

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DOTCONNECTAFRICA TRUST, ) ICDR CASE NO. 50 117 T 1083 13  
 )  
Claimant, )  
 )  
and )  
 )  
INTERNET CORPORATION FOR ASSIGNED )  
NAMES AND NUMBERS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**ICANN'S RESPONSE TO CLAIMANT'S AMENDED NOTICE**

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## INTRODUCTION

1. The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby submits this Response to the Amended Notice of Independent Review Process (“Notice”) submitted by claimant DotConnectAfrica Trust (“DCA”) on 10 January 2014.

2. These unique proceedings occur pursuant to Article IV, Section 3 of ICANN’s Bylaws, which creates a non-binding method of evaluating certain actions of ICANN’s Board of Directors.<sup>1</sup> This Independent Review Process Panel (“IRP Panel”) is “charged with comparing contested actions of the [ICANN] Board to the [ICANN] Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws.”<sup>2</sup> In particular, the IRP Panel is to “apply a defined standard of review to the IRP request, focusing on”:

- a. did the Board act without conflict of interest in taking its decision?;
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?<sup>3</sup>

3. DCA’s Notice asserts a myriad of allegations based on lengthy – and often extremely inflammatory – rhetoric that DCA sent to the ICANN Board over the course of the last two years. But the record reflects that DCA’s failings were the result of the fact that DCA needed, but could not ultimately obtain, the support of the majority of countries on the

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<sup>1</sup> ICANN’s Bylaws, *available at* <http://www.icann.org/en/about/governance/bylaws> and Ex. C-10. Citations to “Ex. C- \_\_\_” refer to exhibits submitted with Claimant DCA’s Notice, and citations to “Ex. R- \_\_\_” refer to exhibits submitted with Respondent ICANN’s Response.

<sup>2</sup> Bylaws, Art. IV, § 3.4 (Ex. C-10).

<sup>3</sup> *Id.*

African continent for DCA's application to operate the .AFRICA gTLD. Instead, the majority of those countries opted to support a different company to operate .AFRICA. Only one company could operate the .AFRICA gTLD, and the fact these countries did not support DCA's application hardly means that the ICANN Board violated its Bylaws or Articles of Incorporation.

4. In these proceedings, DCA challenges the 4 June 2013 decision of the ICANN Board New gTLD Program Committee ("NGPC"), which has delegated authority from the ICANN Board to make decisions regarding the New gTLD Program. In that decision, the NGPC unanimously accepted advice from ICANN's Governmental Advisory Committee ("GAC") that DCA's application for .AFRICA should not proceed.<sup>4</sup> DCA argues that the NGPC should not have accepted the GAC's advice. DCA also argues that ICANN's subsequent decision to reject DCA's Request for Reconsideration was improper.

5. In this response, ICANN demonstrates that the challenged decisions of its Board were well within the Board's discretion. The Board did exactly what it was supposed to do under its Bylaws, its Articles of Incorporation, and the Applicant Guidebook ("Guidebook") that the Board adopted for implementing the New gTLD Program.<sup>5</sup> In particular, the record reflects the following:

- the African Union Commission ("AUC"), an intergovernmental organization, decided (via a request for proposal ("RFP") selection process that DCA boycotted

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<sup>4</sup> See Annex 1 to NGPC Resolution No. 2013.06.04.NG01, *available at* <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf> and Ex. C-45 [Hereinafter, NGPC Scorecard]; *see also* 4 June 2013 Resolution, *available at* <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm> and Ex. R-1.

<sup>5</sup> As noted in the Preamble of the New gTLD Applicant Guidebook (Ex. C-11), the Guidebook was the product of an extensive evaluation process that involved public comment on multiple drafts.

- because it did not wish to compete) to select one of DCA’s competitors that participated in the RFP process, UniForum SA (“UniForum”), to submit an application for the .AFRICA gTLD;
- in order for DCA’s application to pass the ICANN evaluation process, DCA needed the support of 60% of the governments of Africa,<sup>6</sup> but by the time DCA submitted its application for .AFRICA, DCA had lost whatever support it previously had on the African continent;
  - ICANN properly investigated and rejected DCA’s assertion that two of ICANN’s Board members had conflicts of interest with regard to the .AFRICA applications;
  - the AUC had every right to support UniForum’s application, and the AUC’s support for UniForum was not “improper” in any way, nor did it make the AUC “biased” in a manner that should have resulted in ICANN disregarding the AUC’s views;
  - numerous African countries issued “warnings” to ICANN regarding DCA’s application, a signal from those governments that they had serious concerns regarding DCA’s application;
  - following the issuance of those warnings, the GAC issued “consensus advice” against DCA’s application;
  - ICANN then accepted the GAC’s advice, which was entirely consistent with ICANN’s Bylaws and the Guidebook;
  - ICANN properly denied DCA’s Request for Reconsideration.

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<sup>6</sup> See Guidebook, § 2.2.1.4.2.4 (Ex. C-11).

6. In short, the evidence establishes that the process worked exactly as it was supposed to work. The Guidebook establishes a strict framework for how applications for new gTLDs will be evaluated and processed, and the applicants for new gTLDs were fully aware that they had to meet each of the Guidebook’s requirements. No applicant has any “right” to a gTLD, nor can applicants ask ICANN to change the rules for considering gTLD applications, which is what DCA repeatedly requested once it realized that it did not have the requisite support of the countries of Africa. gTLD applications that relate to geographic regions such as Africa require the support of the countries that make up those regions.<sup>7</sup> DCA always knew this, and while it purportedly had some preliminary support from a handful of countries in Africa, in the end those countries chose to support the application filed by one of DCA’s competitors, as they had every right to do. ICANN’s ultimate acceptance of the GAC’s consensus advice that DCA’s application should not proceed was entirely consistent with ICANN’s Bylaws, Articles of Incorporation, and the Guidebook.

#### **BACKGROUND FACTS AND STANDARD OF REVIEW**

7. ICANN was formed in 1998. It was (and remains) a California not-for-profit public benefit corporation. As set forth in Article I, Section 1 of its Bylaws, its mission “is to coordinate, at the overall level, the global Internet’s system of unique identifiers, and in particular to ensure the stable and secure operation of the Internet’s unique identifier systems.”<sup>8</sup> ICANN has a Board of Directors consisting of sixteen voting directors and four non-voting liaisons.

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<sup>7</sup> *See id.*

<sup>8</sup> Bylaws, Art. I, § 1 (Ex. C-10).

8. In addition to ICANN's Board of Directors, ICANN has a number of "Supporting Organizations" that develop policy, which the ICANN Board adopts if implementable. There is an "Address Supporting Organization" that addresses issues relating to Internet addresses, a "Country-Code Names Supporting Organization" that deals with policies related to country-code TLDs (top level domains operated for the benefit of specific countries such as .DE for Germany and .JP for Japan), and a "Generic Names Supporting Organization" that establishes policies relating to generic TLDs ("gTLDs") (such as .COM and .INFO).

9. In addition, a number of "Advisory Committees" advise the Board on various topics described in the ICANN Bylaws. Most relevant to this matter is the Governmental Advisory Committee or GAC, established pursuant to Article XI, Section 2.1 of the Bylaws, which is to "consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues."<sup>9</sup> Membership in the GAC is open to all national governments and distinct economies as recognized in international fora. Section 2.1.j. of Article XI of the Bylaws provides:

The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN

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<sup>9</sup> *Id.* at Art. XI, § 2.1.

Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.<sup>10</sup>

10. In its early years, ICANN focused on increasing the number of Internet registrars that could sell domain name registrations to consumers.<sup>11</sup> ICANN also wanted to expand, although more slowly, the number of Internet registries that operate Top Level Domains. In 2000, ICANN approved a limited number of new TLDs, including .NAME and .INFO, in a “proof of concept” phase that was designed to confirm that adding additional TLDs on the Internet would not adversely affect the stability and security of the Internet. In 2004-05, ICANN approved a handful of additional TLDs.

11. The New gTLD Program, which the ICANN Board approved in June 2011, constitutes by far ICANN’s most ambitious expansion of the Internet’s naming system. The Program’s goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII and internationalized domain name (IDN) TLDs. In conjunction with this process, the Board issued various versions of the Guidebook, an extensive document that provides details to gTLD applicants and forms the basis for ICANN’s evaluation of new gTLDs applications. DCA attached to its Notice as Exhibit C-11 the 4 June 2012 version of the Guidebook. The Guidebook is divided into “Modules,” with Module 1 being the “introduction,” Module 2 providing “evaluation procedures,” Module 3 containing the “objection procedures,” and so forth.

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<sup>10</sup> *Id.* at Art. XI, § 2.1.j.

<sup>11</sup> When ICANN was first formed, only one registrar (Network Solutions, Inc.) existed for the sale of domain name subscriptions in the most widely-used registries of .COM and .NET. Today, there are hundreds of registrars, including companies operating on every continent. *See* ICANN-Accredited Registrars, *available at* <http://www.icann.org/registrar-reports/accredited-list.html>.

12. The New gTLD Program includes special requirements and procedures for applications for strings that represent geographic names. As set forth in Module 2 of the Guidebook, applications for strings that have been identified as a “macro geographical (continental) region,” such as DCA’s application for .AFRICA, must provide signed letters of support from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region. Applicants were encouraged to consult with relevant governments and enlist support prior to submitting an application.<sup>12</sup> As part of the evaluation procedures, a special panel known as the Geographic Names Panel (“GNP”) verifies the relevance and authenticity of the supporting documentation. If an application does not have the requisite support by the deadline imposed by the GNP, the application will fail the Geographic Names review and shall be ineligible for further consideration.<sup>13</sup>

13. All applications for new gTLDs are made available for review and public comment.<sup>14</sup> Concurrent with the public comment period, the GAC is able to issue “Early Warning” notices concerning particular applications. An Early Warning notice is not an official GAC statement against an application, but is intended to provide the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments. Applicants are advised that a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of consensus GAC Advice against it at a later stage in the process. Applicants that want to continue with

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<sup>12</sup> See Guidebook, § 2.2.1.4.2 (Ex. C-11).

<sup>13</sup> See *id.* at § 2.2.1.4.4.

<sup>14</sup> See *id.* at § 1.1.2.3.



their applications are encouraged to work with the relevant parties as soon as possible to address the concerns voiced by the GAC Early Warning.<sup>15</sup>

14. The Guidebook also sets out a process whereby the GAC may issue specific advice to ICANN concerning any application for a new gTLD. As set forth in Section 3.1 of the Guidebook, GAC Advice regarding a new gTLD application may include “consensus advice” in the following form:

The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.<sup>16</sup>

15. Where the GAC issues consensus advice concerning an application, the advice is published and ICANN promptly notifies the applicant, which is then given time to submit a response to the GAC advice for consideration by the Board. The Board is required to consider the GAC Advice “as soon as practicable.”<sup>17</sup>

16. After DCA’s application for .AFRICA was posted for comment, the application received GAC Early Warning notices from 17 GAC Members – the AUC, Benin, Burkina Faso, Comoros, Cameroon, Democratic Republic of Congo, Egypt, Gabon, Ghana, Kenya, Mali, Morocco, Nigeria, Senegal, South Africa, Tanzania and Uganda.<sup>18</sup> The notices, all nearly identical in substance, asserted that the AUC has the mandate of the African governments to establish .AFRICA as a geographic TLD, and that the AUC, through a RFP

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<sup>15</sup> See *id.* at § 1.1.2.4.

<sup>16</sup> *Id.* at § 3.1.

<sup>17</sup> *Id.*

<sup>18</sup> See GAC Early Warnings, available at <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings> and Exs. C-33, C-34. See also Declaration of Heather Dryden [hereinafter “Dryden Decl.”] at ¶ 8.

process, had already appointed UniForum as the registry operator to manage and administer the .AFRICA gTLD on behalf of the African community for the benefit of the African region.<sup>19</sup> The notices also asserted, among other things, that DCA's application did not have the requisite minimum support from the African governments, while UniForum's application had the support of over 39 of 54 individual national governments in Africa, which exceeds the 60% minimum governmental support required by the Guidebook for new geographic strings.<sup>20</sup>

17. DCA submitted to the ICANN Board and the GAC a response to the Early Warning notices.<sup>21</sup> DCA claimed, among other things, that the governments were "teleguided (or manipulated)" into submitting the notices, and that governments that once had endorsed DCA's application were now objecting to DCA's application. DCA also argued that "the process that led to the selection and appointment of UniForum . . . was not based on an open or transparent RFP Process," and that AUC's selection of UniForum made it impossible for DCA to obtain the necessary minimum level of support from African governments.<sup>22</sup> DCA indicated that it would await the outcome of ICANN's initial evaluation process (which, as noted above, would include a review to determine if the

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<sup>19</sup> See GAC Early Warnings (Exs. C-33, C-34).

<sup>20</sup> See *id.*

<sup>21</sup> See DCA Response to ICANN GAC Early Warning Advice, *available at* <http://www.dotconnectafrica.org/wp-content/uploads/2012/12/Response-to-the-ICANN-GAC-Early-Warning-Advice-against-the-.Africa-Application-Submitted-by-DotConnectAfrica-Trust.pdf> and Ex. C-35.

<sup>22</sup> *Id.* As noted above, DCA declined to participate in the AUC's process for selecting a registry operator for .AFRICA, making its objections to the selection of UniForum particularly hollow. 23 May 2011 DCA Press Release, *available at* <http://www.prlog.org/11503736-yes2dotafrica-say-no-to-african-union-expression-of-interest-eoi-for-dotafrica.html> and Ex. R-2. ICANN played no role in the AUC's selection process, and there would have been no role for ICANN to play.

application had the support of governments in the region) before approaching the AUC to try and obtain the required governmental support. DCA further argued that the Board should “waive this requirement [that geographic names have the support of the relevant countries] because of the confusing role that was played by the African Union.”<sup>23</sup> DCA’s decision to wait to try to obtain the support of the AUC until after the review by the Geographic Names Panel was exactly contrary to the Guidebook’s requirement that applicants demonstrate that they already had support from the governments in the geographic region.

18. The GAC met in Beijing China during April 2013. During that meeting, on 10 April 2013, the GAC discussed DCA’s application and reached consensus advice that DCA’s application should not proceed. Accordingly, the GAC advised the Board that, pursuant to Section 3.1 of the Guidebook, the GAC “has reached consensus on GAC Objection Advice” on DCA’s application for .AFRICA.<sup>24</sup>

19. The Guidebook provided that, once GAC Advice is published, applicants that are the subject of that advice are permitted to respond. On 8 May 2013, DCA submitted a lengthy response in which DCA claimed that “a Machiavellian effort has been actually orchestrated against our application . . . .”<sup>25</sup> DCA argued that ICANN should ignore the GAC, and that “the issue of government support [should] be made irrelevant in the process so

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<sup>23</sup> DCA Response to ICANN GAC Early Warning Advice (Ex. C-35) at 5.

<sup>24</sup> GAC Beijing Communiqué, *available at* <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> and Ex. C-43; *see also* Dryden Decl. at ¶¶ 12-13.

