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13 **ZA Central Registry, NPC**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES – CENTRAL**

16 DOTCONNECTAFRICA TRUST, a
17 Mauritius Charitable Trust,

18 Plaintiff,

19 v.

20 INTERNET CORPORATION FOR
21 ASSIGNED NAMES AND NUMBERS, a
22 California corporation; ZA Central Registry,
23 a South African non-profit company; and
24 DOES 1 through 50, inclusive,

25 Defendants.

CASE NO. BC607494

*Assigned for all purposes to the Honorable
Howard Halm*

**DECLARATION OF MOCTAR YEDALY
IN SUPPORT OF ZACR'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

[Filed concurrently: Opposition to Plaintiff's
Motion for Preliminary Injunction;
Declarations of Amy T. Brantly; Mokgabudi
Lucky Masilela; and Declaration II of
Mokgabudi Lucky Masilela in Support of
ZACR's Opposition to Plaintiff's Motion for
Preliminary Injunction]

Date: February 2, 2017

Time: 8:29 a.m.

Dept.: 53

1 **DECLARATION OF MOCTAR YEDALY**

2 I, Moctar Yedaly, hereby declare as follows:

3 1. I am the Head of Information Society Division, within the
4 Infrastructure and Energy Department at the African Union Commission
5 (“AUC”), a position I have held since 2007. The AUC has authorized me to
6 submit this declaration in support of ICANN and ZACR’s opposition to
7 DotConnectAfrica Trust’s (“Plaintiff” or “DCA”) Motion for Preliminary
8 Injunction. I have personal and first-hand knowledge of the matters set forth
9 herein and I am competent to testify as to those matters if called as a witness.

10 2. The AUC is the secretariat of the African Union (“AU”), entrusted
11 with the union’s executive functions. As stated on the AU’s website –
12 <http://www.au.int/en/about/nutshell> – the vision of the AU is: “An integrated,
13 prosperous and peaceful Africa, driven by its own citizens and representing a
14 dynamic force in [the] global arena.” The objectives of the AU include the
15 promotion of sustainable development of the economic, social and cultural levels
16 as well as the integration of African economies, and the advancement of the
17 development of the continent by promoting research in all fields, in particular in
18 science and technology.

19 3. The AU has 54 member states, all from the African continent:
20 Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde,
21 Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d’Ivoire, DR
22 Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia,
23 Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar,
24 Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria,
25 Rwanda, Sahrawi Republic, Sao Tome and Principe, Senegal, Seychelles, Sierra
26 Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Togo, Tunisia,
27 Uganda, UR of Tanzania, Zambia, and Zimbabwe. The only country in Africa

1 that is not a member of the AU is Morocco. Notwithstanding this, the
2 Government of Morocco provided its letter of support for ZACR's application for
3 the .AFRICA TLD.

4 4. The AUC is the key organ playing a central role in the day-to-day
5 management of the African Union. The AUC represents the Union and defends
6 its interests; elaborates draft common positions of the Union; prepares strategic
7 plans and studies for the consideration of the Executive Council i.e., Council of
8 Ministers of Foreign Affairs of the Union's Member States; elaborates, promotes,
9 coordinates and harmonizes the programs and policies of the Union with those of
10 the Regional Economic Communities; and ensures the mainstreaming of gender in
11 all programs and activities of the Union.

12 5. A primary mission of the AUC is to help drive African integration
13 and development process in close collaboration with African Union Member
14 States, the Regional Economic Communities and African citizens. In my position
15 at the AUC, I am in charge of the development of Policies and Regulations and
16 implementation of projects in the field of information and communication
17 technologies for the entire African Continent.

18 6. I have been integrally involved in the AUC's efforts to support the
19 delegation of a .AFRICA top level domain for the African continent. This
20 initiative is fully endorsed by the African Union and has widespread support
21 across the continent. The launch of the .AFRICA domain is of historic
22 significance to the African continent. With the goal of establishing "Africa in One
23 Space," .AFRICA will provide secure, world-class technical infrastructure to
24 leverage the continent's socio-economic capacity and potential. Built on a
25 consensus-driven framework of best practices and open standards, the .Africa
26 Registry will place special emphasis on securing the rights of intellectual property
27 owners, Internet users and the broader African community. The .AFRICA gTLD

1 will enable governments, business and civil society to build brands, promote
2 development and establish long-term relationships with this market. The
3 .AFRICA gTLD will also help governments, the private sector, organizations and
4 individuals associate their services, products and information with the continent.

5 7. On August 7, 2010, African ministers in charge of Information and
6 Communication Technologies (“ICT”) for their respective countries signed the
7 “Abuja Declaration.” In that declaration, the ministers requested that the AUC
8 coordinate various projects aimed at promoting ICT projects on the African
9 continent. Among those projects was “set[ting] up the structure and modalities for
10 the [i]mplementation of the DotAfrica Project.” Attached hereto as **Exhibit A** is
11 a true and correct copy of the Abuja Declaration.

