

DCA Objection	ICANN's Response	Court's Ruling
1. Best evidence rule. (Evid. Code § 1520)	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 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.	
DCA Objection	ICANN's Response	Court's Ruling
1. Best evidence rule. (Evid. Code § 1520.)  2. Lacks foundation and personal knowledge. (Evid. Code § 403.)	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 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)	
	1. Best evidence rule. (Evid. Code § 1520)  DCA Objection  1. Best evidence rule. (Evid. Code § 1520.)  2. Lacks foundation and personal knowledge. (Evid.	1. Best evidence rule. (Evid. Code § 1520)    DCA Objection   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 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.    DCA Objection   ICANN's Response

	Section 2.2.1.4 and Section		Foundation/Personal	
	2.3.1 of the Guidebook.	•	Knowledge. Mr.	
	Ultimately, ICANN received		McFadden laid the	
	over 1,900 applications, and		foundation for his	
	the ICC and EIU conducted a		testimony. McFadden	
i	geographic names review for		testified that he is the	
ı	each of the strings, with the		Principal IP and DNS	
	ICC conducting roughly one-		Specialist at ICC, and that	
1	third of the reviews, and the		the ICC was designated by	
	EIU conducting the other		ICANN to evaluate	
	two-thirds. The ICC and EIU		the .AFRICA applications.	
	adopted the same protocols		(McFadden Decl. ¶ 1.) As	
l	and standards for conducting		such, he has personal	
	the geographic names		knowledge of the protocols	
	review, which were		and standards adopted by	
	published on ICANN's		the Geographic Names	
	website.		Evaluation Panels.	
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	McFadden Declaration	DCA Objection	ICANN's Response	Court's
-			-	Ruling
۱	¶ 4: In order to obtain a	1. Best evidence	Best Evidence. Mr.	
	gTLD that constituted the	rule. (Evid. Code §	McFadden's statement is	
۱	name of a geographic region,	1520.)	not offered to prove the	
	pursuant to Section 2.2.1.4.2		contents of a writing. Mr.	
Ï	of the Guidebook, an		McFadden's testimony is	
	applicant was required to		based on his personal	
I	have the support of sixty (60)		knowledge of the	
	percent of the governments		Guidebook requirements	
	in that region. ICANN	2. Lacks	for obtaining a gTLD that	
	received many gTLD	foundation and	constituted the name of a	
	applications that constituted	personal	geographic region and	
-	geographic regions or	knowledge. (Evid.	protocols and standards	
ı	geographic names, and the	Code § 403.)	adopted by the Geographic	
l	ICC and EIU were tasked		Names Evaluation Panels.	
	with determining if the		A true and correct copy of	
H				
			the Guidebook is attached	
	applications had the requisite		as exhibit three to the	
			as exhibit three to the Declaration of Sophia	
	applications had the requisite		as exhibit three to the	
	applications had the requisite		as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").	
	applications had the requisite		as exhibit three to the Declaration of Sophia	
	applications had the requisite		as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").  Foundation/Personal	
	applications had the requisite		as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").  Foundation/Personal Knowledge. Mr. McFadden laid the	
	applications had the requisite		as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").  Foundation/Personal Knowledge. Mr. McFadden laid the foundation for his	
	applications had the requisite		as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").  Foundation/Personal Knowledge. Mr. McFadden laid the foundation for his testimony. McFadden	
	applications had the requisite		as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").  Foundation/Personal Knowledge. Mr. McFadden laid the foundation for his testimony. McFadden testified that he is the	
	applications had the requisite		as exhibit three to the Declaration of Sophia Bekele ("Bekele Decl.").  Foundation/Personal Knowledge. Mr. McFadden laid the foundation for his testimony. McFadden	

.			the ICC was designated by	
1			ICANN to evaluate	
٦			the .AFRICA applications.	
2			(McFadden Decl. ¶ 1.) As	
3			such, he has personal	
ا			knowledge of the	
4			Guidebook requirements	
1			for obtaining a gTLD that	
5			constituted the name of a	
			geographic region and	
6			protocols and standards	
7				
7			adopted by the Geographic Names Evaluation Panels.	
8		DOLOR:	Names Evaluation Fanels.	Court's
	McFadden Declaration	DCA Objection	ICANN's Response	Ruling
9		1 T - 1-	Foundation/Personal	Rung
	¶ 5: ICANN received two	1. Lacks	Knowledge, Mr.	