<sup>25</sup> DCA Response to GAC Advice, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1165-42560-en.pdf> and Ex. C-41 at 3.

that both contending applications for .Africa would be allowed to move forward . . . .”<sup>26</sup>  
DCA stated that it has “escalated this matter to the United States Congress,”<sup>27</sup> and that the  
AUC “used its political influence and diplomatic authority to push through the GAC  
Objection Advice, [which was] limpid proof that the AU remains convinced that it should  
determine the delegation outcome of .Africa, and not ICANN.”<sup>28</sup> DCA also claimed  
(beginning on page 10 of the response) that there was no consensus reached by the GAC  
because the GAC advisor for Kenya, who was unable to attend the GAC’s meeting in Beijing,  
had opposed the consensus advice on DCA’s application before the Communiqué was  
issued.<sup>29</sup>

20. On 4 June 2013, the ICANN Board, through the NGPC, after meeting on  
multiple occasions to discuss a plan for responding to the GAC’s Advice and having  
reviewed and considered DCA’s response, accepted the GAC’s Advice on DCA’s  
Application for .AFRICA. The NGPC indicated:

The NGPC accepts [the GAC] advice. The [Guidebook] provides that  
if “GAC advises ICANN that it is the consensus of the GAC that a  
particular application should not proceed. This will create a strong  
presumption for the ICANN Board that the application should not be  
approved.”<sup>30</sup>

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<sup>26</sup> *Id.* at 15.

<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> *Id.* at 10-14.

<sup>30</sup> NGPC Scorecard (Ex. C-45).

ICANN Staff was therefore directed not to approve DCA's application for .AFRICA, and DCA was invited to either withdraw its application or seek relief according to ICANN's accountability mechanisms (as in fact DCA has done).<sup>31</sup>

21. DCA thereafter filed a Request for Reconsideration for consideration by ICANN's Board Governance Committee ("BGC").<sup>32</sup> Reconsideration is an accountability mechanism available under ICANN's Bylaws and involves a review process administered by the BGC.<sup>33</sup> DCA's Request for Reconsideration expressed dissatisfaction with the Board's acceptance of GAC Advice on DCA's application and asked that the Board's decision be rescinded and DCA's application be reinstated. DCA argued that the Board should have consulted with independent experts before acting on the GAC Advice.<sup>34</sup>

22. After review and discussion, the BGC recommended denying DCA's Request for Reconsideration (and the Board, through the NGPC, approved the BGC's recommendation) on the grounds the Board is not required to seek input from independent experts in considering GAC Advice, and that the Board considered all material information before accepting the GAC Advice on DCA's application.<sup>35</sup>

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<sup>31</sup> *See id.*

<sup>32</sup> *See* DCA's Reconsideration Request (Request 13-4), *available at* <http://www.icann.org/en/groups/board/governance/reconsideration/request-dca-trust-19jun13-en.pdf> and Ex. C-46.

<sup>33</sup> *See* Bylaws, Art. IV, § 2 (Ex. C-10).

<sup>34</sup> *See* DCA's Reconsideration Request (Request 13-4) (Ex. C-46).

<sup>35</sup> *See* BGC Recommendation on Reconsideration Request 13-4, *available at* <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-dca-trust- and Ex. C-47>.

23. DCA, dissatisfied with the denial of its Request for Reconsideration, notified ICANN of its intent to seek independent review of ICANN's actions.<sup>36</sup> Independent Review is another accountability mechanism available under ICANN's Bylaws and is defined as a "separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws."<sup>37</sup>

24. The Independent Review Process ("IRP") is not a form of traditional dispute resolution (*i.e.*, mediation or arbitration), but is a process in which entities that deal with ICANN can have a further check-and-balance with respect to specific decisions of the ICANN Board, and specifically, whether the Board's actions are consistent with ICANN's Bylaws and Articles of Incorporation.<sup>38</sup>

25. ICANN's Bylaws support a deferential standard of review be applied when evaluating the actions of the ICANN Board, and the appointed IRP Panel is not asked to substitute its judgment for that of the Board. Instead, the IRP Panel is tasked with determining whether the Board's actions were inconsistent with ICANN's Articles of Incorporation or Bylaws.<sup>39</sup>

26. In April 2004, ICANN appointed the ICDR as ICANN's IRP Provider. The ICDR Rules, as supplemented by ICANN's Bylaws and Supplementary Procedures that the

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<sup>36</sup> See DCA's Notice of Intent (Ex. C-49).

<sup>37</sup> Bylaws, Art. IV, § 3 (Ex. C-10). Prior to initiating an independent review, parties are urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues in dispute. *Id.* at § 3.14. The parties engaged in the cooperative engagement process before commencing the independent review at issue here but were not able to resolve the dispute.

<sup>38</sup> See Bylaws, Art. IV, §§ 3.2, 3.4 (Ex. C-10).

<sup>39</sup> See *id.*

ICDR has adopted specially for IRP proceedings, apply here.<sup>40</sup> Unlike a traditional arbitration or mediation through the ICDR, the Bylaws expressly provide that the IRP should be conducted via “email and otherwise via the Internet to the maximum extent feasible.” The IRP panel may also hold meetings via telephone where necessary, and “[i]n the unlikely event that a telephone or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.”<sup>41</sup>

27. Consistent with ICANN’s Bylaws, the IRP Panel is supposed to issue a written declaration designating, among other things, the prevailing party.<sup>42</sup> The Board, “where feasible,” shall consider the IRP Panel’s declaration at the Board’s next meeting.<sup>43</sup> The IRP Panel’s declaration is not binding on the parties because the Board is not permitted to outsource its decision-making authority. The Board will, of course, give serious consideration to the IRP Panel’s declaration.

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<sup>40</sup> In the event of any inconsistency between the Supplementary Procedures and the ICDR’s Rules, the Supplementary Procedures shall govern. Bylaws, Art. IV, § 3.8 (Ex. C-10); *see also* ICDR Supplementary Procedures for Internet Corporation for Assigned Names and Numbers, Independent Review Process, § 2, *available at* <https://www.adr.org/cs/groups/international/documents/document/z2uy/mde0/~edisp/adrstage2014403.pdf> [Hereinafter, ICDR Supplementary Procedures] and Ex. C-3.

<sup>41</sup> Bylaws, Art. IV, § 3.12 (Ex. C-10); ICDR Supplementary Procedures, ¶ 10 (Ex. C-3). The Bylaws provide that requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument (DCA’s Notice was 25 pages), and that ICANN’s response shall not exceed that same length. DCA states in footnote 1 of its Notice that it has a “right to supplement or amend its claims” and to “further elaborate upon and substantiate [its] factual and legal positions . . . .” ICANN strongly disagrees but will reserve discussion on that topic unless and until DCA seeks leave to place additional information before the Panel.

<sup>42</sup> Bylaws, Art. IV, § 3.18 (Ex. C-10). DCA’s Notice states that “ICANN is subject to international and local law . . . .” *See* Notice at ¶ 12. DCA does not, however, cite any law in its Notice. As a California corporation, ICANN is subject to California law.

<sup>43</sup> Bylaws, Art. IV, § 3.21 (Ex. C-10).

## ARGUMENT

### I. ICANN INVESTIGATED AND PROPERLY REJECTED DCA'S ALLEGATION THAT TWO ICANN BOARD MEMBERS HAD CONFLICTS OF INTEREST.

28. DCA asserts that two of ICANN's Board members had conflicts of interests related to DCA's application, and that ICANN failed "to follow its own procedures for handling alleged conflicts of interests on the part of Board members."<sup>44</sup> DCA does not, however, identify what "procedures" ICANN supposedly failed to follow. DCA argues that: (i) ICANN Board member Mike Silber was the treasurer and director of .ZA, the "country code" Top Level Domain for South Africa, and that UniForum administered the .ZA website; and (ii) ICANN Board member Chris Disspain "was CEO of a company affiliated with ARI Registry Services, which provided consulting services to the South African Domain Names Authority with respect to the establishment of the South African (.za) Central Registry."<sup>45</sup>

29. DCA initially presented its conflict of interest allegations to ICANN's Ombudsman, who investigated the allegations and issued a report dated 9 December 2012.<sup>46</sup> In his report, the Ombudsman summarized DCA's charges, referenced the Conflicts of

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<sup>44</sup> Notice at ¶ 45. DCA's Notice also includes a discussion regarding ICANN's Independent Objector ("IO"). *Id.* at ¶¶ 29-31. As part of the New gTLD Program, the IO was appointed to object to "highly objectionable" gTLD applications. Guidebook, § 3.2.5. The IO identified the applications for .AFRICA as "controversial" and issued a preliminary assessment, noting that DCA's application for .AFRICA has been the subject of numerous comments, notably regarding its lack of support from the African community. IO's Assessment, *available at* <http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/africa-general-comment/> and Ex. R-3. The IO ultimately elected not to object to DCA's application because the AUC had already indicated an intent to file its own objection; the IO is prohibited from filing an objection against an application for which an objection has already been filed on the same grounds. *Id.* Because the IO did not file an objection to DCA's application for .AFRICA, DCA's discussion regarding the IO is irrelevant to the issues before the Panel.

<sup>45</sup> Notice at ¶ 24.

<sup>46</sup> 10 December 2013 Report (Ex. C-29).



Interest Policy that the Board had adopted,<sup>47</sup> and stated that he had discussed the issue with Ms. Bekele of DCA and with Messrs. Silber and Disspain. The Ombudsman concluded that: “I consider that no disqualifying conflict of interest, or indeed any conflict of interest at all, is present in the actions of both Chris Disspain and Mike Silber.”<sup>48</sup>

30. Thereafter, on 4 June 2013, the members of the NGPC, including Messrs. Disspain and Silber, unanimously voted to accept the GAC advice to disallow DCA’s application for .AFRICA to continue.<sup>49</sup> Because the vote was unanimous, even if Messrs. Disspain and Silber had abstained, the NGPC still would have had the requisite number of votes to adopt the GAC Advice to disallow DCA’s application from proceeding.

31. At the next meeting of the NGPC on 17 July 2013, the Committee discussed conflict of interest issues, and all members of the NGPC were asked to reaffirm, and did in fact reaffirm, that they did not have a conflict of interest related to votes that had occurred on 4 June 2013, including the vote on accepting GAC advice relating to DCA’s application for .AFRICA.<sup>50</sup>

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<sup>47</sup> The 6 May 2012 Conflicts of Interests Policy, which is extremely thorough, may be found at <http://www.icann.org/en/groups/board/governance/coi>.

<sup>48</sup> Ex. C-29. The Ombudsman’s report also noted “the unfortunate tone of much of the debate on various websites blogs and other places,” that he had discussed this with Ms. Bekele and had suggested a “less aggressive approach would be appropriate,” and that Ms. Bekele had agreed. *Id.* Regrettably, Ms. Bekele’s subsequent writings did not adopt a less aggressive approach, as reflected in her hostile correspondence.

<sup>49</sup> See 4 June 2013 Minutes, *available* <http://www.icann.org/en/groups/board/documents/minutes-new-gtld-04jun13-en.htm> and R-4 (“The Chair took a roll call vote. All members of the Committee voted in favor of Resolution 2013.06.04.NG01. The Resolution carried.”)

<sup>50</sup> 17 July 2013 Minutes, *available* at <http://www.icann.org/en/groups/board/documents/minutes-new-gtld-17jul13-en.htm> and Ex R-5. The penultimate paragraph states: “The Committee also engaged in a discussion regarding conflicts of interest and the process for handling them. The Committee reviewed whether there were conflicts of interest present on 4 June 2013 when the Committee passed a resolution accepting the GAC’s advice in the Beijing Communiqué regarding its consensus objection for a .AFRICA application. Each

32. The NGPC also asked the BGC to look into the conflicts issue. The BGC referred the matter to its Subcommittee on Ethics and Conflicts (the “Subcommittee”). After investigating the matter, the Subcommittee concluded that Messrs. Disspain and Silber did not have conflicts of interest with respect to DCA’s application for .AFRICA. Specifically with respect to Mr. Disspain, the Subcommittee concluded that any possible connection between the organization for which is he Chief Executive Officer and any companies involved in the competing applications for .AFRICA was too attenuated to constitute a conflict of interest. As to Mr. Silber, he had previously disclosed to the BGC his role as a non-executive Director of the .ZA Domain Name Authority and the arms’ length contractual relationship between .ZA Domain Name Authority and UniForum with respect to UniForum’s contract to provide registry services for .ZA, and the BGC had previously determined that this relationship did not present a conflict of interest. No additional facts were identified that would create any concerns with respect to Mr. Silber, and the Subcommittee thus concluded that he did not have any conflict of interest.<sup>51</sup>

33. In sum, ICANN did exactly what it was supposed to do in conjunction with DCA’s assertions that two Board members had conflicts of interests: ICANN’s Ombudsman investigated the charges and determined that no conflicts existed; ICANN’s BGC and its Subcommittee on Ethics and Conflicts investigated and determined that no conflicts existed; and the two Board members in question each reaffirmed that they did not believe that any conflicts existed. These procedures were in complete conformance with ICANN’s Conflicts

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(continued...)

member of the Committee confirmed that there were no conflicts present at the time of the vote on the resolution.” *Id.* at 9.

<sup>51</sup> See Declaration of Cherine Chalaby at ¶¶ 7-9.

of Interest Policy. The fact that DCA disagrees with the outcome is not a basis to conclude that the Board acted contrary to its Bylaws or Articles.

## **II. ICANN PROPERLY ACCEPTED THE GAC’S ADVICE WITH RESPECT TO DCA’S APPLICATION.**

34. DCA makes a number of challenges to the GAC’s consideration of DCA’s application for .AFRICA. DCA argues that the AUC had a “conflict of interest regarding the .AFRICA gTLD” because the “AUC was effectively ‘both an “endorser” and “co-applicant” for the name string’ of .AFRICA.” DCA objected that the AUC “simultaneously used its status as a member of the GAC to create obstacles for DCA’s competing application.”<sup>52</sup>

35. The fact that the AUC endorsed UniForum’s application for .AFRICA did not mean that the AUC was required to remain silent on the question of whether DCA’s application for the same gTLD should proceed. The AUC’s support of UniForum’s application was critical to UniForum because Module 2 of the Guidebook provided that applications for strings that have been identified as a “macro geographical (continental) region,” such as any application for .AFRICA, must provide signed letters of support from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region.<sup>53</sup>

36. Accordingly, DCA’s argument that the AUC’s support for UniForum’s application created some sort of “conflict of interest” or otherwise should have compelled the

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<sup>52</sup> Notice at ¶ 28.

<sup>53</sup> Guidebook, § 2.2.1.4.2 (Ex. C-11).

