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7 INTERNET CORPORATION FOR ASSIGNED
NAMES AND NUMBERS

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11
12 DOTCONNECTAFRICA TRUST,

13 Plaintiff,

14 v.

15 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS, et
16 al.,

17 Defendant.

CASE NO. BC607494

Assigned for all purposes to
Hon. Howard L. Halm

**ICANN'S RESPONSES TO DCA'S
EVIDENTIARY OBJECTIONS TO
THE DECLARATION OF MARK
McFADDEN**

DATE: February 2, 2017
TIME: 8:30 a.m.
DEPT: 53

1 Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") hereby
 2 responds to Plaintiff DotConnectAfrica Trust's ("DCA") evidentiary objections to the Declaration
 3 of Mark McFadden ("McFadden Decl."), filed in support of ICANN's Opposition to Plaintiff's
 4 Motion for Preliminary Injunction.

McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>5 ¶ 2: In 2011, ICANN and the 6 ICC entered into a contract 7 pursuant to which the ICC 8 agreed to provide certain 9 services to ICANN in 10 conjunction with ICANN's 11 New gTLD Program. The 12 contract was amended at 13 various times, including in 14 March 2012. As relevant to 15 this litigation, the ICC agreed 16 in the contract to be one of 17 the two Geographic Names 18 Evaluation Panels pursuant 19 to Module 2 of the Applicant Guidebook ("Guidebook") that ICANN had adopted for the New Gtld Program. ICANN also engaged the Economist Intelligence Unit ("EIU") to perform Geographic Names Evaluation services.</p>	<p>1. Best evidence rule. (Evid. Code § 1520)</p>	<p><u>Best Evidence.</u> Mr. McFadden's statement is not offered to prove the contents of a writing. Mr. McFadden's testimony is based on his personal knowledge of the contract entered into between ICANN and the ICC pursuant to which the ICC agreed to serve as one of the two Geographic Names Evaluation Panels.</p>	
McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>21 ¶ 3: The Geographic Names 22 Evaluation Panels were 23 tasked with reviewing all 24 applied for gTLD strings to 25 determine whether each 26 string is a geographic name. 27 In addition, the Geographic 28 Names Evaluation Panels were responsible for verifying the relevance and authenticity of all supporting documentation that each applicant submitted pursuant to the requirements of</p>	<p>1. Best evidence rule. (Evid. Code § 1520.)</p> <p>2. Lacks foundation and personal knowledge. (Evid. Code § 403.)</p>	<p><u>Best Evidence.</u> Mr. McFadden's statement is not offered to prove the contents of a writing. Mr. McFadden's testimony is based on his personal knowledge of the protocols and standards adopted by the Geographic Names Evaluation Panels. A true and correct copy of the Guidebook is in the record (Bekele Decl., Ex. 3)</p>	

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<p>Section 2.2.1.4 and Section 2.3.1 of the Guidebook. Ultimately, ICANN received over 1,900 applications, and the ICC and EIU conducted a geographic names review for each of the strings, with the ICC conducting roughly one-third of the reviews, and the EIU conducting the other two-thirds. The ICC and EIU adopted the same protocols and standards for conducting the geographic names review, which were published on ICANN's website.</p>		<p><u>Foundation/Personal Knowledge.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has personal knowledge of the protocols and standards adopted by the Geographic Names Evaluation Panels.</p>	
<p>McFadden Declaration</p>	<p>DCA Objection</p>	<p>ICANN's Response</p>	<p>Court's Ruling</p>
<p>¶ 4: In order to obtain a gTLD that constituted the name of a geographic region, pursuant to Section 2.2.1.4.2 of the Guidebook, an applicant was required to have the support of sixty (60) percent of the governments in that region. ICANN received many gTLD applications that constituted geographic regions or geographic names, and the ICC and EIU were tasked with determining if the applications had the requisite support.</p>	<p>1. Best evidence rule. (Evid. Code § 1520.) 2. Lacks foundation and personal knowledge. (Evid. Code § 403.)</p>	<p><u>Best Evidence.</u> Mr. McFadden's statement is not offered to prove the contents of a writing. Mr. McFadden's testimony is based on his personal knowledge of the Guidebook requirements for obtaining a gTLD that constituted the name of a geographic region and protocols and standards adopted by the Geographic Names Evaluation Panels. A true and correct copy of the Guidebook is attached as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl."). <u>Foundation/Personal Knowledge.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that</p>	