10	applications for the	foundation and	McFadden laid the	
,,	string .AFRICA, one	personal	foundation for his	
11	submitted by DCA and the	knowledge. (Evid.	i l	
12	other submitted by the entity	Code § 403.)	testimony. McFadden	
12	now known as ZACR.1 The		testified that he is the	
13	ICC was designated by		Principal IP and DNS	
	ICANN as the Geographic		Specialist at ICC, and that	
14	Names Evaluation Panel to		the ICC was designated by	
	evaluate the .AFRICA		ICANN to evaluate	
15	applications. Because there		the .AFRICA applications.	
16	are 54 countries in Africa,		(McFadden Decl. ¶¶ 1,5.)	
10	any application for .AFRICA		As such, he has personal	
17	required the support of at		knowledge of the	
- '	least 33 countries in Africa,		Guidebook requirements,	
18	or the support of an		DCA and ZACR's	
	organization that represented		applications for .AFRICA,	
19	at least 33 countries in		and the ICC's evaluation	
20	Africa. Each of the two		of DCA and ZACR's	
20	applicants for .AFRICA		applications for .AFRICA.	
21	submitted various purported			
	letters of support from	n.1:	Relevance. Testimony	
22	various countries in Africa as	1. Irrelevant.	regarding DCA's	
1	well as from the African	(Evid. Code §	application for the	
23	Union Commission	350.)	string .DOTAFRICA is	
24	("AUC"), and DCA also		relevant to provide an	
24	submitted a purported letter		accurate and full context	
25	of support from the United		for the history of DCA's	
	Nations Economic		application for .Africa, and	
26	Commission for Africa		to refute DCA's allegations	
	("UNECA"). (ZACR did not		that the application process	
27	submit a letter from		was a "sham," and that	
28	UNECA.) However, the ICC		ZACR was predetermined	
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1 2 3 4 5 6 7 8 9	determined in October 2012 that nearly all of the letters of support for both applications were insufficient – including the two AUC letters and the UNECA letter submitted by DCA – because they did not include the specific language that was required in the Guidebook (discussed below).  n.1 DCA's original application actually was for the string .DOTAFRICA, but ICANN allowed DCA to change the application	,	to prevail. In fact, ICANN provided DCA multiple opportunities to submit a qualifying application to compete for .Africa, including initially by allowing it to change its application from .dotafrica to .africa.	
11	to .AFRICA.  McFadden Declaration	DCA Objection		Court's
ı	Werauten Declaration	Den Objection	ICANN's Response	Ruling
12	¶ 6: ICANN initially took	1. Lacks	Foundation/Personal	
13	the position that letters of	foundation and	Knowledge. Mr.	
	support from the AUC and	personal	McFadden laid the foundation for his	
14	UNECA should not even	knowledge. (Evid. Code § 403.)	testimony. McFadden	
15	count toward the 60 percent requirement. The ICC	Code § 403.)	testified that he is the	
	conducted further research		Principal IP and DNS	
16	on the AUC and UNECA,		Specialist at ICC, and that	
17	and we expressed our view to ICANN in March 2013 that		the ICC was designated by ICANN to evaluate	
18	both the AUC and UNECA		the .AFRICA applications.	
10	were qualified to speak on		(McFadden Decl. ¶ 1.) As	
19	behalf of the countries they		such, he has personal	
20	represented and, thus, verified letters of support		knowledge of DCA and ZACR's applications	
21	from those entities should		for .AFRICA, the ICC's	
	count toward the 60 percent		evaluation of DCA and ZACR's applications	
22	requirement. Following our recommendation, ICANN		for .AFRICA, including	
23	agreed that verified letters of		the ICC's communications	
24	support from the AUC and UNECA should count toward		with ICANN relating to those applications.	
25	the 60 percent requirement,			
	but only if those letters			
26	contained the language			
27	required in the Guidebook.  McFadden Declaration	DCA Objection		Court's
	Michaugen Degiaration	Dea Objection	ICANN's Response	Ruling
28		<u>Lea Sesse Segis di</u>	No.	

1	¶ 7: Accompanying its	1. Best Evidence	Best Evidence. Mr.	AND THE PARTY OF T
ı	application, DCA submitted	Rule (Evid. Code	McFadden's statement is	
2	a letter of support from the	§ 1520.)	not offered to prove the	
	AUC dated August 27, 2009.		contents of a writing. Mr.	
3	Accompanying its		McFadden's testimony is	
4	application, ZACR submitted		based on his personal	
	a letter of support from the AUC dated April 4, 2012. I		knowledge of the ICC's evaluation of DCA and	
5	am now aware that the AUC		ZACR's applications	
6	also wrote a letter to DCA in		for .AFRICA, and the	
6	April 2010 purporting to		ICC's lack of awareness	
7	withdraw its August 2009		and consideration of the	
1	endorsement of DCA. My	2. Irrelevant.	2010 letter from the AUC	
8	understanding is that DCA	(Evid. Code §350.)	withdrawing its support for	
9	did not submit the actual		DCA's application	
´	April 2010 letter to ICANN		for .Africa. A true and	
10	with its gTLD application,		correct copy of the 2010	
	and this letter was not		AUC letter is attached as	
11	brought to my attention until		Exhibit 7 to the Bekele Declaration.	