12 8. Pursuant to that mandate, the AUC issued a public request for
13 expressions of interest, followed by a response for proposals (“RFP Process”),
14 seeking applications from private organizations (including DCA interested in
15 operating the .AFRICA gTLD).

16 9. Prior to the Abuja Declaration, and years before ICANN had even
17 published the applicable Guidebook governing the new gTLD process that would
18 apply to .AFRICA in 2012, the AUC had been approached by DCA requesting a
19 letter of support for the .AFRICA initiative. On August 27, 2009, the AUC issued
20 a letter to DCA expressing its support of the .AFRICA initiative. Attached hereto
21 as **Exhibit B** is a true and correct copy of that August 27, 2009 letter. (The letter
22 was signed by the AUC Deputy Chairperson, Mr. Erastus J.O. Mwencha, for and
23 on behalf of the AUC Chairperson, Jean Ping. This is made clear by Mr.
24 Mwencha signing his own name “for” the Chairperson, and also because the
25 official stamp over the signature block was that of the Deputy Chairperson.) The
26 AUC letter was sent to DCA years before ICANN had issued the governing
27 Guidebook and put out a formal bid for new gTLD applications. Once the AUC
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1 recognized that ICANN was moving forward with a new gTLD process and likely
2 would allow the .AFRICA gTLD to become a reality, the AUC determined that a
3 fully vetted and transparent process was needed for the governments of Africa to
4 provide proper support to an applicant seeking to serve as a registry for a gTLD
5 that would represent the entire continent.

6 10. To that end, on April 16, 2010, the AUC sent DCA a letter informing
7 it that “following consultations with relevant stakeholders . . . [i]t no longer
8 endorse[d] individual initiatives [for .AFRICA].” Instead, “in coordination with
9 the Member States . . . the [AUC] w[ould] go through [an] open [selection]
10 process.” A true and correct copy of this AUC letter is attached hereto as **Exhibit**
11 **C**. One of the purposes of this letter was to advise DCA that the AUC was
12 withdrawing any previous support the AUC had announced for DCA now that the
13 AUC was more fully engaged and had determined to conduct an open selection
14 process to identify the registry operator that the AUC would endorse.

15 11. DCA acknowledged that it was aware the AUC had withdrawn any
16 previous support because it wrote a letter to the AUC on January 26, 2011
17 complaining about what it believed to be the “wrongful withdrawal of [the AUC]
18 endorsement letter.” A true and correct copy of DCA’s January 26, 2011 letter is
19 attached hereto as **Exhibit D**. Thereafter, DCA chose not to participate in the
20 AUC’s RFP Process. ZA Central Registry (“ZACR”), which was previously
21 known as UniForum SA, prevailed in the RFP Process, and ZACR submitted an
22 application to ICANN for the .AFRICA gTLD with the full support of the AUC
23 and with more than 60% support from individual African Governments as
24 required by the new gTLD Applicants’ Guidebook.

25 12. On July 2, 2013, the AUC, pursuant to the Abuja Declaration and
26 with full authority of its member states, sent a letter to ICANN expressly advising
27 that the AUC had placed its full support behind ZACR’s application. (At the time,
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1 ZACR was known as UnForum SA). Attached hereto as **Exhibit E** is a true and
2 correct copy of the July 2, 2013 letter expressing the AUC's support for ZACR's
3 application. I am further informed that Morocco, the only nonmember of the
4 AUC, separately provided a letter supporting ZACR's application. Attached
5 hereto as **Exhibit F** is a true and correct copy of the March 28, 2012 letter from
6 Morocco. It should be noted that the AUC had provided an earlier endorsement
7 letter for ZACR dated April 4, 2012. Attached hereto as **Exhibit G** is a true and
8 correct copy of that earlier letter. After ZACR had been informed that the earlier
9 letter failed to include additional language that ICANN or its vendor deemed
10 necessary to comply with the Guidebook, the AUC undertook to submit the July
11 2, 2013 letter. In so doing, the AUC had asked ZACR to provide the language
12 that was deemed necessary. ICANN then provided the required language; that
13 language was ultimately incorporated into the July 2, 2013 AUC endorsement
14 letter.

15 13. The AUC never supported DCA's application at any time after April
16 16, 2010, and certainly not at any time after ICANN issued its Applicant's
17 Guidebook and invited new applicants to apply for gTLDs, including .AFRICA.
18 Thus, the AUC did not support DCA's application for .AFRICA at the time DCA
19 submitted it to ICANN in 2012, and it does not support DCA's application now.
20 It should be noted that DCA never requested a letter of support from the AUC
21 after ICANN issued its Guidebook in 2012, and the AUC would have declined
22 such a request because following the RFP process the AUC had determined only
23 to support ZACR's application. The strong feelings of the African governments
24 on this matter can also be gleaned by the 17 (seventeen) GAC Early Warning
25 Notices issued by individual African governments that were issued against DCA's
26 application for .AFRICA. Attached hereto as **Exhibit H** are true and correct
27 copies of the GAC Early Warning Notices.