1			the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has personal knowledge of the Guidebook requirements for obtaining a gTLD that constituted the name of a geographic region and protocols and standards adopted by the Geographic Names Evaluation Panels.	
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8	McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
9	¶ 5: ICANN received two applications for the string .AFRICA, one submitted by DCA and the other submitted by the entity now known as ZACR.1 The ICC was designated by ICANN as the Geographic Names Evaluation Panel to evaluate the .AFRICA applications. Because there are 54 countries in Africa, any application for .AFRICA required the support of at least 33 countries in Africa, or the support of an organization that represented at least 33 countries in Africa. Each of the two applicants for .AFRICA submitted various purported letters of support from various countries in Africa as well as from the African Union Commission ("AUC"), and DCA also submitted a purported letter of support from the United Nations Economic Commission for Africa ("UNECA"). (ZACR did not submit a letter from UNECA.) However, the ICC	1. Lacks foundation and personal knowledge. (Evid. Code § 403.) n.1: 1. Irrelevant. (Evid. Code § 350.)	<u>Foundation/Personal Knowledge.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶¶ 1,5.) As such, he has personal knowledge of the Guidebook requirements, DCA and ZACR's applications for .AFRICA, and the ICC's evaluation of DCA and ZACR's applications for .AFRICA. <u>Relevance.</u> Testimony regarding DCA's application for the string .DOTAFRICA is relevant to provide an accurate and full context for the history of DCA's application for .Africa, and to refute DCA's allegations that the application process was a "sham," and that ZACR was predetermined	
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1	determined in October 2012		to prevail. In fact, ICANN	
2	that nearly all of the letters of		provided DCA multiple	
3	support for both applications		opportunities to submit a	
4	were insufficient – including		qualifying application to	
5	the two AUC letters and the		compete for .Africa,	
6	UNECA letter submitted by		including initially by	
7	DCA – because they did not		allowing it to change its	
8	include the specific language		application from .dotafrica	
9	that was required in the		to .africa.	
10	Guidebook (discussed			
11	below).			
12	n.1 DCA’s original			
13	application actually was for			
14	the string .DOTAFRICA, but			
15	ICANN allowed DCA to			
16	change the application			
17	to .AFRICA.			

11	McFadden Declaration	DCA Objection	ICANN’s Response	Court’s Ruling				
12	<p>¶ 6: ICANN initially took the position that letters of support from the AUC and UNECA should not even count toward the 60 percent requirement. The ICC conducted further research on the AUC and UNECA, and we expressed our view to ICANN in March 2013 that both the AUC and UNECA were qualified to speak on behalf of the countries they represented and, thus, verified letters of support from those entities should count toward the 60 percent requirement. Following our recommendation, ICANN agreed that verified letters of support from the AUC and UNECA should count toward the 60 percent requirement, but only if those letters contained the language required in the Guidebook.</p>	<p>1. Lacks foundation and personal knowledge. (Evid. Code § 403.)</p>	<p><u>Foundation/Personal Knowledge.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has personal knowledge of DCA and ZACR’s applications for .AFRICA, the ICC’s evaluation of DCA and ZACR’s applications for .AFRICA, including the ICC’s communications with ICANN relating to those applications.</p>					
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27					McFadden Declaration	DCA Objection	ICANN’s Response	Court’s Ruling
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¶ 7: Accompanying its application, DCA submitted a letter of support from the AUC dated August 27, 2009. Accompanying its application, ZACR submitted a letter of support from the AUC dated April 4, 2012. I am now aware that the AUC also wrote a letter to DCA in April 2010 purporting to withdraw its August 2009 endorsement of DCA. My understanding is that DCA did not submit the actual April 2010 letter to ICANN with its gTLD application, and this letter was not brought to my attention until recently. The ICC was not aware of the AUC's purported withdrawal letter and did not consider the letter in its evaluation of DCA's application.

n.2 The AUC submitted additional letters of support for ZACR on July 3, 2013, and September 29, 2015.