12	recently. The ICC was not aware of the AUC's		Declaration.	
ļ	purported withdrawal letter		Relevance. Testimony	
13	and did not consider the		regarding ICC's knowledge	
14	letter in its evaluation of	3. Prejudicial.	of the 2010 letter from the	
1	DCA's application.	(Evid. Code §	AUC withdrawing its	
15		352.)	support for DCA's	
1.0	n.2 The AUC submitted		application for .Africa is	
16	additional letters of support		relevant to show that ICC's	
17	for ZACR on July 3, 2013,		determination that DCA's	
	and September 29, 2015.		2009 AUC letter did not	
18			meet Guidebook requirements was formed	
19			based solely on the	
1/			contents of the 2009 letter,	
20			and independent of any	
21			knowledge of the 2010	
21			withdrawal letter, since	
22			ICC was not aware this	
		4. ICANN was	letter existed until recently.	
23		copied on the	D 1 1 1 1 771 1 4 1 1 2 2 2 2	
24		purported	<u>Prejudicial</u> . This testimony	
		withdrawal letter	is not materially misleading nor prejudicial.	
25		from the AUC. Bekele Decl., Ex.	Mr. McFadden's	
26		7.	declaration simply states	
۵0			that the ICC was not aware	
27			of the AUC's purported	
20			withdrawal letter and did	
28				

,			not consider the letter in its	
1			evaluation.	
2				
			Objection No. 4. It is	
3			unclear what evidentiary	
4			objection DCA intended to make with its fourth	
•			objection. DCA did not	
5			submit to ICANN with its	
			Application a copy of the	
6			AUC's 2010 letter	
7			withdrawing its support for	
<i>'</i>			DCA, and thus the ICC	
8			was not aware of the	
			AUC's purported	
9			withdrawal letter and did	
10			not consider the letter in its	
10			evaluation.	
11	McFadden Declaration	DCA Objection	ICANNIa Dagnanga	Court's
			ICANN's Response	Ruling
12	¶8: Pursuant to section	1. Best Evidence	Best Evidence. Mr.	
13	2.2.1.4.3 of the Guidebook, a	Rule (Evid. Code	McFadden's statement is	
	government may withdraw	§ 1520.)	not offered to prove the	
14	its support for a gTLD		contents of a writing. Mr.	
	application at any time in the		McFadden's testimony is	
15	application process. The		based on his personal	
16	procedure required by		knowledge of the	
	ICANN and adopted by the	2 I salva	Guidebook requirements and procedures regarding	
17	ICC was to disregard any	2. Lacks foundation. (Evid.	subsequently withdrawn	
1.0	letter of support that was	Code § 403.)	letters of support. A true	
18	subsequently withdrawn, and no longer accept the letter as	Code § 403.)	and correct copy of the	
19	part of an applicant's		Guidebook is in the record	
	required 60 percent support.		(Bekele Decl., Ex. 3).	
20	If the ICC had been aware of		, , ,	
21	the purported withdrawal of		Foundation. Mr.	
21	the AUC's letter to DCA,		McFadden laid the	
22	even if the August 2009		foundation for his	
	letter had contained language		testimony. Mr. McFadden	
23	sufficient under the		testified that he is the	
24	Guidebook (which it did		Principal IP and DNS	
24	not), the ICC would have		Specialist at ICC, and that	
25	issued clarifying questions to		the ICC was responsible	
	DCA explaining that DCA		for verifying the relevance	
26	no longer had the support		and authenticity of all	
27	from the AUC, and requiring	2 0 - 1 - 1	supporting documentation	
21	DCA to submit an updated	3. Speculative and	that each applicant	
28	letter.	conclusory. (Evid.	submitted pursuant to	
	1	7		

1	2 TI 1001	Code § 403.)	Guidebook requirements.	
	n.3 The ICC has encountered other situations where letters		(McFadden Decl. ¶¶ 1, 3.) The ICC conducted	
2	of support have been		geographic names review	
3	withdrawn, and in each		for one-third of the	
4	instance, the ICC removed the letter as documentation of		applications received by ICANN. <i>Id.</i> at ¶ 3. As	
5	support and issued clarifying		such, Mr. McFadden has	
,	questions to the applicant	2	knowledge of Guidebook	
6	asking the applicant to provide additional	n.3 1. Lacks	requirements regarding withdrawing	
7	documentation of support.	foundation. (Evid.	endorsements, and how the	
8		Code § 403.)	ICC applies Guidebook	
			procedures regarding letters of support that are	
9			subsequently withdrawn.	