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1 14. On September 29, 2015, the AUC sent a further letter to ICANN to
2 clarify, once again, that the AUC, on behalf of the African governments, only
3 supports ZACR's application and does not support the application submitted by
4 DCA. Attached hereto as **Exhibit I** is a true and correct copy of the AUC's letter
5 of September 29, 2015. The AUC deemed this additional letter necessary after it
6 came to light that DCA was still attempting to use an early letter that had been
7 expressly withdrawn and repudiated. As addressed in the September 29, 2015
8 AUC letter:

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- 10 • “To be clear, the application submitted by ZA Central Registry
11 (ZACR) . . . is the only application fully endorsed and supported by
12 the AUC and hence African member states. The AUC officially
13 endorsed the ZACR application in our letter dated 4 April 2012,
14 which was followed by our letter of support dated 2 July 2013.”
 - 15 • “Any reliance by DCA in its application . . . proclaiming support or
16 endorsement by the AUC, must be dismissed. The AUC does not
17 support the DCA application and, if any such support was initially
18 provided, it has subsequently been withdrawn with the full
19 knowledge of DCA even prior to the commencement of ICANN's
20 new gTLD application process.”

21 15. I should also note that, on or about July 20, 2015, the AUC received
22 a letter from the Secretary of the Commission and Legal Advisor for the United
23 Nations Economic Commission for Africa (“UNECA”). A true and correct copy
24 of the July 20, 2015 UNECA letter is attached hereto as **Exhibit J**. As set forth in
25 the letter, UNECA “reaffirmed its commitment and support to the AU in the
26 management of Internet-based resources in Africa”, and further advised that an
27 earlier 2008 UNECA letter referenced by DCA could not constitute a proper
28 endorsement by the governments of Africa:

- 1 • “ECA as United Nations entity is neither a government nor a public
2 authority and therefore is not qualified to issue a letter of support for
3 a prospective applicant in support of their application. In addition,
4 ECA does not have a mandate to represent the views or convey the
5 support or otherwise of African governments in matters relating to
6 application for delegation of the gTLD.”
- 7 • “In this regard, the August 2008 letter referenced above is merely
8 expressions of a view in relation to the entity’s initiatives and efforts
9 regarding internet governance, including efforts to obtain a gTLD for
10 Africa. It is ECA’s position that the August 2008 letter to Ms.
11 Bekele [later used by DCA] cannot be properly considered as a
12 “letter of support or endorsement” within the context of ICANN’s
13 requirements and cannot be used as such.”

14 16. ZACR has signed a registry agreement with ICANN, and I am
15 informed that ZACR is fully prepared to proceed once ICANN is able to complete
16 the delegation.

17 17. On June 2, 2014 – more than two years ago – the AUC sent a letter to
18 ICANN explaining “DotAfrica is an extremely important initiative for Africa’s
19 participation and contribution to the Internet economy and to the broader Internet
20 governance ecosystem,” and that it was “with great concern that we are faced with
21 [] delay in delegating this important regional TLD.” Our letter continued: “[I]t is
22 becoming increasingly difficult for the AUC to explain to not only its member
23 states but also other African stakeholders, why the African geographic TLD
24 application has become so challenging for ICANN to expedite despite the various
25 statements made towards the need to support developing regions.” A true and
26 correct copy of this letter is attached to this declaration as **Exhibit K**.

1 18. In my role at the AUC, I communicate regularly with political,
2 business and civic leaders from throughout the African Union and its member
3 states regarding the .AFRICA gTLD. It is evident that the ongoing delay in the
4 delegation of .AFRICA is depriving the people of the African continent of an
5 important opportunity to expand internet domain capabilities. There are real
6 opportunities being lost because we remain unable to develop and promote a
7 gTLD that would be uniquely identified with the African continent. It is difficult
8 to explain to African citizens why .AFRICA is not yet operational when other
9 continents have their own unique gTLDs that have been available for years. It is
10 particularly frustrating when I am informed that the delay is due to DCA's efforts
11 to continue to rely upon a supposed endorsement by the AUC that was withdrawn
12 over six years ago – a point that the AUC, on behalf of its representative
13 governments, has repeatedly advised in the correspondence referenced above.

14 19. In addition, the AUC has required as a condition to its support of
15 .AFRICA that all surplus funds generated through the administration of the
16 .AFRICA gTLD will be channeled into a Development Fund, which will be
17 applied towards African developmental projects and initiatives. The Development
18 Fund will be administered by the dotAfrica Foundation, which will ensure that
19 dotAfrica's core developmental objectives are addressed. I am informed that
20 these projects and initiatives will provide millions of dollars to benefit projects
21 supporting the people of Africa. The continued delay in the delegation of the
22 .AFRICA gTLD to ZACR has impeded this goal and further prejudices the AUC's
23 member states and the African community.

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I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. This declaration was signed on December _8th_, 2016 at __Mexico_____.



Moctar Yedaly