- 1. Best Evidence Rule (Evid. Code § 1520.)
- 2. Irrelevant. (Evid. Code §350.)
- 3. Prejudicial. (Evid. Code § 352.)
- 4. ICANN was copied on the purported withdrawal letter from the AUC. Bekele Decl., Ex. 7.

Best Evidence. Mr. McFadden's statement is not offered to prove the contents of a writing. Mr. McFadden's testimony is based on his personal knowledge of the ICC's evaluation of DCA and ZACR's applications for .AFRICA, and the ICC's lack of awareness and consideration of the 2010 letter from the AUC withdrawing its support for DCA's application for .Africa. A true and correct copy of the 2010 AUC letter is attached as Exhibit 7 to the Bekele Declaration.

Relevance. Testimony regarding ICC's knowledge of the 2010 letter from the AUC withdrawing its support for DCA's application for .Africa is relevant to show that ICC's determination that DCA's 2009 AUC letter did not meet Guidebook requirements was formed based solely on the contents of the 2009 letter, and independent of any knowledge of the 2010 withdrawal letter, since ICC was not aware this letter existed until recently.

Prejudicial. This testimony is not materially misleading nor prejudicial. Mr. McFadden's declaration simply states that the ICC was not aware of the AUC's purported withdrawal letter and did

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		not consider the letter in its evaluation.	
		<p><u>Objection No. 4.</u> It is unclear what evidentiary objection DCA intended to make with its fourth objection. DCA did not submit to ICANN with its Application a copy of the AUC's 2010 letter withdrawing its support for DCA, and thus the ICC was not aware of the AUC's purported withdrawal letter and did not consider the letter in its evaluation.</p>	
	McFadden Declaration	DCA Objection	ICANN's Response
	<p>¶ 8: Pursuant to section 2.2.1.4.3 of the Guidebook, a government may withdraw its support for a gTLD application at any time in the application process. The procedure required by ICANN and adopted by the ICC was to disregard any letter of support that was subsequently withdrawn, and no longer accept the letter as part of an applicant's required 60 percent support. If the ICC had been aware of the purported withdrawal of the AUC's letter to DCA, even if the August 2009 letter had contained language sufficient under the Guidebook (which it did not), the ICC would have issued clarifying questions to DCA explaining that DCA no longer had the support from the AUC, and requiring DCA to submit an updated letter.</p>	<p>1. Best Evidence Rule (Evid. Code § 1520.)</p> <p>2. Lacks foundation. (Evid. Code § 403.)</p> <p>3. Speculative and conclusory. (Evid.</p>	<p><u>Best Evidence.</u> Mr. McFadden's statement is not offered to prove the contents of a writing. Mr. McFadden's testimony is based on his personal knowledge of the Guidebook requirements and procedures regarding subsequently withdrawn letters of support. A true and correct copy of the Guidebook is in the record (Bekele Decl., Ex. 3).</p> <p><u>Foundation.</u> Mr. McFadden laid the foundation for his testimony. Mr. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was responsible for verifying the relevance and authenticity of all supporting documentation that each applicant submitted pursuant to</p>

