **16 September 2014**, close of business in the location of each party's representatives;
 - d. Production of documents ordered to be produced by the Panel shall be completed by **2 October 2014**;
 - e. Exchange and filing of witness statements in accordance with the IRP Procedure Guidelines and this Procedural Order No. 3 shall be completed by **3 November 2014** for DCA Trust and **3 December 2014** for ICANN;
 - f. Exchange and filing of briefs in accordance with the IRP Procedure Guidelines and this Procedural Order No. 3 shall be completed by **3 November 2014** for DCA Trust and **3 December 2014** for ICANN. The briefs shall not exceed **30 pages**;
 - g. Notification of names and other contact details relating to the witnesses in accordance with the IRP Procedure Guidelines and this Procedural Order No. 3 shall be submitted by **26 November 2014 at 12 p.m. Eastern Time/9 a.m. Pacific Time**;
 - h. Confirmation of names of witnesses to be examined at the hearing in accordance with the IRP Procedure Guidelines and this Procedural Order No. 3 shall be submitted by **5 December 2014 at 12 p.m. Eastern Time/9 a.m. Pacific Time**.
3. The Panel will endeavor to deliver its decision on the Parties' request for documents following their application of 16 September 2014 by or shortly after **25 September 2014**. Should the Panel require additional time to deliver its decision in that regard, it will then provide the Parties,

¹ This date has already passed, and the Parties have already presumably, completed their exchange.

if appropriate, with additional time to comply with the production of documents contemplated in paragraph 2 (d) above.

4. There will be a prehearing conference call with the Parties on **6 December 2014 at 11 a.m. Eastern Time, 8 a.m. Pacific Time and 5 p.m. Paris Time**. The Parties will be provided with an appropriate agenda for the conference call in advance of the call.
5. The in-person hearing for this proceeding is fixed to take place in Washington, D.C. on **19 and 20 December 2014**. Details concerning the location, and start and finish times for the hearing will be provided to the Parties in due course.
6. The following additional directions are set out by the Panel to assist the Parties' representatives. If either Claimant or Respondent has any comments with respect to this paragraph 6, they are invited to send the same to the Panel for consideration as soon as possible and certainly no later than by **5 September 2014 at 12 p.m. Eastern Time/9 a.m. Pacific Time**;

- i) Extensions of time shall be granted by the Panel in its discretion, in exceptional cases only and provided that a request is submitted before or, if not possible, immediately after the event preventing a party from complying with a given deadline.
- ii) All notifications, submissions and communications from the Parties to the Panel may be made by email. Exhibits shall be submitted in electronic format (preferably as searchable PDF files) simultaneously with the submission they accompany, by email and/or posted on the dedicated existing FTP server. Unless otherwise directed by the Panel, it shall not be necessary for the Parties to submit hard copies of their notifications, submissions, communications or exhibits.
- iii) The Parties shall send copies of correspondence between them to the Panel only if it pertains to a matter in which the Panel is required to take some action, or be apprised of some relevant event.

Written submissions

- iv) The paragraphs of all written submissions shall be numbered consecutively and the submissions shall include a table of contents.

- v) For each of their submissions, the Parties will clearly indicate the evidence they invoke in support of any assertion or argument: including any documents (with indication of the page and paragraphs), witness statement etc. that they rely upon.
- vi) After exchange of briefs, neither party shall be allowed to make any new allegations or present any new documentary evidence, as well as written witness statements, unless that party submits a reasoned request to the Panel showing that it had, without fault, no possibility or reason to make such new allegation or to offer such new evidence previously. The Panel shall decide on the admissibility and merits of such a request.

Documentary evidence

- vii) The written submissions shall be accompanied by the documentary evidence and the testimonial evidence relied upon by Claimant and Respondent, respectively, including any bylaw, legislation, doctrine and case law relied upon by them.
- viii) The hearing documents shall be submitted in the following form:
 - a. all exhibits shall be numbered consecutively;
 - b. the number of each exhibit containing a document submitted by Claimant shall be preceded by the letter "C-#" and the number of each exhibit containing a document submitted by Respondent shall be preceded by the letter "R-#";
- ix) All documentary evidence submitted to the Panel shall be deemed true and complete, including evidence submitted in the form of copies, unless a party disputes its authenticity;