GAC or the Board to ignore the views of the AUC is false, and DCA does not cite any provision of the Guidebook to support its position. The AUC and the countries of Africa had every right to speak; indeed, no application for .AFRICA could be successful without the support of at least 60% of the countries of Africa. The fact that those countries elected to support UniForum, and not DCA, does not mean that the process that ICANN established in the Guidebook did not work or should have been altered in any manner. In fact, the process worked as intended.<sup>54</sup>

37. DCA also argues that the GAC Advice was not “consensus” advice because the country of Kenya opposed the advice.<sup>55</sup> DCA references two emails from the “GAC Advisor” of Kenya, Sammy Buruchara, in which he stated – prior to the actual GAC meeting on 10 April 2013 at which DCA’s application for .AFRICA was addressed – that Kenya does not support GAC advice against DCA’s application. However, as set forth in the accompanying declaration of Heather Dryden, the chair of the GAC when the consensus advice was issued against DCA’s application (and still GAC chair today), DCA’s argument is wrong in multiple respects.

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<sup>54</sup> DCA also suggests that a letter dated 8 March 2012 from ICANN’s Board Chairman to the AUC was somehow improper. *See* Notice at fn 68. In that letter, ICANN’s Chairman responded to a communiqué that the AUC sent to ICANN, explained that the .AFRICA TLD did not qualify to be on ICANN’s “Reserved Names List”, but explained to the AUC that “protections exist that will allow the African Union and its member states to play a prominent role in determining the outcome of any application for these top-level domain strings,” in part because in the case “of an application for a string representing a geographic name documentation of support will be required from at least 60% of the respective national governments in that region . . . .” Ex. C-24. The letter was accurate as to the provisions of the Guidebook and, contrary to DCA’s claim, in no way “supported the AUC’s efforts to eliminate competition for the .AFRICA gTLD by quashing DCA’s application . . . .” Notice at ¶ 45.

<sup>55</sup> Notice at ¶¶ 33-34.

38. First, as Ms. Dryden explains, DCA has presented only a portion of the (confidential) emails that were exchanged before the GAC's meeting on 10 April 2013. In addition to the two emails that DCA submitted with its Notice, there were several subsequent emails in which representatives of several other African countries criticized Mr. Buruchara's statements and strongly encouraged Mr. Buruchara to change his position stated in these two emails, which he did. As Ms. Dryden states in her accompanying declaration: "By the end of this email exchange, I could not reasonably conclude that Mr. Buruchara, on behalf of Kenya, continued to hold a divergent view from the African Union Commission or its Member States, which supported the issuance of GAC advice in conjunction with DCA's application for .AFRICA."<sup>56</sup>

39. Second, as Ms. Dryden also explains, what matters is not the email exchanges that occur before the GAC meeting at which a proposal is addressed; what matters is what occurs at the actual GAC meeting when the matter is called for discussion. The meeting at which the GAC considered DCA's application occurred on 10 April 2013. At that meeting, one of the countries that had supported the issuance of GAC advice opposing DCA's application confirmed that the matter should remain on the consensus advice agenda for consideration and decision by the GAC. When Ms. Dryden asked if there were any countries that opposed the issuance of GAC consensus advice, nobody responded.<sup>57</sup> Accordingly, the

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<sup>56</sup> Dryden Decl. at ¶ 11. DCA did not submit a declaration from Mr. Buruchara. Notably, immediately before Mr. Buruchara became the Kenya GAC Advisor, he was the chairman of DCA's Strategic Leadership Advisory Board, as DCA announced in a press release. *See* <http://www.dotconnectafrica.org/2013/03/mr-sammy-buruchara-former-chairman-of-dca-appointed-as-the-kenyan-gac-representative-to-icann/> and Ex. R-6.

<sup>57</sup> *See* Dryden Decl. at ¶ 12. Ms. Dryden recalls that Mr. Katundu, the Kenya GAC Representative, was in Beijing and had attended ICANN meetings that week, but she does not recall whether he was in the room at the time the GAC decided to issue the consensus advice with respect to DCA's application. *Id.* at ¶ 13.

GAC advice was properly considered “consensus” advice. Nor has any country ever asked that the GAC’s advice be reconsidered, although the GAC’s policy is not to revisit issues once decisions are taken.<sup>58</sup>

40. In short, the GAC’s consideration of DCA’s application for .AFRICA followed the provisions of the Guidebook. Once the GAC issued consensus advice in opposition to DCA’s application, the Guidebook made clear that “this will create a strong presumption for the ICANN Board that the application should not be approved.”<sup>59</sup> The Board’s decision to accept the GAC advice was fully consistent with the Guidebook, and DCA offers no basis for the Board to have acted contrary to the GAC’s advice.

41. ICANN also notes that, because the Board (through the NGPC) elected to accept the GAC advice not to allow DCA’s application to proceed, the application never proceeded to the next level of review under the Guidebook that would have included, among other things, a completed review by the Geographic Names Panel (“GNP”) to determine if DCA had the requisite support of the Continent of Africa.<sup>60</sup> Even if the GAC had not issued advice related to DCA’s application, DCA almost certainly would have failed this level of review because it did not have the support of 60% of the nations in the region. DCA has argued that ICANN should have waived this level of review in conjunction with DCA’s application, but there was no basis for ICANN to deviate from the Guidebook in this respect.

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<sup>58</sup> See Dryden Decl. at ¶¶ 12-14. Even if Kenya had opposed the issuance of GAC advice at the GAC’s 10 April 2013 meeting, there were numerous African countries that opposed DCA’s application and that had issued Early Warning notices with respect to DCA’s application. Under these circumstances, there was virtually no chance that DCA’s application could have succeeded under the terms of the Guidebook in all events.

<sup>59</sup> Guidebook, § 3.1 (Ex. C-11).

<sup>60</sup> See *id.* at § 2.2.1.4.4. The status of DCA’s application is listed on ICANN’s website as “incomplete” as a result of the Board’s acceptance of the GAC advice.

Certainly, the fact that the AUC and many African countries supported a different application for .AFRICA was not a basis to change the rules. Moreover, if ICANN were to ignore the geographic names requirements, it would be violating the Guidebook.

### **III. ICANN PROPERLY REJECTED DCA’S REQUEST FOR RECONSIDERATION.**

42. Article IV, Section 2 of ICANN’s Bylaws permits an entity that has been materially affected by an ICANN Board decision to request that the Board reconsider that decision.<sup>61</sup> After the NGPC’s vote on 4 June 2013 to adopt the GAC’s consensus advice on DCA’s application, DCA filed a formal Request for Reconsideration.<sup>62</sup> DCA argued that the NGPC’s decision was “arbitrary,” “lacked the necessary thoroughness required in considering a weighty decision,” and was “taken with undue haste.” The primary basis for DCA’s request was that ICANN’s Board did not consult with an independent expert:

[A]ccording to the Guidebook, the Board may consult with independent experts such as those designated to hear objections. We believe that our application has received a ‘GAC Objection Advice’ and this objection is similar to a Community Objection, and the GAC Objection Advice and our Response to GAC Advice should have been subjected first to a review by the International Centre of Expertise of the International Chamber of Commerce – where Community Objections are heard . . . .<sup>63</sup>

43. ICANN rejected DCA’s Reconsideration Request.<sup>64</sup> The Board stated that DCA had not identified material information that the Board had not considered, and that the Guidebook did not require the Board to retain independent experts. And while there was no doubt that the Board had no obligation to retain an independent expert to evaluate why the

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<sup>61</sup> See Bylaws, Art. IV, § 2 (Ex. C-10).

<sup>62</sup> See DCA’s Reconsideration Request (Request 13-4) (Ex. C-46).

<sup>63</sup> *Id.* at Attachment (14 June 2013 Letter from DCA to ICANN) at 5.

<sup>64</sup> See BGC Recommendation on Reconsideration Request 13-4 (Ex. C-47).

GAC had issued its advice or whether that advice was proper or improper, nowhere in DCA's Request for Reconsideration did DCA even hint at what an "independent expert" might have advised ICANN or how such advice might have altered the Board's thinking in accepting the GAC advice to reject DCA's application.

44. Section 3.1 of the Guidebook is quite clear that the Board may consult with independent experts under certain scenarios:

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.<sup>65</sup>

45. Thus, the Guidebook is clear that the Board had the option of consulting with independent experts, not that consulting with experts was mandatory. Further, there is no reason to believe that any "expert" could have assisted the Board in determining whether to accept the GAC's advice, and DCA did not articulate what an expert possibly could have added to ICANN's decision-making process.<sup>66</sup> In short, there truly was no basis for the Board to accept DCA's Request for Reconsideration.

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<sup>65</sup> Guidebook, § 3.1 (Ex. C-11).

<sup>66</sup> After the Board rejected DCA's Reconsideration Request, DCA and ICANN engaged in a cooperative engagement process as set forth in Article IV, § 3.14 of the Bylaws. After that process was completed, DCA sent a letter in which it identified – for the first time – what it believed an independent expert might have done to assist the Board. 28 September 2013 Letter from DCA to ICANN (Ex. R-7). DCA suggested that an expert could determine whether the GAC advice was "valid," whether DCA's arguments were "admissible," whether the process followed the GAC's operating principles, and whether the expert would recommend that the Board accept the GAC advice.



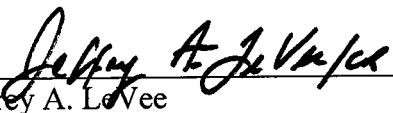
## CONCLUSION

46. As established in this memorandum, ICANN's conduct with respect to DCA's application for .AFRICA was fully consistent with ICANN's Articles of Incorporation and its Bylaws. ICANN acted through open and transparent processes; ICANN followed its conflicts of interest procedures; ICANN followed the procedures that it established in the new gTLD Applicant Guidebook; ICANN respected the advice of the GAC; and ICANN followed the procedures set forth in its Bylaws in evaluating DCA's Request for Reconsideration.

47. At the end of the day, the majority of the countries in Africa elected to support the application of one of DCA's competitors for the .AFRICA gTLD, and they had every right to take that decision. There is absolutely nothing in ICANN's Articles, Bylaws or Applicant Guidebook that required ICANN to challenge that decision or to change the rules so that DCA would be the successful applicant. ICANN's Board did exactly what it was supposed to do in this circumstance, and ICANN urges this IRP Panel to so find.

Respectfully submitted,

Dated: February 10, 2013

By:   
Jeffrey A. LoVee  
Jones Day  
Counsel for Respondent ICANN

LAI-3208304

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(continued...)

*Id.* at 2. None of these matters required "expert advice" in any sense, and all are well within the province of the ICANN Board.

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DOTCONNECTAFRICA TRUST, ) ICDR CASE NO. 50 117 T 1083 13  
 )  
Claimant, )  
 )  
and )  
 )  
INTERNET CORPORATION FOR ASSIGNED )  
NAMES AND NUMBERS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**DECLARATION OF CHERINE CHALABY**

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Counsel to Respondent  
The Internet Corporation  
For Assigned Names and Numbers

## DECLARATION OF CHERINE CHALABY

I, Cherine Chalaby, declare:

1. I am a current member of the Board of Directors of the Internet Corporation for Assigned Names and Numbers (“ICANN”). I have served on the ICANN Board since 2010. I make this declaration in support of ICANN’s response to the Independent Review proceeding initiated by DotConnectAfrica Trust (“DCA”). I have personal knowledge of the matters set forth in this declaration and am competent to testify to these matters if called as a witness.

2. ICANN’s Board of Directors has a number of committees such as the Audit Committee and the Finance Committee. Another one of those committees is the Board Governance Committee (“BGC”), which has a number of tasks, including administration of ICANN’s Conflict of Interest Policy. The full charter of the BGC may be found here: <http://www.icann.org/en/groups/board/governance/charter>. Part II.E of the BGC charter addresses conflict of interest issues. The BGC has a Subcommittee on Ethics and Conflicts (the “Subcommittee”). Since its inception, I have been one of the three members of the Subcommittee.

3. The ICANN Board has adopted a conflict of interest policy. The current version of the policy was adopted on 6 May 2012 and may be found here: <http://www.icann.org/en/groups/board/governance/coi>.

4. ICANN is currently in the process of evaluating and in some instances approving applications for new Top Level Domains, also known as gTLDs. On 10 April 2012, ICANN’s Board established a committee to address issues associated with applications for new gTLDs. This committee is known as the New gTLD Program Committee or “NGPC.”

5. In October 2012, DCA notified ICANN's Ombudsman that DCA believed that two ICANN Board members – Chris Disspain and Mike Silber – had a conflict of interest relating to DCA's application for the .AFRICA Top Level Domain. In December 2012, the Ombudsman issued a report in which he found: "I consider that no disqualifying conflict of interest, or indeed any conflict of interest at all, is present in the actions of both Chris Disspain and Mike Silber." A copy of the Ombudsman's report may be found here: <https://omblog.icann.org/?p=823>.

6. On 4 June 2013, the NGPC (including Chris Disspain and Mike Silber) met and unanimously voted to accept the GAC advice to disallow DCA's application for .AFRICA to continue. No member of the NGPC declared any conflict of interest during this meeting.

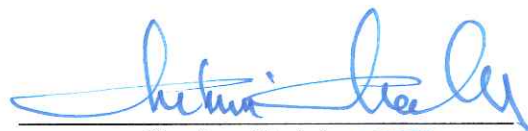
7. Some weeks after the 4 June 2013 NGPC vote accepting the GAC advice to disallow DCA's application for .AFRICA, the claim of Mike Silber's and Chris Disspain's potential conflict of interest on this matter was again raised. For the sake of clarity, all members of the NGPC were asked to and did specifically affirm that they did not have a conflict of interest related to DCA's application for .AFRICA when they voted on the GAC advice. In addition, the NGPC asked the BGC to look into the issue further, and the BGC referred the matter to the Subcommittee. After investigating the matter, the Subcommittee concluded that Chris Disspain and Mike Silber did not have conflicts of interest with respect to DCA's application for .AFRICA.

8. Specifically with respect to Mr. Disspain, the Subcommittee concluded that any connection between the organization for which he is Chief Executive Officer and any companies involved in the competing applications for .AFRICA was too attenuated to constitute a conflict of interest with respect to DCA's application for .AFRICA. As to Mr. Silber, he had previously

disclosed to the BGC his role as a non-executive Director of the .ZA Domain Name Authority (having been appointed as such by the South African Minister of Communications) and the arms' length contractual relationship between .ZA Domain Name Authority and UniForum SA trading as the ZA Central Registry for the provision of registry services for .ZA, and the BGC had previously determined that this relationship did not present a conflict of interest. No additional facts were identified that would create any concerns with respect to Mr. Silber, and the Subcommittee thus concluded that he did not have any conflict of interest with respect to DCA's application for .AFRICA.

9. After concluding that neither Mr. Disspain nor Mr. Silber had a conflict of interest related to DCA's application for .AFRICA, the Subcommittee reported its findings to the BGC and the NGPC.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. I signed this declaration on February 7, 2014, at Santa Monica, California.