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<p>n.3 The ICC has encountered other situations where letters of support have been withdrawn, and in each instance, the ICC removed the letter as documentation of support and issued clarifying questions to the applicant asking the applicant to provide additional documentation of support.</p>	<p>Code § 403.)</p> <p>n.3 1. Lacks foundation. (Evid. Code § 403.)</p> <p>2. Irrelevant. (Evid. Code § 350.)</p>	<p>Guidebook requirements. (McFadden Decl. ¶¶ 1, 3.) The ICC conducted geographic names review for one-third of the applications received by ICANN. <i>Id.</i> at ¶ 3. As such, Mr. McFadden has knowledge of Guidebook requirements regarding withdrawing endorsements, and how the ICC applies Guidebook procedures regarding letters of support that are subsequently withdrawn.</p> <p><u>Speculation/Conclusory.</u> Mr. McFadden’s own understanding of the Guidebook requirements and procedures regarding letters of support subsequently withdrawn is not speculative, but a subject Mr. McFadden has personal knowledge of.</p> <p><u>Foundation.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has knowledge of past situations where letters of support have been withdrawn.</p> <p><u>Relevance.</u> Testimony regarding past situations where letters of support have been withdrawn</p>	
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1			is relevant to show that ICANN/ICC followed standard procedures in evaluating DCA's application, and DCA would not have been able to obtain an updated letter from the AUC that conformed with the Guidebook's requirements following the IRP Declaration. This evidence supports ICANN's argument that DCA has no likelihood of success on the merits as to its second and fifth causes of action.	
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11	McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
12	¶ 9: Unaware of the AUC's withdrawal letter to DCA, the ICC followed a documented evaluation process with respect to DCA and ZACR's letters of support whereby each letter was evaluated for required criteria pursuant to the Guidebook. In particular, section 2.2.1.4.3 of the Guidebook required that letters of support for a geographic name "clearly express the government's or public authority's support for or non- objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use." It further required that a letter of support "demonstrate the government's or public authority's understanding that the string is being sought through the gTLD	1. Best evidence rule. (Evid. Code § 1520.) 2. Lacks foundation. (Evid. Code § 403.)	<u>Best Evidence.</u> Mr. McFadden's statement is not offered to prove the contents of a writing. Mr. McFadden's testimony is based on his personal knowledge of the Guidebook requirements and the ICC's evaluation of DCA and ZACR's applications for .AFRICA. A true and correct copy of the Guidebook is in the record (Bekele Decl., Ex. 3). <u>Foundation.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has knowledge of the Guidebook	
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<p>application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees.” The ICC determined in early 2013 that none of the letters of support submitted by DCA or ZACR from the AUC or UNECA contained language that was sufficient under this section of the Guidebook.</p>		<p>requirements and the ICC’s evaluation of DCA and ZACR’s applications for .AFRICA.</p>	
<p>McFadden Declaration</p>	<p>DCA Objection</p>	<p>ICANN’s Response</p>	<p>Court’s Ruling</p>
<p>¶ 10: Specifically, Section 2.2.1.4.3 had very specific requirements for each of the letters of support. Those requirements were part of the policy making process that developed the Guidebook over a course of several years, and they were there to ensure that any letter of support was legitimate, authoritative, and demonstrated that the governmental entity understood precisely what it was supporting. DCA’s letters from the AUC and UNECA failed to show that the governmental entities understood the process of the new gTLD program, and they also failed to show the governmental entity’s understanding that the applicant (DCA) would have to abide by ICANN consensus policy and be responsible for any related fees. Indeed, in our</p>	<p>1. Best evidence rule. (Evid. Code § 1520.)</p> <p>2. Lacks foundation, speculative, and conclusory. (Evid. Code § 403.)</p>	<p><u>Best Evidence.</u> Mr. McFadden’s statement is not offered to prove the contents of a writing. Mr. McFadden’s testimony is based on his personal knowledge of the Guidebook requirements for letters of support and of the ICC’s evaluation of DCA and ZACR’s applications for .AFRICA, and is offered to show ICC’s basis for evaluating letters of support as insufficient. A true and correct copy of the Guidebook is in the record (Bekele Decl., Ex. 3). True and correct copies of DCA’s 2008 and 2009 letters of support are also in the record (Bekele Decl., Exs. 6, 8)</p> <p><u>Foundation.</u> Mr. McFadden laid the foundation for his testimony. McFadden</p>	