10			Speculation/Conclusory.	
11			Mr. McFadden's own	
12			understanding of the	
			Guidebook requirements and procedures regarding	
13			letters of support	!
14			subsequently withdrawn is	
			not speculative, but a	
15			subject Mr. McFadden has personal knowledge of.	
16		2. Irrelevant.		
17		(Evid. Code §	Foundation. Mr. McFadden laid the	
18		350.)	foundation for his	
			testimony. McFadden	
19			testified that he is the	
20			Principal IP and DNS Specialist at ICC, and that	
21			the ICC was designated by	
			ICANN to evaluate the .AFRICA applications.	
22			(McFadden Decl. ¶ 1.) As	
23			such, he has knowledge of past situations where	
24			letters of support have	
25			been withdrawn.	
26			Relevance. Testimony	
			regarding past situations	
27			where letters of support have been withdrawn	
28			nave been withdrawn	

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1			is relevant to show that	
•			ICANN/ICC followed	
2	,		standard procedures in	
_ ا			evaluating DCA's	
3			application, and DCA	
4			would not have been able	
`			to obtain an updated letter from the AUC that	
5			conformed with the	
6			Guidebook's requirements following the IRP	
7	,		Declaration. This evidence	
′∥			supports ICANN's	
8			argument that DCA has no	
			likelihood of success on	
9			the merits as to its ninth	
10			cause of action.	
10	McFadden Declaration	DCA Objection		Court's
11			ICANN's Response	Ruling
	¶ 9: Unaware of the AUC's	1. Best evidence	Best Evidence. Mr.	
12	withdrawal letter to DCA,	rule. (Evid. Code §	McFadden's statement is	
13	the ICC followed a	1520.)	not offered to prove the	
	documented evaluation		contents of a writing. Mr.	
14	process with respect to DCA		McFadden's testimony is	
	and ZACR's letters of		based on his personal	
15	support whereby each letter		knowledge of the	
16	was evaluated for required		Guidebook requirements	
	criteria pursuant to the		and the ICC's evaluation	
17	Guidebook. In particular,		of DCA and ZACR's	
	section 2.2.1.4.3 of the	2. Lacks	applications for .AFRICA.  A true and correct copy of	
18	Guidebook required that		the Guidebook is in the	
19	letters of support for a	foundation. (Evid.	record (Bekele Decl., Ex.	
17	geographic name "clearly	Code § 403.)	3).	
20	express the government's or public authority's support for		3).	
	or non- objection to the		Foundation. Mr.	
21	applicant's application and		McFadden laid the	
22	demonstrate the		foundation for his	
	government's or public		testimony. McFadden	
23	authority's understanding of		testified that he is the	
	the string being requested		Principal IP and DNS	
24	and its intended use." It		Specialist at ICC, and that	
25	further required that a letter		the ICC was designated by	
23	of support "demonstrate the		ICANN to evaluate	
26	government's or public		the .AFRICA applications.	
	authority's understanding		(McFadden Decl. ¶ 1.) As	
27	that the string is being sought		such, he has knowledge of	
28	through the gTLD		the Guidebook	
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.	application process and that		requirements and the ICC's	
1	the applicant is willing to		evaluation of DCA and	
	accept the conditions under		ZACR's applications	
2	which the string will be		for .AFRICA.	
3	available, i.e., entry into a		ioi .Ai Rica.	
ا	1			
4	registry agreement with			
·	ICANN requiring			
5	compliance with consensus			
	policies and payment of			
6	fees." The ICC determined in			
7	early2013 that none of the		•	
7	letters of support submitted			
8	by DCA or ZACR from the			
	AUC or UNECA contained			
9	language that was sufficient			
·	under this section of the			
10	Guidebook.			
	McFadden Declaration	DCA Objection	ICANN's Response	Court's
11	The same of the state of the st		•	Ruling
12	¶ 10: Specifically, Section	1. Best evidence	Best Evidence. Mr.	
12	2.2.1.4.3 had very specific	rule. (Evid. Code §	McFadden's statement is	
13	requirements for each of the	1520.)	not offered to prove the	
ļ	letters of support. Those		contents of a writing. Mr.	