  
Cherine Chalaby

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

DOTCONNECTAFRICA TRUST, ) ICDR CASE NO. 50 117 T 1083 13  
 )  
Claimant, )  
 )  
and )  
 )  
INTERNET CORPORATION FOR ASSIGNED )  
NAMES AND NUMBERS, )  
 )  
Respondent. )  
\_\_\_\_\_ )

**DECLARATION OF HEATHER DRYDEN**

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Counsel to Respondent  
The Internet Corporation  
For Assigned Names and Numbers

## DECLARATION OF HEATHER DRYDEN

I, Heather Dryden, declare:

1. I am a Senior Policy Advisor at the International Telecommunications Policy and Coordination Directorate at the Canadian Department of Industry (Industry Canada), based in Ottawa, Canada. In 2010, I was elected by the Internet Corporation for Assigned Names and Numbers (“ICANN”) Governmental Advisory Committee (“GAC”) to serve as its Interim Chair at the ICANN and GAC meetings in June 2010 in Brussels. I was then elected to a full term as Chair of the GAC and re-elected for a second term in 2013. By virtue of my role on the GAC, I also serve as a non-voting liaison to the Board of Directors of ICANN.

2. I make this declaration in support of ICANN’s response to the Independent Review proceeding initiated by DotConnectAfrica Trust (“DCA”). I have personal knowledge of the matters set forth in this declaration and am competent to testify to these matters if called as a witness.

3. ICANN’s Board approved the “New gTLD Program” in June 2011. In conjunction with this process, ICANN issued various versions of the New gTLD Applicant Guidebook (“Guidebook”), an extensive document that provides details to gTLD applicants and forms the basis for ICANN’s evaluation of new gTLD applications. DCA attached to its Notice as Exhibit C-11 the 4 June 2012 version of the Guidebook.

4. As set forth in the Guidebook, the GAC had a very specific role to play in conjunction with the New gTLD Program. For example, pursuant to Section 1.1.2.4 of the Guidebook, the GAC was permitted to issue “Early Warning” notices concerning gTLD applications. As noted in this portion of the Guidebook, these notices were triggered by individual countries who participate in the GAC requesting that the GAC transmit Early Warning

notices to the applicants. It was common for one country to issue an Early Warning notice via the GAC (on a template that the GAC had created) and for other countries to also transmit Early Warning notices using identical or substantially similar language.

5. In addition to the Early Warning notices referenced in the Guidebook, Section 3.1 of the Guidebook addressed the concept of “GAC Advice,” which was “intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.” Section 3.1 also sets forth the different types of GAC Advice that could be issued, including “consensus advice,” in order to raise an objection to an application, which the GAC issues if no country objects to the issuance of the advice. With respect to consensus advice, the Guidebook states: “The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.”

6. The GAC meets in conjunction with ICANN Public meetings, which occur approximately three times a year. Leading up to these public meetings, there often is considerable email dialogue regarding proposals that one or more countries have asked the GAC to address, including the possibility that the GAC would issue advice in conjunction with a particular gTLD application. The purpose of this dialogue is to help inform the various GAC representatives and their advisors of the issues that the GAC is being asked to address before the GAC formally addresses a specific proposal to issue GAC advice. For a number of important reasons, the GAC has previously determined that these email exchanges should be treated and maintained as confidential, and for this reason, I am not attaching the email that I have referred to in conjunction with preparing this declaration.



7. Each of the countries that participate in the GAC designates a formal GAC Representative, who is the official person designated to speak on behalf of that country. In addition, some countries also designate GAC Advisors who also participate at GAC meetings.

8. In conjunction with DCA's application for .AFRICA, sixteen individual countries from the African continent, as well as the African Union Commission, requested that the GAC transmit Early Warning notices, which the GAC in fact transmitted in accordance with its process and the terms of the Guidebook. DCA has noted that several of these Early Warning notices were either identical or quite similar, and I have explained above why this was so. The fact that these notices were identical or similar is not surprising.

9. Thereafter, three individual African countries requested that the GAC issue GAC advice opposing DCA's application for .AFRICA. These requests occurred prior to the GAC's meeting April 2013 meeting in Beijing, China. The proposal regarding DCA's application was addressed at the GAC meeting on 10 April 2013. Leading up to the 10 April meeting, there was considerable email exchange among the various GAC representatives.

10. I have reviewed Exhibit C-41 accompanying DCA's papers submitted to the Independent Review Panel, including two emails that Sammy Buruchara sent, one to the GAC email list, quoted on page 12 of Exhibit C-41. These emails are dated 9 April 2013, which was the day before the GAC took up the question of whether the GAC would issue GAC advice in conjunction with DCA's application for .AFRICA for the purpose of reaching a decision. Mr. Buruchara stated in the first email that he was the GAC Advisor from Kenya, but in the second email, his signature line suggests that he was the official Kenya GAC Representative. To clarify, Mr. Buruchara has never been the official GAC Representative from Kenya. Instead, Michael Katundu (who was copied on the first email) was the GAC Representative from Kenya

in conjunction with the April 2013 meeting in Beijing, and Mr. Katundu remains the GAC Representative today.

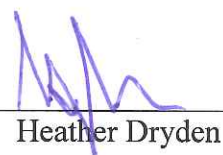
11. Following Mr. Buruchara's email to the GAC email list as set forth on page 12 of Exhibit C-41 and entitled, "[GAC] dotafrica text proposed for communique From:Sammy Buruchara," there were several emails sent by other GAC representatives, as well as a further final email sent by Mr. Buruchara, in advance of the GAC meeting on 10 April. Those emails strongly encouraged Mr. Buruchara and the government of Kenya not to oppose the issuance of GAC advice in conjunction with DCA's application for .AFRICA. By the end of this email exchange, I could not reasonably conclude that Mr. Buruchara, on behalf of Kenya, continued to hold a divergent view from the African Union Commission or its Member States, which supported the issuance of GAC advice in conjunction with DCA's application for .AFRICA.

12. In any event, the dialogue that occurs among GAC members prior to the particular GAC meeting at which a proposal is to be decided on does not bind the GAC or any of its participating countries. What matters is what occurs during the actual decisional GAC meeting. On 10 April 2013, the GAC met in Beijing specifically to address whether to issue GAC consensus advice in conjunction with DCA's application for .AFRICA. During the meeting, an African country confirmed that DCA's application should remain on the consensus objection agenda for consideration and decision by the GAC. As chair of the GAC, in situations where a government in the GAC proposed to issue consensus advice on a specific application as part of the GAC's role in accordance with Section 3.1 of the Guidebook, I asked the GAC membership whether there were any objections to a GAC consensus objection. This question was asked in conjunction with the proposal to issue GAC consensus advice opposing the application for .AFRICA, and no government objected.

13. I recall that Mr. Katundu was in Beijing and had attended certain ICANN meetings that week, but I do not specifically recall whether Mr. Katundu was in the room at the time that the GAC was deciding whether to issue consensus advice with respect to DCA's application. I can confirm, however, that no person associated with the government of Kenya – or for that matter any other country – objected to a GAC consensus objection in conjunction with DCA's application for .AFRICA. For this reason, the GAC did in fact issue consensus advice opposing DCA's application for .AFRICA, and that advice was formally communicated to the ICANN Board on 11 April 2013 (DCA Exhibit C-43).

14. Once the GAC issues consensus advice, the GAC does not reconsider the issue in subsequent meetings, in part because governments can change positions and personnel over time. I can, however, confirm that no country (including Kenya) has ever asked the GAC that the consensus advice issued in conjunction with DCA's application for .AFRICA be reconsidered.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. I signed this declaration on February 7, 2014, at Santa Monica, California.

  
Heather Dryden

INDEPENDENT REVIEW PROCESS  
INTERNATIONAL CENTER FOR DISPUTE RESOLUTION

*DotConnectAfrica Trust*  
(Claimant)  
v.  
*Internet Corporation For Assigned Names and Numbers*  
(Respondent)

**INDEX TO DOCUMENTS SUBMITTED WITH  
RESPONDENT ICANN'S RESPONSE TO CLAIMANT'S AMENDED NOTICE**

<b><u>Exhibit</u></b>	<b><u>DESCRIPTION</u></b>
<b>R-1</b>	4 June 2013 Resolution, <i>available at</i> <a href="http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm">http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm</a>
<b>R-2</b>	23 May 2011 DCA Press Release, <i>available at</i> <a href="http://www.prlog.org/11503736-yes2dotafrica-say-no-to-african-union-expression-of-interest-eoi-for-dotafrica.html">http://www.prlog.org/11503736-yes2dotafrica-say-no-to-african-union-expression-of-interest-eoi-for-dotafrica.html</a>
<b>R-3</b>	Independent Objector's Assessment, <i>available at</i> <a href="http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/africa-general-comment/">http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-comments-on-controversial-applications/africa-general-comment/</a>
<b>R-4</b>	4 June 2013 Minutes, <i>available at</i> <a href="http://www.icann.org/en/groups/board/documents/minutes-new-gtld-04jun13-en.htm">http://www.icann.org/en/groups/board/documents/minutes-new-gtld-04jun13-en.htm</a>
<b>R-5</b>	17 July 2013 Minutes, <i>available at</i> <a href="http://www.icann.org/en/groups/board/documents/minutes-new-gtld-17jul13-en.htm">http://www.icann.org/en/groups/board/documents/minutes-new-gtld-17jul13-en.htm</a>
<b>R-6</b>	March 14, 2013 DCA Press Release, <i>available at</i> <a href="http://www.dotconnectafrica.org/2013/03/mr-sammy-buruchara-former-chairman-of-dca-appointed-as-the-kenyan-gac-representative-to-icann/">http://www.dotconnectafrica.org/2013/03/mr-sammy-buruchara-former-chairman-of-dca-appointed-as-the-kenyan-gac-representative-to-icann/</a>
<b>R-7</b>	28 September 2013 Letter from DCA to ICANN

# **Exhibit R-1**

# Approved Resolution | Meeting of the New gTLD Program Committee

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 [icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm](http://icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm)

4 June 2013

## 1. Main Agenda:

### 1. Consideration of Non-Safeguard Advice in the GAC's Beijing Communiqué

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 18 April 2013, ICANN posted the Beijing Communiqué and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1;

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC's advice on the New gTLD Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC's advice in the Beijing Communiqué on the New gTLD Program;

Whereas, the NGPC has considered the applicant responses submitted during the 21- day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC's advice in the Beijing Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC's advice in the Beijing Communiqué similar to the one used during the GAC and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC advice, noting those as "1A" items.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2013.06.04.NG01), the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué" (4 June 2013), attached as [Annex 1](#) [PDF, 564 KB] to this Resolution, in response to the items of GAC advice in the Beijing Communiqué as presented in the scorecard.

## Rationale for Resolution 2013.06.04.NG01

### Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013. The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

**What is the proposal being considered?**

The NGPC is being asked to consider accepting a discrete grouping of the GAC advice as described in the attached NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué (4 June 2013), which includes nine (9) items of non-safeguard advice from the Beijing Communiqué as listed in the GAC Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC's advice.

**Which stakeholders or others were consulted?**

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 <http://newgtlds.icann.org/en/applicants/gac-advice-responses>. The NGPC has considered the applicant responses in formulating its response to the GAC advice as applicable.

To note, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The public comment forum on how the NGPC should address GAC advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC advice not being considered at this time in the attached scorecard.

**What concerns or issues were raised by the community?**

As part of the 21-day applicant response period, ICANN received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up, multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at: <http://newgtlds.icann.org/en/applicants/gac-advice-responses>.

**What significant materials did the Board review?**

As part of its deliberations, the NGPC reviewed the following materials and documents:

**What factors did the Board find to be significant?**

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC's advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

**Are there positive or negative community impacts?**

The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

**Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?**

There are no foreseen fiscal impacts associated with the adoption of this resolution.

**Are there any security, stability or resiliency issues relating to the DNS?**

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the

DNS.

**Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?**

ICANN posted the GAC advice and officially notified applicants of the advice on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>. This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Published on 6 June 2013



# **Exhibit R-2**

## Yes2DotAfrica Say "No" to African Union Expression of Interest (EOI) for DotAfrica

Source: *DotConnectAfrica.org*

Dated: May 23, 2011

### *African Union Commission Expression of Interest (EOI) for DotAfrica Unjustifiable*

The African Union Commission Addis Ababa in a recent Communiqué issued to clarify its position on DotAfrica stated that it will float an Expression of Interest process to short-list bidders to be endorsed for DotAfrica, and as of Week 20 of 2011 commenced this rather unwarranted and unnecessary effort.

DCA believes that the African Union cannot be neglectful of the serious sentiments it as expressed in the above Communiqué of 12th May 2011, inter alia: **"The African Union Commission takes this opportunity to again reassure the people and governments of Africa of its commitment to a transparent and accountable process in the selection of the winning candidate"**. The keywords are transparency and accountability - for these have a bearing on credibility, and institutional reputation

First, any talk of transparency and accountability now sounds hollow and unbelievable. DCA believes that the EOI process is a red-herring designed to manipulate international opinion and public regarding AU's commitment to transparency and accountability, whereas the clarification itself falls short of telling the truth. The clarification is untruthful to the extent that it does not acknowledge that DCA was given an endorsement by the AU. Therefore, the very EOI process on DotAfrica is now discredited, and considered a surreptitious ruse that would be employed to unfairly endorse AfTLD.

Second, it is quite evident that the present EOI process is a ruse to officially hijack the DotAfrica Initiative using supposititious African Union official machinery and imprimatur, now termed 'AU-led'-process, to favour AfTLD.

Third, on what basis would one participate in a process that is founded on untruth and erected on an altar of injustice? Therefore, DCA will not give any credence to a discredited, iniquitous and inequitable process which evidently does not satisfy the basic canons of probity. .

Accordingly, DCA would like to again stress the following points for the record:

1. The DCA therefore will not give credence to a process that lacks probity, and hereby serves notice that it would not participate in the current process which has no credibility. The DCA already expressed interest by proposing the DotAfrica initiative to the African Union Commission in 2006 and again in 2008, and after a rigorous process of making technical presentations, meetings, clarifications and exchange of correspondence with the Commission, the AU in 2009, issued DCA with an official endorsement of the Initiative proposed.

<http://www.scribd.com/doc/31565131/African-Union-AU-Endorsement-of-DotConnectAfrica#fullscreen:0n>

2. Since the AU Task Force members have already expressed interest on DotAfrica, and have also openly supported AfTLD, it is therefore clear to one and all that the AU Task Force on DotAfrica is tainted, [http://library.constantcontact.com/download/get/file/1102516344150-101/Post\\_Event\\_Press\\_release\\_final+AftLD.pdf](http://library.constantcontact.com/download/get/file/1102516344150-101/Post_Event_Press_release_final+AftLD.pdf) because its members who are in a sinister confederacy with AfTLD are manifestly leading the organization astray by floating wrong and unworkable proposals, whilst pushing an opaque and illegal agenda that is aimed at victimizing DCA in order to favour and reward AfTLD.

3. So it is quite clear that the EOI process would simply be a procedure that has been solely contrived to 'evaluate and award' the bid to themselves; to wit, why should DCA bother to participate when the odds are already stacked against it?