1	judgment, the letters that		testified that he is the	
2	DCA submitted from the		Principal IP and DNS	
3	AUC and UNECA were not		Specialist at ICC, and that	
4	even close to conforming to		the ICC was designated by	
5	the very specific		ICANN to evaluate	
6	requirements in the AGB;		the .AFRICA applications.	
7	indeed, the two letters were		(McFadden Decl. ¶ 1.) As	
8	drafted before the		such, he has knowledge of	
9	requirements in the		the Guidebook	
10	Guidebook were even		requirements for letters of	
11	available to applicants.		support and of the ICC's	
12			evaluation of DCA and	
13			ZACR's applications	
14			for .AFRICA.	
15			<u>Speculative/Conclusory.</u>	
16			Mr. McFadden's own	
17			understanding of the	
18			Guidebook requirements	
19			for letters of support and of	
20			the ICC's evaluation of	
21			DCA and ZACR's	
22			applications for .AFRICA	
23			is not speculative, but a	
24			subject Mr. McFadden has	
25			personal knowledge of.	
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	McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
	¶ 11: The ICC adhered to an ICANN policy whereby the ICC was not permitted to contact any governmental authority that had submitted a letter of support for an applicant. Rather, the required procedure for a noncompliant letter was to direct "clarifying questions" to the applicant so that the applicant could contact the governmental authority to obtain an updated letter. Accordingly, the ICC determined that it needed to send clarifying questions to both DCA and ZACR (because the letter that ZACR submitted from the	1. Lacks foundation and conclusory. (Evid. Code § 403.)	<u>Foundation/Conclusory.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has knowledge of ICANN policy related to letters of support, the ICC's evaluation of DCA and ZACR's applications for .AFRICA, and ICANN's instructions to the ICC relating to DCA and ZACR's applications	

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<p>AUC was also deficient under the Guidebook). However, just as the ICC was planning to send clarifying questions to DCA in the Spring of 2013, ICANN's Board voted to stop processing DCA's application following receipt by the Board of consensus advice from ICANN's Governmental Advisory Committee (the "GAC") recommending that DCA's application should not proceed. As a result, on June 7, 2013, ICANN advised the ICC to discontinue work on DCA's application.</p>	<p>2. Directly contradicts the evidence. Colón Decl. Ex. 3, [Email between McFadden and ICANN employee Trang Nguyen drafting support letter for ZACR from AUC.]</p>	<p>for .AFRICA.</p> <p><u>Objection No. 2.</u> It is unclear what evidentiary objection DCA intended to make with its second objection. "Directly contradicts the evidence" is not an evidentiary objection, but rather argument that goes to weight. Further, the referenced email does not contradict any of the testimony presented in paragraph 11.</p>	
McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>¶ 12: The ICC did send clarifying questions to ZACR, and following that, the AUC submitted a revised endorsement letter for ZACR on July 3, 2013. The ICC determined that the revised letter satisfied all required criteria in the Guidebook. Thus, the ICC concluded that ZACR had passed the Geographic Names Review by obtaining the requisite 60 percent support. The ICC did not rely on any of the other letters of support that ZACR submitted with its application in 2012.</p>	<p>1. Best evidence rule. (Evid. Code § 1520.)</p> <p>3. Prejudicial and contradictory to evidence. Colón Decl. Ex. 3, [Email between McFadden and ICANN employee Trang Nguyen drafting support letter for ZACR from AUC.]</p>	<p><u>Best Evidence.</u> Mr. McFadden's statement is not offered to prove the contents of a writing. Mr. McFadden's testimony is based on his personal knowledge of the ICC's evaluation procedures for ZACR's application for .AFRICA and the ICC's ultimate determination that ZACR passed the Geographic Names Review.</p> <p><u>Prejudicial/Contradictory.</u> This testimony is not materially misleading nor prejudicial. Mr. McFadden's declaration simply states the ICC's evaluation procedures for ZACR's application for .AFRICA and the ICC's ultimate determination that ZACR passed the Geographic</p>	