14	requirements were part of the		McFadden's testimony is	
	policy making process that		based on his personal	
15	developed the Guidebook		knowledge of the	
16	over a course of several		Guidebook requirements	
10	years, and they were there to		for letters of support and of	
17	ensure that any letter of		the ICC's evaluation of	
	support was legitimate,	2. Lacks	DCA and ZACR's	
18	authoritative, and	foundation,	applications for AFRICA,	
	demonstrated that the	speculative, and	and is offered to show	
19	governmental entity	conclusory. (Evid.	ICC's basis for evaluating	
20	understood precisely what it	1 Cada 8 402 )	Lattage at cumpart ac	
40 I		Code § 403.)	letters of support as	
	was supporting. DCA's	Code § 403.)	insufficient. A true and	
21	was supporting. DCA's letters from the AUC and	Code § 403.)	insufficient. A true and correct copy of the	
	was supporting. DCA's	Code § 403.)	insufficient. A true and correct copy of the Guidebook is in the record	
	was supporting. DCA's letters from the AUC and UNECA failed to show that the governmental entities	Code § 403.)	insufficient. A true and correct copy of the Guidebook is in the record (Bekele Decl., Ex. 3).	
21 22	was supporting. DCA's letters from the AUC and UNECA failed to show that	Code § 403.)	insufficient. A true and correct copy of the Guidebook is in the record (Bekele Decl., Ex. 3). True and correct copies of	
21	was supporting. DCA's letters from the AUC and UNECA failed to show that the governmental entities	Code § 403.)	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	
21 22 23	was supporting. DCA's letters from the AUC and UNECA failed to show that the governmental entities understood the process of the	Code § 403.)	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	
21 22	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	Code § 403.)	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	
<ul><li>21</li><li>22</li><li>23</li><li>24</li></ul>	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	Code § 403.)	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	
21 22 23	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	Code § 403.)	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)	
<ul><li>21</li><li>22</li><li>23</li><li>24</li></ul>	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	Code § 403.)	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)  Foundation. Mr.	
21 22 23 24 25 26	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	Code § 403.)	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)  Foundation. Mr. McFadden laid the	
21 22 23 24 25	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	Code § 403.)	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)  Foundation. Mr. McFadden laid the foundation for his	
21 22 23 24 25 26	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	Code § 403.)	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)  Foundation. Mr. McFadden laid the	

,	judgment, the letters that		testified that he is the	
1	DCA submitted from the		Principal IP and DNS	
2	AUC and UNECA were not		Specialist at ICC, and that	
	even close to conforming to		the ICC was designated by	
3	the very specific		ICANN to evaluate	
	requirements in the AGB;		the .AFRICA applications.	
4	indeed, the two letters were		(McFadden Decl. ¶ 1.) As	
	drafted before the		such, he has knowledge of	
5	requirements in the		the Guidebook	
6	Guidebook were even		requirements for letters of	ŀ
	available to applicants.		support and of the ICC's	
7			evaluation of DCA and	
1			ZACR's applications	
8	1		for .AFRICA.	
9			Speculative/Conclusory.	
10			Mr. McFadden's own	
			understanding of the	
11			Guidebook requirements	
			for letters of support and of	
12			the ICC's evaluation of	
13			DCA and ZACR's	
13			applications for .AFRICA	
14			is not speculative, but a	
			subject Mr. McFadden has	
15			personal knowledge of.	
16	McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
17	¶ 11: The ICC adhered to an	1. Lacks	Foundation/Conclusory.	
1 /	ICANN policy whereby the	foundation and	Mr. McFadden laid the	
18	ICC was not permitted to	conclusory. (Evid.	foundation for his	
]	contact any governmental	Code § 403.)	testimony. McFadden	
19	authority that had submitted		testified that he is the	
20	a letter of support for an		Principal IP and DNS	
20	applicant. Rather, the		Specialist at ICC, and that	
21	ll ' . 1 J			i
∠ı [	required procedure for a		the ICC was designated by	
	noncompliant letter was to		ICANN to evaluate	
22	noncompliant letter was to direct "clarifying questions"		ICANN to evaluate the .AFRICA applications.	
22	noncompliant letter was to direct "clarifying questions" to the applicant so that the		ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As	
	noncompliant letter was to direct "clarifying questions" to the applicant so that the applicant could contact the		ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has knowledge of	
22	noncompliant letter was to direct "clarifying questions" to the applicant so that the applicant could contact the governmental authority to		ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has knowledge of ICANN policy related to	
22 23 24	noncompliant letter was to direct "clarifying questions" to the applicant so that the applicant could contact the governmental authority to obtain an updated letter.		ICANN to evaluate the .AFRICA applications. (McFadden Decl. ¶ 1.) As such, he has knowledge of ICANN policy related to letters of support, the	
22 23	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		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	
<ul><li>22</li><li>23</li><li>24</li><li>25</li></ul>	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		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	
22 23 24	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		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	
22   23   24   25   26	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		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	
<ul><li>22</li><li>23</li><li>24</li><li>25</li></ul>	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		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	

,	AUC was also deficient		for .AFRICA.	