4. It is already recognized that the **AU is supposed to be an endorsing partner on DotAfrica**, and cannot participate directly in the ICANN process. The African Union Commission is not in the business of Global Internet Domain Governance, so on what basis would it be applying directly to ICANN after already endorsing DCA to participate in the same bid? How come the AU now aims to become a competitor in the same process that it was simply supposed to endorse? Where is the equity in the AU choosing to sideline DCA, after the DCA proposed and clarified the DotAfrica Initiative to AU in the first place?  
<http://www.nepad.org/system/files/Background%20note%20%20on%20DotAfrica%20-Final%20version%20ENG.pdf>

Thus, whilst DCA believes that transparency and accountability are important, probity, truth, honesty, justice, fairness, legality, equity, and other related ethical and justicial norms cannot, and should not be ruled out and ignored as if these are not imperative. **How could one therefore accept an EOI process that is based on a willful suppression of the truth?** Where is the credibility of the African Union?

Unless acceptable answers are provided, the institutional reputation of the African Union is now at stake, and this apex African organization might suffer irreparable harm and acute embarrassment unless it takes immediate and reasonable steps to correct the injustice that has been committed against the DCA.

The African Union should be seen as the Custodian of the high ideals and sacrosanct values that we all strive for to enable us build the Africa of our dreams; as envisioned by all those leaders who sacrificed so much for the freedom of our peoples. A lot is therefore expected of, and from the African Union, as we all try to establish the grundnorm of a Renascent Africa. Therefore, the EOI process is the 'invention' of the AU Taskforce, and should be rejected. It would be a huge and total disaster and become a proverbial byword for African inability to perform and coordinate.

Finally, the DCA hereby warns individuals, firms, registries and such organizations to shun the EOI process and not to participate in it, since this may become a legal minefield and quagmire that will land them in trouble.

In view of all of the aforementioned, DCA hereby requests the AU Commission to stop the unjustifiable EOI process immediately, acknowledge and reinstate DCA's original endorsement forthwith, between the DotConnect Africa and African Union Commission (as endorsing partner). Only the immediate discontinuation of the EOI process will help everyone come to knowledge of the profound truth so as to restore confidence and fairness in the service of justice, and help avoid this looming catastrophe

Anything short of this will be a travesty that would not only damage the hard-won reputation and institutional credibility of this respected Pan-African organization, but also shatter Africa's DotAfrica dreams.

###

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

--- End ---

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# **Exhibit R-3**

HOME



# Independent Objector

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ICANN Applicant Guidebook for the New gTLD Program

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The Issue of "Closed Generic" gTLDs

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**During his review of the applications for the new gTLD “.Africa”, the Independent Objector (IO) has noted that numerous comments have been posted on the public comments webpage of ICANN. To ensure transparency and address public concerns on those controversial applications, the hereunder comment aims at informing the public of the reasons why the IO does not consider in principle filing an objection.**

**Although finalized after an exchange of views with the applicants, this comment is still preliminary and does not prejudge the IO's final decision to file an objection against the applications or not.**

### Controversial Application

- .Africa - [DotConnectAfrica Trust](#)
- .Africa - [UniForum SA \(NPC\) trading as Registry.Africa](#)

### Overview of the comments against the controversial applications

The applications for the new gTLD string “.Africa” have given rise to numerous comments on the public comments webpage of ICANN. Most of the comments against the applications raise identical issues.

Two applications for the gTLD string “.Africa” have been submitted to ICANN. The first applicant is UniForum SA (NPC) trading as Registry.Africa, a “not for profit company” which has been appointed by the African Union to be the registry provider for the “.Africa” gTLD. The second applicant is DotConnectAfrica Trust, “an independent, non-profit and non-partisan organization”. The latter application has been subject to numerous comments, notably regarding its lack of support from the African community. Opponents to the management of the “.Africa” gTLD by DotConnectAfrica Trust sustain that the only legitimate applicant is UniForum SA (NPC) trading as Registry.Africa since it has received support from the African Union Commission. They argue that the applied-for gTLD string directly refers to a geographical name, the African continent, and therefore should be operated in the best interests of the continent and its people. Because of the nature of the support received by the first applicant, no other applicants should be allowed by ICANN to manage the “.Africa” gTLD.

## Contact

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*Independent Objector*

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You can also use our  
Contact Form.

## The Independent Objector's position

**In the present case, the IO, eager to lead a fair and transparent assessment, first expressed his concerns regarding certain issues raised by the application to the applicants through the initial notice procedure. Indeed, as encouraged but not required by ICANN, parties are given the choice to participate in mediation or negotiation processes. The Initial Notice procedure opened up an opportunity for settling the pending issues.**

**A detailed note, including the reasons why the IO considered that an objection against the application might be warranted, was sent to the applicants in order to give them the opportunity to react to the IO's first assessment. It is only after careful review of their comments and feedbacks that the IO conducted a second assessment of the application. Still for the sake of transparency, to which the IO is fully committed, the present comment aims at informing the public of the results of the IO's second evaluation of the application.**

**As he is acting in the best interests of the public using the Internet, the IO is convinced that the public should know about the subject matter and extent of his exchanges with the applicants. Therefore, the applicants' responses are attached to the present comment.**

It should be noted that, acting in the interests of global Internet users, the IO has the possibility to file objections against applications on the community and limited public interest grounds.

### Community Objection

For the IO to consider filing a community objection, there must be a substantial opposition to the gTLD application from a representative portion of the community to which the gTLD string may be explicitly or implicitly targeted. Therefore, the community named by the IO must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection.

When assessing whether a community objection is warranted, the IO bases his review on four preliminary tests.

1. As for the first test, (*the IO determines if the community invoked is a clearly delineated community*), the IO notes that the notion of "community" is wide and broad, and is not precisely defined by ICANN's guidebook for the new gTLDs program. It can include a community of interests, as well as a particular ethnical, religious, linguistic or similar community. Moreover, communities can also be classified in sub-communities (i.e. the Jewish community in New York or the Italian community on Facebook). However, beyond the diversity of communities, there are common definitional elements.

For the IO, a community is a group of individuals who have something in common (which can include their nationality or place of residence – i.e. the French, South-East Asian or Brazilian community – or a common characteristic – i.e. the disability community), or share common values, interests or goals (i.e. the health, legal, internet or ICANN community). For the purpose of the IO evaluation, it is clear that what matters is that the community invoked can be clearly delineated, enjoys a certain level of public recognition and encompasses a certain number of people and/or entities.

In the present case, the IO first notes that public comments made on the community ground tend to prove the existence of such a community, being the community of the inhabitants of the continent of Africa, and generally express an opinion in the name of the designated community.

In view of the broad elements of definition mentioned above, there is no doubt for the IO that inhabitants of the continent of Africa form a geographical community, which can be delineated for the present purpose. If they have a common place of residency, the continent of Africa, they also share in part similar values and interests, one obviously being the promotion and preservation of their continent.

Also, the IO notes that Africa is listed as a UNESCO region and appears on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list. Therefore, according to the Applicant Guidebook Section 2.2.1.4.2, which expressly refers to the UNESCO’s list, Africa is considered as a geographic name.

2. As for the second and third tests, (*The IO verifies if there is a substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted*), the IO notes that the application for the new gTLD string “. Africa” has been widely commented. However, the number of negative comments is not a decisive factor for the IO’s decision to make, or not, an objection.

When reviewing the application, the IO pays a particular attention to the representative nature of entities or persons expressing opposition as well as the level of recognized stature or weight among sources expressing opposition. In this regard, the IO notes that 17 early warnings have been issued by representatives of the ICANN’s governmental Advisory Committee (GAC) of the African Union Commission, Comoros, Kenya, Cameroon, Democratic Republic of the Congo, Benin, Egypt, Gabon, Burkina Faso, Ghana, Morocco,



Mali, Uganda, Senegal, South Africa, Nigeria and Tanzania. Notably, The African Union is an organization with 54 Member States representing all African States, with the exception of Morocco (which introduced a comment of its own). The Commission is the Secretariat of the Union entrusted with executive functions. The mission of the Commission is to become “an efficient and value-adding institution driving the African integration and development process in close collaboration with African Union Member States, the Regional Economic Communities and African citizens”.

In particular, the Organization underlines in its notice that “the African Union Commission (AUC) has the mandate of African governments to ‘establish dotAfrica as a continental (geographic) Top-Level Domain for use by organizations, businesses and individuals with guidance from African Internet Agencies’ and ‘to set up the structures and modalities for the implementation of dotAfrica project’ as provided for in the Abuja Declaration”. Indeed, in a communiqué, the African Union indicated that a “Task Force and the assigned consultants provided the needed support to the AU Commission to launch the dotAfrica tender process to select a competent Registry Operator. Accordingly, the AU Commission selected UniForum SA (the ZA Central Registry Operator or ZACR), to administer and operate dotAfrica gTLD on behalf of the African community. The endorsement of the ZACR is the only formal endorsement provided by the African Union and its member’s states with regard to dotAfrica”. It can be further noted that EURid, a private non-profit organisation incorporated under Belgian law, manages, since 2003, the “.eu” top-level Internet domain under contract to the European Commission (which can be seen as less representative of the whole European continents than the African Union in respect to Africa) (see <http://www.eurid.eu/>).

3. As the fourth test (*the IO conducts when assessing whether an objection is warranted or not, the application for the Top-Level Domain name must create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted*), it can be considered that a “.Africa” gTLD should be managed in the best interests of the African Community. Benefits of such a gTLD string are numerous and include, for example, the promotion of economic development and tourism in Africa. The gTLD could host regional or national official websites or simply host websites of companies settled in the continent. Considering that the application submitted by UniForum SA (NPC) trading as Registry.Africa received the support of several African governments, it seems legitimate that it manages such a gTLD. On the contrary, it is difficult to conceive that an applicant, which lacks support from African governments, could operate the gTLD in the best interest of African people, to who the gTLD is mostly intended.

4. Also, the IO notes with a particular interest that the Applicant Guidebook

designed for the new gTLD program launched by ICANN anticipated this type of situation and has developed certain rules regarding geographic names. As noted above, there is no doubt for the IO that the applied-for gTLD string “.Africa” falls under the definition of a geographic name given by the Applicant Guidebook. Like for all geographic names, a geographic names panel “will determine whether each applied-for gTLD string represents a geographic name, and verify the relevance and authenticity of the supporting documentation where necessary”.

5. According to Section 2.2.1.4.2 of the same guidebook, applied-for gTLD strings that are geographic names must obtain support from governments of the targeted geographic region. Thus, “documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region”. Given that the African Union Commission, representing the large majority of African States, has issued an early warning, it seems unlikely that the applicant DotConnectAfrica Trust will meet requirements to pass the Geographic Names Panel review.
  
6. Moreover, assuming that the applicant would succeed in collecting all necessary documents and would pass the review of the Geographic Names Panel, the Applicant Guidebook sets rules for applied-for gTLD strings which would be identical. Thus, “if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5. However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation”. Indeed, in case the applicant would pass the Geographic Names Panel review, it is likely that both applications for “.Africa” will be assigned to a contention set, as provided for in section 4.1.1. of the Applicant Guidebook.
  
7. However, when applicants go through the contention resolution, they are either subject to a community priority evaluation or to an auction. For the community priority evaluation, applicants must have specified that their application is community-based. The IO notes that none of the two applications have been submitted as community-based applications. Furthermore, section 4.3 of the guidebook provides that “an auction will not take place to resolve contention in the case where the contending applications are for geographic names. In this

case, the applications will be suspended pending resolution by the applicants". Thus, the resolution of the dispute would be left to negotiation between applicants.

#### **FIRST ASSESSMENT:**

As for his possibility to object on the community ground and only if both applications pass the review of the Geographic Names Panel and can't reach an agreement, the IO was of the opinion that an objection against the application for a new gTLD string ".Africa" submitted by DotConnectAfrica Trust could be warranted.

#### **FINAL ASSESSMENT:**

As a preliminary point, the applicant, DotConnectAfrica Trust (DCA Trust), argued that the IO "can lodge objections in cases where no other objection has been filed. Therefore (the IO's) intention to also file an objection against DCA's application on community grounds is clearly unwarranted and would be considered superfluous against the backdrop that (he has) already noted in (his) initial assessment "that 17 early warnings have been issued by representatives of the ICANN's governmental Advisory Committee (GAC)". If it is true that, according to section 3.2.5 of the Applicant Guidebook, "absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground", the IO would like to stress out that an early warning is nothing more than "an indication that the application is seen as potentially sensitive or problematic by one or more governments". As stated in section 1.1.2.4 of the Applicant Guidebook, "the GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application". To date and as far as the IO is aware, no formal objection or GAC advice have been filed by a GAC representative.

DCA Trust stated that "according to the new gTLD Applicant's Guidebook, ICANN has cautioned (in Section 3.2.2.3) that '*multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant.*' DCA Trust might be forced to complain to ICANN that it is being harassed and that these objections should be considered superfluous and frivolous and should therefore not be countenanced".

Further to the fact that this provision of the Applicant Guidebook applies to Limited Public Interests objections and not to community objections, the IO would like to put the emphasis on the singularity of his functions. Indeed, the mission of the IO has been specifically designed by ICANN to preserve the interests of the public who use the global internet, on whose behalf he is acting. There are no similar representatives within the ICANN New gTLDs Program. In fact, the IO has been granted standing to file objections on the Limited Public Interest and Community grounds, notwithstanding the regular standing requirements for such objections.

DCA Trust also argued that "the provisions in the Applicant Guidebook are

robust enough and as such, it is not necessary for the Independent Objector to perform a re-definition of what actually constitutes a 'community'".

The IO would like to clarify that his definition of a community is based on the elements of definition provided by the Applicant Guidebook. However, these elements are only rather general guidelines and it is the mission of the IO, under the control of the expert panels, when appointed by the ICC, to decide on the existence of a clearly delineated community.

DCA Trust stated in its response that the IO's "intended action gives DCA Trust the impression that (the IO is) unwittingly acting on behalf of the African Union Commission and/or UniForum, the organization that (he) believes is legitimate to manage the .Africa gTLD".

Section 3.2.5 of the ICANN Applicant Guidebook states that "the Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant" and that "the IO must be and remain independent and unaffiliated with any of the gTLD applicants". When designing the mission and mandate of the IO, ICANN rightly made a point of insisting on the independence of the IO, primarily to avoid abuses of favoritism with regard to any of the Applicants and the IO has no relationships whatsoever with any of the applicants within the New gTLDs Program. Moreover, the IO is fully independent and impartial and he only pays great attention to GAC early warnings since they reflect the position of governments acting on behalf of their citizens (and also, in this case, the position of an intergovernmental organization). Given this representative nature and the level of recognized stature and weight of such a notice, the IO must take those positions into due consideration.

However, it is also important to note the difference in the scope of the IO's and a GAC representative's missions. While a GAC representative expresses an opinion on behalf of its government and of citizens of the State, the IO is acting in the sole interest of the public who use the global internet. It must also be underlined that when the IO explores an early warning, he only considers it as an evidence that an application is perceived as highly controversial but he is by no means bound by this position. When taking his final decision on the question to know whether an objection is warranted or not, he does so in full independence, impartiality and solely in the best interests of the public who uses the global internet.

DCA Trust raised the question as to know, if the IO was "already convinced that DCA Trust will not pass the Geographic Names Panel Evaluation, why (has he) bothered to prepare (his) initial assessment?".