McFadden Declaration	DCA Objection	Names Review. ICANN's Response	Court's Ruling
<p>¶ 13: I understand that DCA challenged, via an “Independent Review Procedure” under ICANN’s Bylaws, the decision of the ICANN Board to accept the GAC’s consensus advice that DCA’s application should not proceed. After the IRP issued its declaration in DCA’s favor in July 2015, ICANN directed the ICC to resume processing DCA’s application in order to determine if DCA’s application could pass the Geographic Names review, which is exactly where DCA’s application had been prior to the time the Board voted in 2013 to accept the GAC’s advice. In September 2015, the ICC sent DCA the clarifying questions we had determined in 2013 to be necessary before discontinuing work on DCA’s application. The questions explained that both the AUC and UNECA letters submitted in support of DCA’s application did not comply with section 2.2.1.4.3 of the Guidebook, and we requested updated letters of support.</p>	<p>1. Lacks personal knowledge. (Evid. Code § 403.)</p> <p>2. Best Evidence Rule (Evid. Code § 1520.)</p>	<p><u>Personal Knowledge.</u> McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has personal knowledge of ICANN’s instructions to the ICC relating to DCA and ZACR’s applications and the ICC’s evaluation of DCA and ZACR’s applications for .AFRICA.</p> <p><u>Best Evidence.</u> Mr. McFadden’s statement is not offered to prove the contents of a writing. Mr. McFadden’s testimony is based on his personal knowledge of ICANN’s instructions to the ICC relating to DCA and ZACR’s applications and the ICC’s evaluation of DCA and ZACR’s applications for .AFRICA. True and correct copies of the Clarifying Questions issued to DCA are in the record (Bekele Decl., Exs. 13, 15).</p>	
McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
<p>¶ 14: I am now aware that UNECA wrote a letter dated July 20, 2015 in which UNECA stated that it is neither a government nor a public authority and therefore is not qualified to</p>	<p>1. UNECA did not submit a July 20, 2015 letter. (Bekele Decl., Ex. 10.)</p>	<p><u>Objection No. 1.</u> It is unclear what evidentiary objection DCA intended to make with its first objection. DCA's statement is not an evidentiary objection.</p>	

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<p>issue a letter of support under the Guidebook. This letter also was not brought to my attention until very recently. The ICC did not consider this letter in its evaluation of DCA’s application; however, as noted above, the ICC already had determined that the original UNECA letter from 2008– written four years before DCA submitted its application and before ICANN had even posted the first draft of the Guidebook – did not contain the information required by the Guidebook, and we required DCA to provide an updated letter.</p>	<p>2. Lacks foundation. (Evid. Code § 403.)</p>	<p>Further, nowhere in paragraph 14 does it state that UNECA "submitted" the July 20, 2015 letter. However, UNECA did draft a July 20, 2015 letter making the same statements regarding its nonsupport for DCA's application, which Ms. Bekele conceded she received in the December 1, 2016 deposition.</p> <p><u>Foundation.</u> McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has personal knowledge of the Guidebook requirements and the ICC’s evaluation of DCA and ZACR’s applications for .AFRICA.</p>	
<p>McFadden Declaration</p>	<p>DCA Objection</p>	<p>ICANN’s Response</p>	<p>Court’s Ruling</p>
<p>¶ 15: In response to the clarifying questions that the ICC sent to DCA in September 2015, DCA took the position that its original documentation of support submitted with its application in 2012 was sufficient, and DCA provided no additional or updated letters of support. Because DCA’s existing letters of support were noncompliant, the ICC concluded that DCA had not passed Geographic Names Review. DCA elected to</p>	<p>1. Lacks personal knowledge and foundation. (Evid. Code § 403.)</p>	<p><u>Foundation/Personal Knowledge.</u> Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the Principal IP and DNS Specialist at ICC, and that the ICC was designated by ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has personal knowledge of DCA and ZACR’s applications for .AFRICA and the</p>	