1	under the Guidebook).			
2	However, just as the ICC was		Objection No. 2. It is	1
i.	planning to send clarifying		unclear what evidentiary	
3	questions to DCA in the	2. Directly	objection DCA intended to	
4	Spring of 2013, ICANN's	contradicts the	make with its second	
4	Board voted to stop	evidence. Colón	objection. "Directly	
5	processing DCA's	Decl. Ex. 3,	contradicts the evidence" is	
	application following receipt	[Email between	not an evidentiary	
6	by the Board of consensus	McFadden and	objection, but rather	
7	advice from ICANN's	ICANN employee	argument that goes to weight. Further, the	
′	Governmental Advisory	Trang Nguyen drafting support	referenced email does not	
8	Committee (the "GAC") recommending that DCA's	letter for ZACR	contradict any of the	
	application should not	from AUC.]	testimony presented in	
9	proceed. As a result, on June	11011111100.	paragraph 11.	
10	7, 2013, ICANN advised the		t	
10	ICC to discontinue work on			
11	DCA's application.			
10	McFadden Declaration	DCA Objection	ICANNIa Despense	Court's
12		ta and the same and	ICANN's Response	Ruling
13	¶ <b>12</b> : The ICC did send	1. Best evidence	Best Evidence. Mr.	
	clarifying questions to	rule. (Evid. Code §	McFadden's statement is	
14	ZACR, and following that,	1520.)	not offered to prove the	
15	the AUC submitted a revised		contents of a writing. Mr. McFadden's testimony is	
15	endorsement letter for ZACR		based on his personal	
16	on July 3, 2013. The ICC determined that the revised		knowledge of the ICC's	
	letter satisfied all required		evaluation procedures for	
17	criteria in the Guidebook.	3. Prejudicial and	ZACR's application	
18	Thus, the ICC concluded that	contradictory to	for .AFRICA and the	
10	ZACR had passed the	evidence. Colón	ICC's ultimate	
19	Geographic Names Review	Decl. Ex. 3,	determination that ZACR	
20	by obtaining the requisite 60	[Email between	passed the Geographic	1
20	percent support. The ICC did	McFadden and	Names Review.	
21	not rely on any of the other	ICANN employee		
	1 1 1 7 4 CD		n : 1: 1/G 1:	<b>J</b> I
22	letters of support that ZACR	Trang Nguyen	Prejudicial/Contradictory.	ļ
	submitted with its application	drafting support	This testimony is not	
22		drafting support letter for ZACR	This testimony is not materially misleading nor	
23	submitted with its application	drafting support	This testimony is not materially misleading nor prejudicial. Mr.	
23 24	submitted with its application	drafting support letter for ZACR	This testimony is not materially misleading nor prejudicial. Mr. McFadden's declaration	
24	submitted with its application	drafting support letter for ZACR	This testimony is not materially misleading nor prejudicial. Mr. McFadden's declaration simply states the ICC's	
	submitted with its application	drafting support letter for ZACR	This testimony is not materially misleading nor prejudicial. Mr. McFadden's declaration simply states the ICC's evaluation procedures for	
24 25	submitted with its application	drafting support letter for ZACR	This testimony is not materially misleading nor prejudicial. Mr. McFadden's declaration simply states the ICC's evaluation procedures for ZACR's application	
24	submitted with its application	drafting support letter for ZACR	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	
24 25	submitted with its application	drafting support letter for ZACR	This testimony is not materially misleading nor prejudicial. Mr. McFadden's declaration simply states the ICC's evaluation procedures for ZACR's application	
<ul><li>24</li><li>25</li><li>26</li></ul>	submitted with its application	drafting support letter for ZACR	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	

,			Names Review.	
1 2	McFadden Declaration	DCA Objection	ICANN's Response	Court's Ruling
_	¶ 13: I understand that DCA	1. Lacks personal	Personal Knowledge.	
3	challenged, via an	knowledge. (Evid.	McFadden testified that he	
. 1	"Independent Review	Code § 403.)	is the Principal IP and	
4	Procedure" under ICANN's		DNS Specialist at ICC, and	
5	Bylaws, the decision of the		that the ICC was	
ا د	ICANN Board to accept the		designated by ICANN to	
6	GAC's consensus advice that		evaluate the .AFRICA	
Ŭ	DCA's application should		applications. (McFadden	
7	not proceed. After the IRP		Decl. ¶ 1.) As such, he has	
	issued its declaration in		personal knowledge of	
8	DCA's favor in July 2015,		ICANN's instructions to	
_	ICANN directed the ICC to		the ICC relating to DCA	
9	resume processing DCA's		and ZACR's applications	
10	application in order to		and the ICC's evaluation	
10	determine if DCA's		of DCA and ZACR's	
11	application could pass the		applications for AFRICA.	