The IO would like to underline that he is acting on behalf of the public who uses the global internet and in order to preserve their best interests. With this in mind, the IO has reviewed all applications within the New gTLDs Program. Also, in order to lead a fair and transparent assessment, he specifically designed the initial notice procedure, which aims at giving applicants the opportunity to react to the IO's first assessment. The IO notes by the way that this procedure has been welcome by most of the applicants. In light of the fundamental importance of his mission, the IO is of the opinion that he must conduct a very careful review of all applications and equally notify all applicants of his concerns whenever he considers that they could justify an objection, notwithstanding that other procedures exist. Indeed, it is only when

taking his final decision on whether he should file an objection or not, that the IO will decide if these other procedures are deemed adequate and sufficient to address his concerns. This being said, the IO is still convinced that the application by DCA Trust should not pass the Geographic Names Panel Evaluation and since, when deciding whether to object or not, he must take into account "costs incurred by the objector in expressing opposition" (Section 3.5.4 of the Applicant Guidebook), he agrees with DCA Trust that this is an element which should be taken into consideration for his final assessment.

Finally, the applicant DCA Trust has raised other points in its response, which can be downloaded at the bottom of this page. However, none of the arguments raised by DCA Trust has convinced the IO that an objection on the community ground is not warranted against their application. Indeed, the applicant failed in demonstrating that it receives support from governments of the geographical region, contrary to the other applicant, Uniforum SA, whose response can also be downloaded on this page. More importantly, the IO is still convinced that opposition from a large number of representatives of the African community provides a strong indication that the application could be against the best interests of the above mentioned clearly delineated community.

However, it is the public policy of the IO not to make an objection when a single established institution representing and associated with the community having an interest in an objection can lodge such an objection directly. This does not exclude that the IO deems it nevertheless appropriate to file a community objection in particular circumstances, e.g., if the established institution representing and associated with the community has compelling reasons not to do so, or if several communities are in the same interest and an application could raise issues of priority or in respect to the modalities of the objection.

In the present case, the IO is of the opinion that the African Union is an established institution representing and associated with a significant part of the targeted community. The African Union Commission is already fully aware of the controversial issues and is better placed than the IO to file an objection, if it deems it appropriate. For these reasons the IO, who is primarily acting as a "safety net", does not in principle intend to file an objection on the community ground.

*IMPORTANT GENERAL REMARK: The applicant DotConnectAfrica Trust deemed it useful to put into doubt my impartiality and independence. I wish to make clear that my inclination not to lodge an objection to their application is by no means the result of what can be seen as an attempt to intimidate me.*

A. P.

#### Limited Public Interest Objection

**FIRST AND FINAL ASSESSMENT:** The IO notes that for the purpose of his evaluation based on the limited public interest ground of the application for ".Africa", no relevant comment has drawn his attention. Nor can he

personally find any reason for making an objection on this ground.

---

## Applicants' Responses to the Independent Objector's Initial Notice



### **DotConnectAfrica Trust**

Response to the IO's Initial Notice - ".AFRICA"  
[DotConnectAfrica Trust response to the I\[...\]](#)  
Document Adobe Acrobat [1.3 MB]



### **UniForum SA**

Response to the IO's Initial Notice - ".AFRICA"  
[UniForum SA Response to the IO.pdf](#)  
Document Adobe Acrobat [843.8 KB]

# **Exhibit R-4**

## Internet Corporation for Assigned Names and Numbers

GROUPS (/EN/GROUPS) › BOARD (/EN/GROUPS/BOARD) › DOCUMENTS (/EN/GROUPS/BOARD/DOCUMENTS)

### Minutes | New gTLD Program Committee

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4 June 2013

**Note: On 10 April 2012, the Board established the New gTLD (generic Top Level Domain) Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD (generic Top Level Domain) Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN (Internet Corporation for Assigned Names and Numbers)'s Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program. The full scope of the Committee's authority is set forth in its charter at [http://www.icann.org/en/groups/board/new-gTLD \(/en/groups/board/new-gTLD\)](http://www.icann.org/en/groups/board/new-gTLD (/en/groups/board/new-gTLD)).**

**A Regular Meeting of the New gTLD (generic Top Level Domain) Program Committee of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors was held telephonically on 4 June 2013 at 13:00 UTC.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Chris Disspain, Bill Graham, Olga Madruga-Forti, Ray Pizak, George Sadowsky, Mike Silber, Judith Vazquez, and Gonzalo Navarro.**

**Thomas Narten, IETF (Internet Engineering Task Force) Liaison was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.**

**Erika Mann, Francisco da Silva (TLG Liaison), and Kuo-Wei Wu sent apologies.**

**ICANN (Internet Corporation for Assigned Names and Numbers) Staff in attendance for all or part of the meeting: Akram Atallah, Chief Operating Officer; John Jeffrey, General Counsel and Secretary; Megan Bishop, Michelle Bright, Samantha Eisner, Allen Grogan, Dan Halloran, Jamie Hedlund, Liz Le, Karen Lentz, Cyrus Namazi, Erika Randall, Amy Stathos, and Christine Willett.**



**These are the Minutes of the Meeting of the New gTLD (generic Top Level Domain) Program Committee, which took place on 04 June 2013.**

**1. GAC (Governmental Advisory Committee) Advice Items**

- a. Consideration of Non-Safeguard Advice in the GAC (Governmental Advisory Committee)'s Beijing Communiqué

Rationale for Resolution 2013.06.04.NG01

1.

GAC (Governmental Advisory Committee) Advice Items

The Chair introduced the item on the main agenda regarding responding the GAC (Governmental Advisory Committee) advice issued in the Beijing Communiqué. The Chair briefly outlined the proposed course of action for the meeting. The Chair noted that the Committee received a letter from ALAC (At-Large Advisory Committee), which will be placed on the agenda for discussion at the next meeting.

At the request of the meeting shepherd, Chris Disspain, Jamie Hedlund walked the Committee through each of the items on the proposed "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) Beijing Communiqué (4 June 2013)" (the "1A Scorecard"), which is Annex 1 (</en/groups/board/documents/new-gtld-resolution-annex-1-04jun13-en.pdf>) [PDF, 564 KB] of the proposed resolution and attached to the minutes for reference.

The Committee discussed accepting the GAC (Governmental Advisory Committee) advice regarding application number 1-1165-42560 for .AFRICA and application number 1-1936-2101 for .GCC. Olga Madruga-Forti inquired whether the applicants would be permitted to withdraw their applications within a certain amount of time if the Committee accepted the GAC (Governmental Advisory Committee) advice. After further discussion of the appropriate language to include in the 1A Scorecard and consultation with the General Counsel, the Committee agreed that the 1A Scorecard should indicate that the applicants may withdraw or may wish to seek relief via ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability mechanisms, subject to the appropriate standing and procedural requirements.

The Committee discussed its proposed response on the GAC (Governmental Advisory Committee) advice regarding the .HALAL and .ISLAM strings, and decided to accept the advice. The Committee agreed that its response should note that it stands ready to enter into a dialogue with the GAC (Governmental Advisory Committee). The Chair questioned whether the Committee needed to write a formal letter to the GAC (Governmental Advisory Committee) transmitting this response. Heather Dryden suggested that this was not necessary. The proposed response informs the GAC (Governmental Advisory Committee) that the Committee looks forward to liaising with the GAC (Governmental Advisory Committee) as to how such dialogue should be conducted.

Olga Madruga-Forti raised a concern about acting on GAC (Governmental Advisory Committee) advice that is non-consensus advice. Chris provided a brief history of the genesis of the language in the Applicant Guidebook (AGB) regarding GAC (Governmental Advisory Committee) advice where the GAC (Governmental Advisory Committee) expresses concerns—citing to the experience with the application for the .XXX string where there were number of governments who had concerns. The provision in the AGB provides governments who have deep concerns on certain strings (even if not a GAC (Governmental Advisory Committee) consensus) a mechanism to have a dialogue with the Committee about its concerns.

Jamie commented that staff looked into the issue and determined that pursuant to AGB Section 3.1.2, it does not make a difference whether the concerns are raised by the entire GAC (Governmental Advisory Committee) or a few members; the Committee is expected to enter into a dialogue to understand the scope of the concerns.

The Committee engaged in discussions regarding accepting the GAC (Governmental Advisory Committee)'s advice on the list of strings that it advised should not proceed beyond initial evaluation. Thomas questioned whether the proposed response was too open-ended. Chris confirmed that the Committee's proposed response is crafted to indicate that it will not proceed beyond initial evaluation and any dispute resolution until the Committee hears back from the GAC (Governmental Advisory Committee).

The Committee also discussed the proposed response on the GAC (Governmental Advisory Committee)'s advice regarding singular and plural strings. Bill Graham and the Chair suggested text edits to the 1A Scorecard to make it clear that the NGPC is accepting the advice to consider the issue of singular and plural strings. Mike Silber agreed that the response should be that the Committee will consider whether to allow single and plural versions of the same string.

The Committee decided that its response to the GAC (Governmental Advisory Committee)'s advice regarding protections for IGO (Intergovernmental Organization) names and acronyms was more appropriate to be sent in a letter and not within the 1A Scorecard. Jamie confirmed that the letter would be sent out under separate cover to the GAC (Governmental Advisory Committee).

The Committee agreed to accept the GAC (Governmental Advisory Committee)'s advice to finalize the RAA (Registrar Accreditation Agreement) before approving any new gTLD (generic Top Level Domain) contracts, and to advise the expert working group to take into account the GAC (Governmental Advisory Committee) principles regarding WHOIS. After a review of the briefing materials, the Committee also agreed to accept the advice regarding protections for the IOC/RCRC names.

Jamie noted that the Committee was provided responses to the Annex II questions raised by the GAC (Governmental Advisory Committee) in its Beijing Communiqué. The Committee agreed that it would transmit the responses to the GAC (Governmental Advisory Committee). Jamie also noted that the advice from the GAC (Governmental Advisory Committee) requesting a written briefing on the ability to change strings was not included in the 1A Scorecard because it will be a separate briefing paper to the GAC (Governmental Advisory Committee).

Ray Plzak inquired whether the formulation of the responses to the GAC (Governmental Advisory Committee) should reference the "Committee accepts this advice," or the "Board accepts this advice." The General Counsel responded that a whereas clause would be added to the proposed resolution to

indicate that the Committee has the Board's authority to act on the GAC (Governmental Advisory Committee) advice. George Sadowsky raised the issue that the 1A Scorecard being adopted by the Committee should be clearly labeled and identified so that it clear to the Committee and to the community which version of the 1A Scorecard is the final version adopted. The Chair, along with Chris and Ray concurred with this point and suggested that the 1A Scorecard be given a document number or other identifying information to give as much specificity as possible. The General Counsel read the proposed resolution as revised.

The Committee then took the following action:

a.

Consideration of Non-Safeguard Advice in the GAC (Governmental Advisory Committee)'s Beijing Communiqué

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 18 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) posted the Beijing Communiqué and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>) triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1;

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC (Governmental Advisory Committee)'s advice on the New gTLD (generic Top Level Domain) Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC (Governmental Advisory Committee)'s advice in the Beijing Communiqué on the New gTLD (generic Top Level Domain) Program;

Whereas, the NGPC has considered the applicant responses submitted during the 21-day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC (Governmental Advisory Committee)'s advice in the Beijing Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC (Governmental Advisory Committee)'s advice in the Beijing Communiqué similar to the one used during the GAC (Governmental Advisory Committee) and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC (Governmental Advisory Committee) advice, noting those as "1A" items.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program.

Resolved (2013.06.04.NG01), the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) Beijing Communiqué" (4 June 2013), attached as Annex 1 to this Resolution, in response to the items of GAC (Governmental Advisory Committee) advice in the Beijing Communiqué as presented in the scorecard.

Rationale for Resolution 2013.06.04.NG01

#### **Why the NGPC is addressing the issue?**

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> (/en/about/governance/bylaws#XI) permit the GAC (Governmental Advisory Committee) to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC (Governmental Advisory Committee) issued advice to the Board on the New gTLD (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013. The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee)'s advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC (Governmental Advisory Committee) advice, it must inform the GAC (Governmental Advisory Committee) and state the reasons why it decided not to follow the advice. The Board and the GAC (Governmental Advisory Committee) will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC (Governmental Advisory Committee) advice was not followed.

#### **What is the proposal being considered?**

The NGPC is being asked to consider accepting a discrete grouping of the GAC (Governmental Advisory Committee) advice as described in the attached "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) Beijing Communiqué (4 June 2013)" (the "1A Scorecard"), which includes nine (9) items of non-safeguard advice from the Beijing Communiqué as listed in the GAC (Governmental Advisory Committee) Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC (Governmental Advisory Committee)'s advice.

#### **Which stakeholders or others were consulted?**

On 18 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) advice and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>) triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 <http://newgtlds.icann.org/en/applicants/gac-advice-responses> (<http://newgtlds.icann.org/en/applicants/gac-advice-responses>). The NGPC has considered the applicant responses in formulating its response to the GAC (Governmental Advisory Committee) advice as applicable.

To note, on 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address GAC (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm> (</en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>). The public comment forum on how the NGPC should address GAC (Governmental Advisory Committee) advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC (Governmental Advisory Committee) advice not being considered at this time in the 1A Scorecard.

#### **What concerns or issues were raised by the community?**

As part of the 21-day applicant response period, ICANN (Internet Corporation for Assigned Names and Numbers) received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC (Governmental Advisory Committee) advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up, multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at: <http://newgtlds.icann.org/en/applicants/gac-advice-responses> (<http://newgtlds.icann.org/en/applicants/gac-advice-responses>).

#### **What significant materials did the Board review?**

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC (Governmental Advisory Committee) Beijing Communiqué:  
<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>  
(</en/news/correspondence/gac-to-board-18apr13-en.pdf>) [PDF, 156 KB]
- Applicant responses to GAC (Governmental Advisory Committee) advice:  
<http://newgtlds.icann.org/en/applicants/gac-advice-responses>  
(<http://newgtlds.icann.org/en/applicants/gac-advice-responses>)
- Applicant Guidebook, Module 3:  
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>  
(<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>) [PDF, 261 KB]
- The NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) Beijing Communiqué (4 June 2013)

Available as Annex 1 to the Resolution (</en/groups/board/documents/new-gtld-resolution-annex-1-04jun13-en.pdf>) [PDF, 564 KB]

**What factors did the Board find to be significant?**

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC (Governmental Advisory Committee)'s advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

**Are there positive or negative community impacts?**

The adoption of the GAC (Governmental Advisory Committee) advice as provided in the 1A Scorecard will assist with resolving the GAC (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) applications to continue to move forward as soon as possible.

**Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?**

There are no foreseen fiscal impacts associated with the adoption of this resolution.

**Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?**

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System).

**Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?**

ICANN (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) advice and officially notified applicants of the advice on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>). This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

**The Chair took a roll call vote. All members of the Committee voted in favor of Resolution 2013.06.04.NG01. The Resolution carried.**

Chris noted that the Committee's communications should be clear that the action taken is not the sum total of the 1As and that there could be additional iterations of the scorecard to address the other advice. Heather commented that it should be communicated to the GAC (Governmental Advisory Committee) that this resolution is not related to the safeguard advice.

The Chair then called the meeting to a close.

Published on 26 June 2013

**Board** (</en/groups/board>)

**Meetings** (</en/groups/board/meetings>)

**Documents** (</en/groups/board/documents>)

**Board & Chair Self-Appraisal** (</en/groups/board/documents/appraisals>)

**Board Compensation Election** (</en/groups/board/documents/ce>)

**Procedure Manual** (</en/groups/board/documents/draft-procedure-manual-09oct12-en>)

**Resolutions Wiki** (<https://community.icann.org/display/tap/ICANN+Board+Resolutions>)

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**New gTLD Program Committee** (</en/groups/board/new-gtld>)

**Risk Committee** (</en/groups/board/risk>)

**Structural Improvements Committee** (</en/groups/board/improvements>)

**ALAC** (<http://www.atlarge.icann.org>)

**ASO** (<http://aso.icann.org>)

**ccNSO** (<http://ccnso.icann.org>)

**GAC** (<http://gac.icann.org>)

**GNSO** (<http://gnso.icann.org>)

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**RSSAC** (</en/groups/rssac>)

**SSAC** (</en/groups/ssac>)

**Technical Liaison Group** (</en/groups/tlg>)

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[RSSAC \(/en/groups/rssac\)](/en/groups/rssac)  
[SSAC \(/en/groups/ssac\)](/en/groups/ssac)  
[Community Wiki \(http://community.icann.org\)](http://community.icann.org)  
[Meetings \(http://meetings.icann.org\)](http://meetings.icann.org)  
[New gTLDs \(http://newgtlds.icann.org\)](http://newgtlds.icann.org)  
[WHOIS \(http://whois.icann.org\)](http://whois.icann.org)  
Help

[\(/en/help\)](/en/help)  
Acronym Helper

# **Exhibit R-5**

## Internet Corporation for Assigned Names and Numbers

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### Minutes | Meeting of the New gTLD Program Committee

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[العربية \(/ar/groups/board/documents/minutes-new-gtld-17jul13-ar.htm\)](/ar/groups/board/documents/minutes-new-gtld-17jul13-ar.htm)

17 July 2013

**Note: On 10 April 2012, the Board established the New gTLD (generic Top Level Domain) Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD (generic Top Level Domain) Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of incorporation, Bylaws or ICANN (Internet Corporation for Assigned Names and Numbers)'s Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program. The full scope of the Committee's authority is set forth in its charter at [http://www.icann.org/en/groups/board/new-gTLD \(/en/groups/board/new-gTLD\)](http://www.icann.org/en/groups/board/new-gTLD (/en/groups/board/new-gTLD)).**

**A Regular Meeting of the New gTLD (generic Top Level Domain) Program Committee of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors was held in Durban, South Africa on 17 July 2013 at 13:30 local time.**

**Committee Chairman Cherine Chalaby promptly called the meeting to order.**

**In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN (Internet Corporation for Assigned Names and Numbers)), Chris Disspain, Bill Graham, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro, Ray Plzak, Georg Sadowsky, Mike Silber, Judith Vazquez and Kuo-Wei Wu.**

**Thomas Narten (IETF (Internet Engineering Task Force) Liaison) and Francisco da Silva (TLG Liaison) were in attendance as non-voting liaisons to the Committee.**

**Jonne Soininen was in attendance as an observer to the Committee.**

**ICANN (Internet Corporation for Assigned Names and Numbers) Staff in attendance for all or part of the meeting: Akram Atallah, President, Generic Domains Division; John Jeffrey, General Counsel and Secretary; Megan Bishop; Michelle Bright; Dan Halloran; Jamie Hedlund; David Oliv Brian Peck; Erika Randall; Amy Stathos; and Christine Willett.**

**These are the Minutes of the Meeting of the New gTLD (generic Top Level Domain) Program Committee, which took place on 17 July 2013.**

**1. Extension of Initial Protections of IGO (Intergovernmental Organization) Names and Acronyms**

Rationale for Resolution 2013.07.17.NG01 – 2013.07.17.NG03

**2. AOB**

**1.**

Extension of Initial Protections of IGO (Intergovernmental Organization) Names and Acronyms

The Chair introduced the item to the Committee, and the Committee considered extending the initial protections for IGO (Intergovernmental Organization) names and acronyms while the Committee continues to work through implementation issues with the GAC (Governmental Advisory Committee).

Chris Disspain updated the Committee on a meeting he had with Bill Graham and representatives from the OECD (Organization for Economic Co-operation and Development) and WIPO (World Intellectual Property Organization), where they discussed the possibility of a clearinghouse model to protect IGO (Intergovernmental Organization) acronyms. Chris noted that the IGO (Intergovernmental Organization) representatives were concerned about gaming and are interested in mechanisms, such as rapid take-down, to address those concerns. Chris explained that more time is needed to work on a solution, and he recommended that the Committee consider extending the initial protections for IGOs until the Buenos Aires meeting. Mike Silber asked whether that was a sufficient amount of time. Gonzalo Navarro noted that the temporary protections in the resolution need to have a clear end date, whether the date of the Buenos Aires meeting or another specific date.

The members of the Committee discussed proposed clarifications to the resolution.

Ray Plzak moved, and Bill Graham seconded the resolution. The Committee then took the following action:

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the Beijing Communiqué reiterated the GAC (Governmental Advisory Committee)'s previous advice to the Board that "appropriate preventative initial protection for the IGO (Intergovernmental Organization) names and acronyms on the provided list be in place before any new gTLDs would launch" (the "IGO (Intergovernmental Organization) GAC (Governmental Advisory

Committee) Advice"). The IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice is identified in the GAC (Governmental Advisory Committee) Register of Advice as 2013-04-11-IGO.

Whereas, the New gTLD (generic Top Level Domain) Program Committee (NGPC) is responsible for considering the IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program.

Whereas, the NGPC has spent significant time considering the IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice and has had initiated dialogue with the GAC (Governmental Advisory Committee) on this advice.

Whereas, on 2 July 2013, the NGPC approved Resolutions 2013.07.02.NGPC03 – 2013.07.02.NGPC06, and the NGPC confirmed that appropriate initial protection for the IGO (Intergovernmental Organization) identifiers will continue to be provided as presented in the "IGO (Intergovernmental Organization) List dated 22/03/2013" through the first meeting following the ICANN (Internet Corporation for Assigned Names and Numbers) 47 meeting in Durban while the GAC (Governmental Advisory Committee), NGPC, ICANN (Internet Corporation for Assigned Names and Numbers) staff and community continue to actively work through outstanding implementation issues concerning protections for IGO (Intergovernmental Organization) names and acronyms through.

Whereas, the GAC (Governmental Advisory Committee), NGPC, ICANN (Internet Corporation for Assigned Names and Numbers) staff and community continue to actively work through outstanding implementation issues, the NGPC thinks it is prudent to further extend the initial protections for the IGO (Intergovernmental Organization) identifiers.

Resolved (2013.07.17.NG01), the NGPC confirms that appropriate preventative initial protection for the IGO (Intergovernmental Organization) identifiers will continue to be provided as presented in the New gTLD (generic Top Level Domain) Registry Agreement adopted on 2 July 2013 while the GAC (Governmental Advisory Committee), NGPC, ICANN (Internet Corporation for Assigned Names and Numbers) staff and community continue to actively work through outstanding implementation issues.

Resolved (2013.07.17.NG02), the NGPC determines that pursuant to Specification 5 in the New gTLD (generic Top Level Domain) Registry Agreement adopted on 2 July 2013, registry operators will continue to implement temporary protections for the precise IGO (Intergovernmental Organization) names and acronyms on the "IGO (Intergovernmental Organization) List" posted as Annex 1 (/en/groups/board/documents/resolutions-new-gtld-annex-1-item-1b-02jul13-en.pdf) [PDF, 541 KB] to Resolution 2013.07.02NG03 – 2013.07.02.NG06 until the first meeting of the NGPC following the ICANN (Internet Corporation for Assigned Names and Numbers) 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice, whichever is earlier.

Resolved (2013.07.17.NG03), if the NGPC and GAC (Governmental Advisory Committee) do not reach an agreement on outstanding implementation issues for protecting IGO (Intergovernmental Organization) names and acronyms by the first meeting of the NGPC following the ICANN (Internet Corporation for Assigned Names and Numbers) 48 meeting in Buenos Aires, and subject to any matters that arise during the discussions, the NGPC determines that registry operators will be

**R-5**

required to protect only the IGO (Intergovernmental Organization) names identified on the GAC (Governmental Advisory Committee)'s "IGO (Intergovernmental Organization) List" posted as Annex 1 (</en/groups/board/documents/resolutions-new-gtld-annex-1-item-1b-02jul13-en.pdf>) [PDF, 541 KB] to Resolution 2013.07.02NG03–2013.07.02.NG06.

Rationale for Resolution 2013.07.17.NG01 – 2013.07.17.NG03

**Why the NGPC is addressing the issue?**

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws <<http://www.icann.org/en/about/governance/bylaws#XI>> (/en/about/governance/bylaws#XI) permits the GAC (Governmental Advisory Committee) to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC (Governmental Advisory Committee) issued advice to the Board on the New gTLD (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013. The ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws require the Board to take into account the GAC (Governmental Advisory Committee)'s advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC (Governmental Advisory Committee) advice, it must inform the GAC (Governmental Advisory Committee) and state the reasons why it decided not to follow the advice. The Board and the GAC (Governmental Advisory Committee) will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC (Governmental Advisory Committee) advice was not followed.

**What is the proposal being considered?**

In the Beijing Communiqué, the GAC (Governmental Advisory Committee) reiterated previous advice that "appropriate preventative initial protection for the IGO (Intergovernmental Organization) names and acronyms on the provided list be in place before any new gTLDs would launch ("IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice")." The NGPC is being asked to consider accepting this advice, while being mindful of the outstanding implementation issues. This IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice is identified in the GAC (Governmental Advisory Committee) Register of Advice as 2013-04-11-IGO.

The New gTLD (generic Top Level Domain) Registry Agreement includes protections for IGOs but does not yet specify the names and acronyms to be protected.

To address the GAC (Governmental Advisory Committee) advice regarding IGO (Intergovernmental Organization) names and acronyms, on 2 July 2013, the NGPC directed that temporary protections for the IGO (Intergovernmental Organization) names and acronyms previously identified by the GAC (Governmental Advisory Committee) on its "IGO (Intergovernmental Organization) List dated 22/03/2013," which was attached as Annex 1 (</en/groups/board/documents/resolutions-new-gtld-annex-1-item-1b-02jul13-en.pdf>) [PDF, 541 KB] the 2 July 2013 resolutions, so that the GAC (Governmental Advisory Committee) and the NGPC would have time to work out outstanding implementation issues, as noted in the Beijing Communiqué. We think it is important that those temporary protections remain in place until the first meeting of the NGPC following the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in Buenos Aires, Argentina, unless the NGPC and the GAC (Governmental Advisory Committee) are able to resolve the issues and the NGPC passes a resolution on the IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice earlier than the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in Buenos Aires. If the NGPC and the GAC (Governmental Advisory Committee) do not reach agreement on the issues, and subject to any matters that arise during the discussions, the NGPC would require registry operators only to protect the names, but not the acronyms, identified on the GAC (Governmental Advisory Committee)'s IGO (Intergovernmental Organization) List posted as Annex 1 (</en/groups/board/documents/resolutions-new-gtld-annex-1-item-1b-02jul13-en.pdf>) [PDF, 541 KB] to Resolutions 2013.07.02NG03-2013.07.02.NG06. This Resolution provides temporary protections for IGOs while respecting the ongoing implementation work.

**Which stakeholders or others were consulted?**

On 29 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on the proposed final draft of the New gTLD (generic Top Level Domain) Registry Agreement <<http://www.icann.org/en/news/public-comment/base-agreement-29apr13-en.htm> (</en/news/public-comment/base-agreement-29apr13-en.htm>)>. The public comment forum closed on 11 June 2013. The NGPC has considered the community comments on the New gTLD (generic Top Level Domain) Registry Agreement in formulating its response to the IGO (Intergovernmental Organization) GAC (Governmental Advisory Committee) Advice as it relates to the New gTLD (generic Top Level Domain) Registry Agreement <<http://forum.icann.org/lists/comments-base-agreement-29apr13/> (<http://forum.icann.org/lists/comments-base-agreement-29apr13/>)>.



Additionally, on 14 June 2013, the GNSO (Generic Names Supporting Organization) Policy Development Process Working Group tasked with addressing the issue of protecting the identifiers of certain IGOs and International Non-Governmental Organizations ("INGOs") in all gTLDs published its Initial Report for public comment. The public comment period is scheduled to close 7 August 2013.

<<http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm> (/en/news/public-comment/igo-ingo-initial-14jun13-en.htm)> The Issue Report was initiated as a result of a recommendation by the GNSO (Generic Names Supporting Organization) Drafting Team formed to provide a GNSO (Generic Names Supporting Organization) Council response to the Board and GAC (Governmental Advisory Committee) on the protection of IOC and RCRC names in new gTLDs. After community review, the scope of the Final GNSO (Generic Names Supporting Organization) Issue Report included an evaluation of whether to protect the names of both IGOs and non-government organizations at the top level and second level in all gTLDs.

#### **What concerns or issues were raised by the community?**

ICANN (Internet Corporation for Assigned Names and Numbers) received several responses from the community during the course of the public comment forum on the proposed final draft of the New gTLD (generic Top Level Domain) Registry Agreement; however, none of the responses specifically relates to the provisions in the New gTLD (generic Top Level Domain) Registry Agreement to provide protections for IGO (Intergovernmental Organization) identifiers.

<<http://forum.icann.org/lists/comments-base-agreement-29apr13/> (<http://forum.icann.org/lists/comments-base-agreement-29apr13/>)>

#### **What significant materials did the NGPC review?**

As part of its deliberations, the NGPC reviewed the following significant materials and documents:

- GAC (Governmental Advisory Committee) Beijing Communiqué:  
<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> (/en/news/correspondence/gac-to-board-18apr13-en.pdf) [PDF, 156 KB]
- Public comments in response to the New gTLD (generic Top Level Domain) Registry Agreement: <http://forum.icann.org/lists/comments-base-agreement-29apr13/> (<http://forum.icann.org/lists/comments-base-agreement-29apr13/>)
- GNSO (Generic Names Supporting Organization) PDP (Policy Development Process) Working Group Initial Report on Protection of IGO (Intergovernmental Organization) and INGO Identifiers in all gTLDs:  
<<http://gnso.icann.org/en/issues/igo-ingo-initial-14jun13-en.pdf> (<http://gnso.icann.org/en/issues/igo-ingo-initial-14jun13-en.pdf>)> [PDF, 609 KB]

#### **What factors did the Board find to be significant?**

The Beijing Communiqué generated significant interest from the community and stimulated many comments. The NGPC considered the community comments, the GAC (Governmental Advisory Committee)'s advice transmitted in the Beijing Communiqué, the ongoing work of the GNSO (Generic Names Supporting Organization) PDP (Policy Development Process) Working Group on the Protection of IGO (Intergovernmental Organization) and INGO Identifiers in all gTLDs and further discussion with the GAC (Governmental Advisory Committee) on this topic.