Witness Statements

- x) Each witness statement shall:
 - a. contain the name and address of the witness, his or her relationship to any of the Parties (past and present, if any) and a description of his or her qualifications;
 - b. contain a full and detailed description of the facts, and the source of the witness' information as to those facts, sufficient to serve as that witness' evidence in the matter in dispute;

- c. contain an affirmation of the truth of the statement; and
 - d. be signed by the witness and give the date and place of signature.
- xi) If a party disputes the evidence put forward by a witness, it should request the presence of that witness at the hearing for cross-examination, as provided in section 6 (xii);
 - xii) Each party shall notify the other party, with a copy to the Panel, of the names of the witnesses of the other party whom that party wishes to cross-examine at the hearing, within the time limit determined by the Panel in this Procedural Order No. 3;
 - xiii) Being duly informed of the date of the hearing, the Parties will immediately after the receipt of this Procedural Order No. 3, or at least, as quickly as possible, inform their potential witnesses of the relevant dates set out in this Order to secure their presence at the hearing and avoid any disruption of the procedural calendar;
 - xiv) Witnesses shall be summoned by the party, which relies on their evidence. If a witness fails to attend at the hearing after having been duly notified to do so without a valid reason, the Panel shall in its discretion draw the necessary inferences and reach appropriate conclusions;
 - xv) The admissibility, relevance, weight and materiality of the evidence offered by a witness or a party shall be determined by the Panel;

Witness hearing

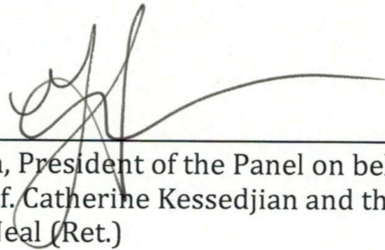
- xvi) The procedure for examining witnesses at the in-person hearing in Washington, D.C. shall be as follows:
 - a. Witnesses will be heard after a short opening statement by the party producing the witness and subsequently by the opposing party;
 - b. Unless otherwise agreed by the Parties, the order of appearance of witnesses will be decided by the Panel at the prehearing conference call or before;
 - c. Each witness shall first be invited to confirm or deny his or her written statement;
 - d. The Panel shall have the right to examine any witness and to interject with any questions it may have during the

- examination by counsel. The Panel shall also ensure that each party has the opportunity to re-examine a witness with respect to any questions asked by the Panel;
- e. After a short introduction by the party producing the witness, the other party shall proceed to cross-examine the witness, followed by a re-examination by the party producing the witness. The scope of re-examination shall be limited to matters that have arisen in the cross-examination only.
 - f. The Panel shall at all times have complete control over the procedure in relation to a witness giving oral testimony, including the right to limit or exclude any question to, or to refuse to a party to examine a witness when it considers that the factual allegation(s) on which the witness is being examined is (are) sufficiently proven by exhibits or other witnesses or that the particular witness's examination as such is irrelevant, immaterial or duplicative.
- xvii) Witnesses will not be heard under oath but the President shall draw their attention to the fact that the Panel requests them to tell the truth, the entire truth and nothing but the truth and shall ask them to confirm that they will comply with this request.
- xviii) Witnesses of fact may not be present in the hearing room during the examination of other witnesses of fact, unless the Parties agree otherwise. This rule, however, does not apply to Parties' representatives who have the right to remain in the hearing room at all times except during the examination of the Parties' representative(s) of the other party.
- xix) Unless expressly authorized or requested by the Panel, documents may only be submitted together with the written submissions, which refer to them. In particular, new documents shall not be admitted at the hearing, save for exceptional circumstances as determined by the Panel. In such circumstance, the other party shall be afforded sufficient opportunity to study and make observations on the new document.
- xx) The hearing shall be transcribed by a stenographer if the Parties agree. The retaining and engagement of the stenographer will be done directly by the Parties.

This Procedural Order No. 3 has seven (7) pages and it may be amended or supplemented and the procedures for the conduct of this proceeding modified, pursuant to such further directions or Procedural Orders as the Panel may from time to time issue. The members of the Panel have all reviewed this Procedural Order No. 3 and agreed that the President may sign it alone on their behalf.

Place of IRP, Los Angeles, California.

Dated 5 September 2014.

A handwritten signature in black ink, appearing to be 'B. Barin', written over a horizontal line. The signature is fluid and cursive.

Babak Barin, President of the Panel on behalf of
himself, Prof. Catherine Kessedjian and the Hon.
Richard C. Neal (Ret.)