1.1			applications for the Rich	
12	Geographic Names review,	2. Best Evidence	Best Evidence. Mr.	
l	which is exactly where		McFadden's statement is	
13	DCA's application had been	Rule (Evid. Code		
	prior to the time the Board	§ 1520.)	not offered to prove the	
14	voted in 2013 to accept the		contents of a writing. Mr.	
1.5	GAC's advice. In September		McFadden's testimony is	
15	2015, the ICC sent DCA the		based on his personal	
16	clarifying questions we had		knowledge of ICANN's	
10	determined in 2013 to be		instructions to the ICC	
17	necessary before		relating to DCA and	
	discontinuing work on		ZACR's applications and	
18	DCA's application. The		the ICC's evaluation of	
	questions explained that both		DCA and ZACR's	
19	the AUC and UNECA letters		applications for .AFRICA.	
20	submitted in support of		True and correct copies of	
20	DCA's application did not		the Clarifying Questions	
21	comply with section 2.2.1.4.3		issued to DCA are in the	
	of the Guidebook, and we		record (Bekele Decl., Exs.	
22	requested updated letters of		13, 15).	
	support.			
23	McFadden Declaration	DCA Objection		Court's
2.4			ICANN's Response	Ruling
24	¶ 14: I am now aware that	1. UNECA did not	Objection No. 1. It is	
25	UNECA wrote a letter dated	submit a July 20,	unclear what evidentiary	
ر ے	July 20, 2015 in which	2015 letter.	objection DCA intended to	
26	UNECA stated that it is	(Bekele Decl., Ex.	make with its first	
	neither a government nor a	10.)	objection. DCA's	
27	public authority and	,	statement is not an	
	therefore is not qualified to		evidentiary objection.	
28	dioretore is not quantied to		1	
		13		

1	issue a letter of support under		Further, nowhere in	
•	the Guidebook. This letter	2. Lacks	paragraph 14 does it state	
2	also was not brought to my	foundation. (Evid.	that UNECA "submitted"	
	attention until very recently.	Code § 403.)	the July 20, 2015 letter.	
3	The ICC did not consider this		However, UNECA did	
	letter in its evaluation of		draft a July 20, 2015 letter	
4	DCA's application; however,		making the same	
5	as noted above, the ICC		statements regarding its	
	already had determined that		nonsupport for DCA's	
6	the original UNECA letter		application, which Ms.	
_ 1	from 2008 – written four		Bekele conceded she	
7	years before DCA submitted		received in the December	
8	its application and before		1, 2016 deposition.	
٥	ICANN had even posted the			
9	first draft of the Guidebook –		Foundation. McFadden	
	did not contain the		laid the foundation for his	
10	information required by the		testimony. McFadden	
11	Guidebook, and we required		testified that he is the Principal IP and DNS	
11	DCA to provide an updated		Specialist at ICC, and that	
12	letter.		the ICC was designated by	
			ICANN to evaluate	
13			the .AFRICA applications.	
1.4			(McFadden Decl. ¶ 1.) As	
14			such, he has personal	
15			knowledge of the	
			Guidebook requirements	
16			and the ICC's evaluation	
17			of DCA and ZACR's	
17			applications for .AFRICA.	
18	McFadden Declaration	DCA Objection	ECANINI Dognama	Court's
			ICANN's Response	Ruling
19	¶ 15: In response to the	1. Lacks personal	Foundation/Personal	
20	clarifying questions that the	knowledge and	Knowledge. Mr.	
20	ICC sent to DCA in	foundation. (Evid.	McFadden laid the	
21	September 2015, DCA took	Code § 403.)	foundation for his	
	the position that its original		testimony. McFadden	
22	documentation of support		testified that he is the	
23	submitted with its application		Principal IP and DNS	
دے ا	in 2012 was sufficient, and		Specialist at ICC, and that	
24	DCA provided no additional		the ICC was designated by	
	or updated letters of support.		ICANN to evaluate	
25	Because DCA's existing		the .AFRICA applications. (McFadden Decl. ¶ 1.) As	
26	letters of support were		such, he has personal	
۷۵	noncompliant, the ICC concluded that DCA had not		knowledge of DCA and	
27	passed Geographic Names		ZACR's applications	
	Review. DCA elected to		for .AFRICA and the	
28	Licelew. Den elected to	<u> </u>		
		1.4		

1	participate in "Extended		ICC's evaluation of DCA	
1	Evaluation," which entailed		and ZACR's applications	
2	sending clarifying questions		for .AFRICA.	