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<p>participate in “Extended Evaluation,” which entailed sending clarifying questions again to give DCA additional time to provide the requisite documentation of support. The ICC sent DCA the extended evaluation clarifying questions on October 30, 2015. In response, DCA again took the position that its original application was sufficient and that it did not need to submit any additional letters of support. Thus, the ICC determined that DCA had failed to provide the requisite documentation of support or non-objection for the .AFRICA gTLD.</p>		<p>ICC’s evaluation of DCA and ZACR’s applications for .AFRICA.</p>	
<p>McFadden Declaration</p>	<p>DCA Objection</p>	<p>ICANN’s Response</p>	<p>Court’s Ruling</p>
<p>¶ 16: The ICC treated all gTLD applications equally including DCA and ZACR’s applications for .AFRICA. Both applications initially had letters of support from the AUC and/or UNECA. The ICC recommended that both of those entities be viewed as authorized to provide an official endorsement on behalf of the countries in Africa that each represented, and ICANN ultimately agreed. The ICC then evaluated each letter for required criteria pursuant to the Guidebook, and determined that all three of the initial letters (two from the AUC and one from UNECA) were not sufficient under the terms of the Guidebook. The ICC conducted its evaluation not</p>	<p>1. Conclusory. (Evid. Code § 403.)</p> <p>2. Contradicts earlier testimony in that ZACR did not have support from UNECA. (McFadden Decl., ¶ 5.)</p>	<p><u>Conclusory.</u> Mr. McFadden’s own understanding of the ICC’s evaluation of DCA and ZACR’s applications for .AFRICA is not conclusory, but a subject Mr. McFadden has personal knowledge of.</p> <p><u>Objection No. 2.</u> It is unclear what evidentiary objection DCA intended to make with its second objection. DCA’s statement is not an evidentiary objection, but rather argument, that goes to weight. Nor does Mr. McFadden claim that ZACR had a support letter from UNECA.</p>	

1 knowing whether the AUC or
2 UNECA still endorsed any
3 application and not knowing
4 the views of AUC or
5 UNECA as to whether they
6 were authorized to speak for
7 the countries on the African
8 continent that they purported
9 to represent. ZACR was able
10 to provide an updated letter
11 of support compliant with the
12 Guidebook, and it passed the
13 Geographic Names Review;
14 DCA's application failed the
15 Geographic Names Review.

10 Dated: February 1, 2017

Jones Day

11
12 By: 

13 Jeffrey A. DeVee

14 Attorneys for Defendant
15 INTERNET CORPORATION FOR
16 ASSIGNED NAMES AND NUMBERS
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1 **PROOF OF SERVICE**

2 I, Diane Sanchez, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On February 1,
6 2017, I served a copy of the within document(s):

7 **ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS TO THE
8 DECLARATION OF MARK MCFADDEN**

- 9 by placing the document(s) listed above in a sealed envelope with postage thereon
10 fully prepaid, in the United States mail at Los Angeles, California addressed as set
11 forth below.
- 12 by placing the document(s) listed above in a sealed Federal Express envelope and
13 affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery
14 Service agent for delivery.
- 15 by personally delivering the document(s) listed above to the person(s) at the
16 address(es) set forth below.
- 17 by transmitting via e-mail or electronic transmission the document(s) listed above
18 to the person(s) at the e-mail address(es) set forth below.

16 Ethan J. Brown
ethan@bnslawgroup.com
17 Sara C. Colón
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18 Rowennakete "Kete" Barnes
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22 I declare that I am employed in the office of a member of the bar of this court at whose
23 direction the service was made.

24 Executed on February 1, 2017, at Los Angeles, California.

25 
26 Diane Sanchez

27 NAI-1501037652v2