**Are there positive or negative community impacts?**

The response to the GAC (Governmental Advisory Committee) advice as provided in the NGPC's Resolution will assist with resolving the GAC (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) applications to continue to move forward as soon as possible, while being mindful of the ongoing efforts to work through the outstanding implementation issues.

**Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?**

There are no foreseen fiscal impacts associated with the adoption of this resolution.

**Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?**

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System).

**Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?**

On 29 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on the proposed final draft of the New gTLD (generic Top Level Domain) Registry Agreement. The public comment forum closed on 11 June 2013.

On 14 June 2013, the GNSO (Generic Names Supporting Organization) Policy Development Process Working Group tasked with addressing the issue of protecting the identifiers of certain IGOs and INGOs in all gTLDs published its Initial Report for public comment. The public comment period is scheduled to close 7 August 2013.

<<http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>  
(/en/news/public-comment/igo-ingo-initial-14jun13-en.htm)>

**All members of the Committee in attendance voted in favor of Resolutions 2013.07.17.NG01 – 2013.07.17.NG03. The Resolutions carried.**

2.

**AOB**

The Committee considered its upcoming discussions with members of the GAC (Governmental Advisory Committee) who have concerns about applications for .HALAL and .ISLAM. The Chair inquired about the number of Committee members planning to attend the meeting, and noted that the goal of the meeting was to listen to the concerns of the governments about the applications.

Thomas Narten noted that the Committee should not be concerned if the number of Committee members attending the meeting would constitute a quorum for purposes of a regular meeting of the Committee. Gonzalo Navarro agreed, and noted that it was important to for as many Committee members as available to hear what the governments had to say.

Ray Plzak noted that even if not a formal Committee meeting, the number of attendees could give a perception of a formal meeting. Gonzalo agreed with Ray that the Committee should be clear about expectations for the meeting since this is the first of its kind and could be seen as setting a precedent.

The Chair suggested that there could be a statement at the beginning of the meeting to note that it is not a formal Committee meeting so as to avoid any misconceptions.

Chris Disspain noted that the meeting, while not a decision-making meeting, formal Committee meeting, is actually intended to be a dialogue pursuant to the Applicant Guidebook which requires the Board to enter into a dialogue to understand the full scope of the concerns raised in the GAC (Governmental Advisory Committee)'s advice if the if the Board receives advice from the GAC (Governmental Advisory Committee) that some governments have concerns about particular strings.

Erika Mann and Olga Madruga-Forti made suggestions for how the dialogue should be conducted.

The Committee also engaged in a discussion regarding conflicts of interest and the process for handling them. The Committee reviewed whether there were conflicts of interest present on 4 June 2013 when the Committee passed a resolution accepting the GAC (Governmental Advisory Committee)'s advice in the Beijing Communiqué regarding its consensus objection for a .AFRICA application. Each member of the Committee confirmed that there were no conflicts present at the time of the vote on the resolution.

The Chair then called the meeting to a close.

Published on 11 September 2013

**Board (/en/groups/board)**

**Meetings (/en/groups/board/meetings)**

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**Procedure Manual (/en/groups/board/documents/draft-procedure-manual-09oct12-en)**

**Resolutions Wiki (<https://community.icann.org/display/tap/ICANN+Board+Resolutions>)**

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**New gTLD Program Committee (</en/groups/board/new-gtld>)**

**Risk Committee (</en/groups/board/risk>)**

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**GNSO (<http://gnso.icann.org>)**

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**NRO (<http://www.nro.net>)**

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**RSSAC (</en/groups/rssac>)**

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Acronym Helper

# **Exhibit R-6**

## **Mr. Sammy Buruchara, Former Chairman of DCA Appointed as the Kenyan GAC Advisor to ICANN**

*Source: DotConnectAfrica org*

*Dated: Mar. 14, 2013*

UPPERHILL, Kenya -- Mr. Buruchara's has amassed an invaluable leadership experience in numerous innovation-focused governmental and private sector organizations and his extensive experience in emerging economies throughout his career, and it is hoped that he will bring this to bear positively on the work of the ICANN GAC.

Mr. Buruchara is a renowned Internet giant with a long and successful career in the ICT industry. He is the founder of Nairobi Net Limited, one of the pioneer Internet Service Providers (ISPs) in Kenya, a founding member and former chairman of the Telecommunications Service Providers Association in Kenya, and a member of the Board of Directors of the Kenya ICT Board. He also served as a member of the IT-enabled services working group at the Prime Minister's Office of the Government of Kenya.

Mr. Buruchara is familiar with the work of ICANN and has been credited for organizing and hosting one of the most successful ICANN meetings in Africa. Under his coordination, the ICANN 37 in Nairobi held in March 2010, hosted delegates from all over the world during which important resolutions that have had very positive impacts on today's Internet deployments were adopted.

His tenure in several organizations such as Kenyan Network Information Centre (KeNIC) saw Mr. Buruchara pioneer great strategies of how to run the country-code TLD registry (.ke) by replicating the ICANN bottom-up approach because of the balance between commerce and public interest. This approach ensures that governments and the private sector are able to participate equitably in a PPP (Public Private Partnership).

Late in 2012, he was also brought in as a Change Manager at KENIC, and successfully oversaw the total revamping and rebranding of the ccTLD manager. He overhauled the whole system and refreshed the management as well as systems in a move to reduce cost and increase effectiveness.

**Until this appointment to the ICANN GAC, Mr. Buruchara had been associated with DotConnectAfrica Trust as the Chairperson of DCA's Strategic Leadership Advisory Board. He has since since resigned officially from DCA Trust and is no longer associated with our organization.**

We are delighted to have Mr. Buruchara extend his great internet and development expertise and insight to the ICANN GAC. His deep knowledge of Internet needs in the developing world and impressive accomplishments in creating solutions tailored for the African internet constituency would be of great help in furthering the work of the ICANN GAC.

In his resignation letter he commended Ms. Bekele's leadership saying; *"It was a great unique opportunity and experience to work with the entire board especially Ms. Bekele who tirelessly showed immense leadership for the project"* Mr. Buruchara credits Ms. Sophia Bekele for building and consolidating many important partnerships between DCA Trust and several technology and services providers in Kenya in order to boost Kenya's profile as the country host of a new gTLD registry.

Mr. Sammy Buruchara will be greatly missed at DCA Trust. We wish him well in all his future endeavors especially now that he has to discharge important responsibilities at ICANN as the GAC Representative of

Kenya, a role that he seems quite prepared for. In his valedictory comments to DCA Trust, Mr. Buruchara said: *"I really look forward to working with the ICANN GAC and assist towards achieving its goal of independence and judicious execution of its duties in my appointment representing my country at ICANN"*

### **DCA Registry Services Ltd.**

DCA Registry Services (Kenya) Ltd is an affiliate of DotConnectAfrica Trust (DCA Trust) based in Kenya. DCA has partnered with Safaricom and Fincom Technologies in Kenya and CentralNic, a UK based world's pioneering domain registry to deliver superior domain registry services that are based on the latest Extensible Provisioning Protocol (EPP), and supported with RGP, DNSSEC. There is a Launch Phase extension for Sunrise and Land Rush periods. Other key registry technologies include Thick Whois, IPv6 Compatibility, and IDN Support.

The registry services run on a redundant back end with an embedded Mobile Device compliant system. Security and Stability is also enabled with a Shared Registry System (SRS) for ease of use by registrars and other .africa appointed resellers.

--- End ---

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# **Exhibit R-7**



September 28, 2013

The President/Chief Executive Officer  
Internet Corporation for Assigned Names & Numbers (ICANN)  
12025 Waterfront Drive, Ste. 300  
Los Angeles, CA USA 90094  
United States of America

**Copy to: Dr. Steven Crocker, Chairman of the ICANN Board of Directors**

Dear Sirs,

**Subject: Submission of Clarifications Sought by ICANN Representatives during our recent CEP Discussions**

We hereby write to provide you with some clarifications requested by ICANN representatives during our last CEP telephonic meeting on Thursday, September 19, 2013.

**1. Our GAC Advice was a 'GAC Objection Advice'**

The GAC Advice that our .Africa application received was a 'GAC Objection Advice'. You may refer to the Beijing GAC Advice of April 11, 2013 for verification. Moreover, the GAC Advice Framework that was published by the ICANN new gTLD Program Committee (NGPC) classified our .Africa application as an 'Objection'. Again, we urge you to refer to the GAC Advice Framework that was prepared and published by the NGPC in May 2013.

Please note that a GAC Objection Advice must not be confused with the type of 'objections' filed under the four (4) main criteria (grounds) such as **Legal Rights Objection, String Confusion Objection, Community Objection, and Limited Public Interest Objection** filed with the respective official (new gTLD Program) Dispute Resolution Service Providers as per Section 3.2.1 of the new gTLD Program Guidebook.

Nevertheless, the new gTLD Program Guidebook also witnesses in Module 3, Section 3.1 of the Applicant's Guidebook that in some cases, a GAC (Objection) Advice could be pertinent to one of the subject matter areas of the objection procedures as per the following statement excerpted from Section 3.1 of the Guidebook: ***"The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures."***

**2. If the GAC Objection Advice is related/pertinent to one of the subject matter area of 'Objection Procedures', then Independent Experts may be consulted by the ICANN Board**

According to the new gTLD Program Guidebook: ***"The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures"***. We believe that since this was not done by the ICANN Board, DCA Trust shall continue to maintain that the ICANN Board did not exercise the necessary amount of discretion in this regard to ensure that it followed a rigorous and accountable process before reaching its decision.



### 3. What should be done to consult with Independent Experts

To consult with 'Independent Experts' **“such as those designated to hear objections in the new gTLD Program Dispute Resolution Procedure”**, we believe that the GAC Objection Advice, and the Response to the GAC Objection Advice submitted by DCA Trust to ICANN should be sent by the ICANN Board to the designated Independent Expert for their review and opinion.

We think that the Independent Expert should be asked to **treat the GAC Objection Advice and the accompanying Response to GAC Advice by DCA Trust the same way they would treat a filed Community Objection** – that is, as a new gTLD Dispute with the African Union Commission (acting as a GAC member) as the 'Objector', objecting (through ICANN GAC), on behalf of the African Community, and DCA Trust as the 'Respondent' (responding applicant); **thus, the Independent Expert should be asked to review the process that led to the GAC Objection Advice:**

- Whether it was valid in terms of overall conformance to laid down procedures prescribed in the Guidebook including Section 3.2.2.4; and
- Whether the process that led to the GAC Objection Advice followed the operating principles of the ICANN GAC;
- Determine the overall substantiality of the defense presented by DCA Trust;
- Determine whether the GAC Objection Advice itself is valid in terms of its overall substance and adherence to due process; and also
- Determine whether the arguments and evidences presented by DCA Trust in defense of the GAC Objection Advice are admissible, and on the basis of such considerations and comprehensive determinations, provide an expert opinion to ICANN whether to accept the GAC Objection Advice as issued or not to accept the GAC Objection Advice in the same way that they (Dispute Resolution Service Provider) would make a ruling on a filed Objection Procedure:
- Whether to uphold the Objection as filed or deny the Objection either due to lack of merit or some other deficiency inherent in the filed Objection; or on the strength of the defense that has been presented by the respondent to counter the Objection.

### 4. Why we believe ICANN violated its own Bylaws

Section 3 (4b) of the ICANN Bylaws infers that the **ICANN Board shall always exercise due diligence and care in having a reasonable amount of facts in front of them before taking their decisions.**

We hereby cite Article IV, Section 3 (No. 4b) of the ICANN Bylaws which states *inter alia*:

*“Requests for such independent review shall be referred to an Independent Review Process Panel (“IRP Panel”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:*

- a. *did the Board act without conflict of interest in taking its decision?;*
- b. *did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?;*”

We have posited that by not consulting with Independent Experts prior to deciding on the GAC Objection Advice that was issued against DCA Trust's .Africa application, even though the GAC Objection Advice against DCA's application had already been correctly assessed by ICANN as an 'Objection' based on the published NGPC GAC Advice Framework, **the ICANN has violated this particular provision (cited above)**



**within its Bylaws.** We seriously believe that the ICANN Board failed to ensure a rigorous and accountable process which would have proved beyond reasonable doubt that **“the Board exercised due diligence and care in having a reasonable amount of facts in front of them”** when they considered the GAC Objection Advice.

DCA Trust has always maintained the position that by not exercising the discretionary option of consulting with Independent Experts as stipulated in the Guidebook (Section 3.1), the ICANN Board did not exercise due diligence and sufficient care in having a reasonable amount of facts in front of them, since it is quite patent that consultations with independent experts **“such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures”** would have no doubt presented an additional point of view (or other facts based on expert determination) that should have been considered by the ICANN Board NGPC before the decision was taken.

Furthermore, by not exhausting all the likely procedures recommended in the Guidebook (Section 3.1) including consultations with Independent Experts, we deem the resulting decision as inequitable, and as such, is also a violation of the relevant provision within the ICANN Bylaws which states that **“ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment”**. Please refer to Section 3 (‘Non-Discriminatory Treatment’) of Article II of the ICANN Bylaws. DCA Trust has always insisted that the decision made by the ICANN NGPC was inequitable.

### **Conclusion**

In concluding, we implore you to please note that we have already conveyed the main points of our arguments in the various communications sent to ICANN in the recent past, and we urge you to read them carefully so as to thoroughly understand our position as presented and what presently constitutes the basis of our continuing disagreement with the decision that has been taken by the ICANN Board NGPC.

Therefore, we believe that if the ICANN representatives participating in the CEP Procedure are (still) unable to correctly understand DCA’s position, **then the matter should be referred (subjected) to independent review by a competent third-party.**

In any case, we hereby opine that acceptance on the part of ICANN to consult with independent experts on the GAC Objection Advice and the Response to GAC Advice submitted by DCA Trust pursuant to relevant stipulations contained in Section 3.1 of the new gTLD Program Guidebook will be a good beginning, and DCA Trust would profoundly welcome such a step as indeed ‘cooperative’.

Thanking you in anticipation as we look forward to hearing from you soonest.

Yours sincerely,

*For & On Behalf of DotConnectAfrica Trust*

*Sbekele*

Ms. Sophia Bekele, B.S., M.B.A., C.I.S.A, C.C.S, CGEIT  
DotConnectAfrica Trust (Applicant for the .Africa gTLD) Application ID: 1-1165-42560

cc: Mr. Akram Atallah, President, Generic Domains, Division  
cc: Cherine Chalaby, Chair, New gTLD Program Committee  
cc: John Jeffrey, ICANN General Counsel & Secretary  
cc: Susanna Bennett, ICANN Chief Operating Officer