_	again to give DCA additional			
3	time to provide the requisite			
4	documentation of support.			
	The ICC sent DCA the extended evaluation			
5	clarifying questions on			
6	October 30, 2015. In			
	response, DCA again took			
7	the position that its original			
	application was sufficient			
8	and that it did not need to			
9	submit any additional letters			
	of support. Thus, the ICC			
10	determined that DCA had			
11	failed to provide the requisite documentation of support or			
•	non-objection for			
12	the .AFRICA gTLD.			
12	McFadden Declaration	DCA Objection		Court's
13			ICANN's Response	Ruling
14	¶ 16: The ICC treated all	1. Conclusory.	Conclusory. Mr.	
	gTLD applications equally	(Evid. Code §	McFadden's own	
15	including DCA and ZACR's	403.)	understanding of the ICC's	
16	applications for .AFRICA.		evaluation of DCA and	
	Both applications initially		ZACR's applications for .AFRICA is not	
17	had letters of support from		conclusory, but a subject	
18	the AUC and/or UNECA.  The ICC recommended that		Mr. McFadden has	
10	both of those entities be		personal knowledge of.	
19	viewed as authorized to		personal land //reage	
20	provide an official	2. Contradicts	Objection No. 2. It is	
20	endorsement on behalf of the	earlier testimony	unclear what evidentiary	
21	countries in Africa that each	in that ZACR did	objection DCA intended to	
	represented, and ICANN	not have support	make with its second	
22	ultimately agreed. The ICC	from UNECA.	objection. DCA's statement is not an	
23	then evaluated each letter for	(McFadden Decl.,	evidentiary objection, but	
	required criteria pursuant to the Guidebook, and	¶ 5.)	rather argument, that goes	
24	determined that all three of		to weight. Nor does Mr.	
25	the initial letters (two from		McFadden claim that	
23	II life liftlial fellers (two from		7.4.00 1 1	
ł	the AUC and one from		ZACR had a support letter	
26	f 1		from UNECA.	
	the AUC and one from UNECA) were not sufficient under the terms of the		,	
26 27	the AUC and one from UNECA) were not sufficient under the terms of the Guidebook. The ICC		,	
	the AUC and one from UNECA) were not sufficient under the terms of the		,	

1	knowing whether the AUC or UNECA still endorsed any				
2	application and not knowing				
3	the views of AUC or UNECA as to whether they				
4	were authorized to speak for				
5	the countries on the African continent that they purported				
	to represent. ZACR was able				
6	to provide an updated letter of support compliant with the				
7	Guidebook, and it passed the Geographic Names Review;				
8	DCA's application failed the				
9	Geographic Names Review.				
10	Dated: December 21, 2016 Jones Day				
11					
12	By:				
13	Erin L. Burk				
14	Attorneys for Defendant INTERNET CORPORATION FOR				
15	ASSIGNED NAMES AND NUMBERS				
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	16 ICANN'S RESPONSES TO DOA'S ORIECTIONS TO THE DECLARATION OF M. McFADDEN				

## **PROOF OF SERVICE** 1 2 I, Diane Sanchez, declare: 3 I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address 4 5 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On December 6 21, 2016, I served a copy of the within document(s): 7 ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS TO THE **DECLARATION OF M. MCFADDEN** 8 by placing the document(s) listed above in a sealed envelope with postage thereon 9 fully prepaid, in the United States mail at Los Angeles, California addressed as set 10 forth below. by placing the document(s) listed above in a sealed Federal Express envelope and 11 × affixing a pre-paid air bill, and causing the envelope to be delivered to a Delivery 12 Service agent for delivery. 13 by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below. 14 by transmitting via e-mail or electronic transmission the document(s) listed above 15 × to the person(s) at the e-mail address(es) set forth below. 16 David W. Kesselman, Esq. Ethan J. Brown Kesselman Brantly Stockinger LLP 17 ethan@bnslawgroup.com 1230 Rosecrans Ave, Suite 690 Sara C. Colón Manhattan Beach, CA 90266 18 sara@bnslawgroup.com (310) 307-4556 Rowennakete "Kete" Barnes 19 (310) 307-4570 fax kete@bnsklaw.com dkesselman@kbslaw.com BROWN NERI & SMITH LLP 20 11766 Wilshire Boulevard, Suite 1670 Via Email & Federal Express Los Angeles, California 90025 21 Telephone: (310) 593-9890 22 Via Email & Federal Express I declare that I am employed in the office of a member of the bar of this court at whose 23 24 direction the service was made. 25 Executed on December 21, 2016, at Los Angeles, California. 26 derane Sunch 27 28