1 2 3 4 5 6 7 8 9	Jeffrey A. LeVee (State Bar No. 125863) Erin L. Burke (State Bar No. 186660) Rachel T. Gezerseh (State Bar No. 251299) Amanda Pushinsky (State Bar No. 267950) JONES DAY 555 South Flower Street Fiftieth Floor Los Angeles, CA 90071.2300 Telephone: +1.213.489.3939 Facsimile: +1.213.243.2539 Attorneys for Defendant INTERNET CORPORATION FOR ASSIGNE NAMES AND NUMBERS	
		HE STATE OF CALIFORNIA
10 11	COUNTY OF LOS ANGE	LES, CENTRAL DISTRICT
12	DOTCONNECTAFRICA TRUST,	CASE NO. BC607494
13	Plaintiff,	Assigned for all purposes to Hon. Howard L. Halm
14	v.	
15	INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, et	ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS TO THE DECLARATION OF
16	al.,	CHRISTINE WILLETT
17	Defendant.	
18 19		DATE: February 2, 2017 TIME: 8:30 a.m. DEPT: 53
		DEF1. 33
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	ICANN'S RESPONSES TO DCA'S OBJECTION	ONS TO THE DECLARATION OF C. WILLETT

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

Willett Declaration	DCA Objection	Response	Court's Ruling
¶ 2: In my role as Vice President for Operations, I have been responsible for overseeing the evaluation of the 1,930 gTLD applications ICANN received in 2012 as part of ICANN's New gTLD Program. Those applications are evaluated in accordance with the procedures set forth in the New gTLD Applicant Guidebook ("Guidebook"). A copy of the Guidebook is attached as Exhibit 3 to the declaration of Sophia Bekele Eshete ("Bekele Declaration").	1. Lacks personal knowledge (Evid. Code § 702) 2. Lacks foundation (Evid. Code § 403.)	Foundation/Personal Knowledge. Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the procedures governing the evaluation of New gTLD applications.	
Willett Declaration	DCA Objection	Response	Court's Ruling
¶ 3: In the spring of 2012, Plaintiff DCA and defendant ZA Central Registry ("ZACR") each submitted applications to operate the .AFRICA gTLD. In doing so, they, like all new gTLD applicants, expressly accepted and acknowledged the Guidebook, including the release and covenant not to sue ("Covenant") in paragraph 6 of Module 6.	1. Lacks personal knowledge (Evid. Code § 702) 2. Lacks foundation (Evid. Code § 403)	Foundation/Personal Knowledge. Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the procedures governing the evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa.	

1	Willett Declaration	DCA Objection	Response	Court's
2	¶ 6: In addition, because DCA	1. Lacks personal	Foundation/Personal	Ruling
3	and ZACR had each applied	knowledge (Evid.	Knowledge. Ms. Willett	
4	for a gTLD that represents the	Code § 702)	testified that she is the Vice	
	name of a geographic region,	2. Lacks foundation (Evid.	President for Operations of the Global Domains Division	
5	the Guidebook requires that DCA and ZACR each provide	Code § 403)	of ICANN, and that in that	
6	documentation of support or	3. Best evidence	role she has been responsible	
٦	non-objection from at least	rule (Evid. Code	for overseeing the evaluation	
7	60% of the governments in the region. Bekele Decl. Ex. 3	§ 1520)	of applications received as part of the New gTLD	
8	§ 2.2.1.4.2. The Guidebook		Program. (Willett Decl. ¶¶	
9	also provides that a		1-2.) As such, she has	
	Geographic Names Panel		personal knowledge of contents of the Guidebook	
10	operated by a third-party vendor retained by ICANN		and the actions taken by the	
11	must verify the relevance and		Geographic Names Panel.	
12	authenticity of an applicant's		D . D '1	
ľ	documentation of support. <i>Id.</i>		Best Evidence. This testimony is not offered to	
13	§§ 2.4.2, 2.2.1.4.4. The Geographic Names Panel		prove the contents of a	
14	evaluated the support letters		writing. Rather, Ms.	ŀ
15	submitted by the applicants		Willett's testimony is based	i
İ	pursuant to the criteria set forth in the Guidebook. In		on her personal knowledge of ICANN's procedures to	
16	particular, section 2.2.1.4.3 of		evaluate New gTLD	
17	the Guidebook required that		applications, including	
18	letters of support for a geographic name "clearly		ICANN's implementation of the Guidebook's	
10	express the government's or		requirements in reviewing	
19	public authority's support for		New gTLD applications,	
20	or nonobjection to the		including DCA and ZACR's applications. A true and	
21	applicant's application and demonstrate the government's		correct copy of the	
	or public authority's		Guidebook is attached as	
22	understanding of the string		exhibit three to the Declaration of Sophia Bekele	
23	being requested and its intended use." It further		("Bekele Decl.").	
24	requires that a letter of		(201010 20011)	
24	support "should demonstrate			
25	the government's or public			
26	authority's understanding that the string is being sought			
	through the gTLD application			
27	process and that the applicant			
28	is willing to accept the	3		<u> </u>

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1	conditions under which the			
2	string will be available, i.e.,			
	entry into a registry agreement			
3	with ICANN requiring compliance with consensus			
4	policies and payment of fees."			
	The Geographic Names Panel			
5	treated both of these			
6	requirements as mandatory for all applicants (including DCA			
- I	and ZACR).			
7		DCA Objection	Response	Court's
8	Willett Declaration	DCA Objection	Response	Ruling
9	¶ 7: ZACR submitted 41	1. Lacks	Foundation/Personal	
	letters of support with its	foundation (Evid.	Knowledge. Ms. Willett	
10	application, including over	Code § 403) 2. Best evidence	testified that she is the Vice President for Operations of	
11	thirty letters from individual African governments, and a	rule (Evid. Code	the Global Domains Division	
	2012 letter from the African	§ 1520)	of ICANN, and that in that	
12	Union Commission ("AUC").	,	role she has been responsible	
13	The AUC is the secretariat for		for overseeing the evaluation	
14	the African Union, in which every African nation except		of applications received as part of the New gTLD	
14	Morocco is a member. DCA		Program. (Willett Decl. ¶¶	
15	submitted six letters of		1-2.) As such, she has	
16	support with its application		personal knowledge of the	
	for .AFRICA ("Application")		evaluation of New gTLD	
17	- one from the AUC, one from the United Nations Economic		applications, including DCA and ZACR's applications	
18	Commission for Africa		for .Africa, the contents of	
	("UNECA"), three from		those applications, and their	
19	individual African countries,		supporting documentation.	
20	and one from the South African Embassy in		Best Evidence. This	
21	Washington, D.C.		testimony is not offered to	
21	,		prove the contents of a	
22			writing. Ms. Willett's	
23			testimony is based on her personal knowledge of the	
			evaluation of New gTLD	
24			applications, including DCA	
25			and ZACR's applications	
26			for .Africa, the contents of those applications, and their	
20			supporting documentation.	
27	William Designation	DCA Objection	Response	Court's
28	Willett Declaration	DCA Objection	Acopolise (Section 1)	Ruling
	ICANN'S RESPONSES TO I	OCA'S OBJECTIONS	TO THE DECLARATION OF C. W	TLLETT

1 ¶8: The AUC letter of support that DCA submitted 2 was dated April 27, 2009. A copy of that letter is attached 3 as Exhibit 6 to the Bekele Declaration. I now understand 4 that, in 2010, DCA received a 5 letter from the AUC that formally withdrew the AUC's 6 support for DCA's Application. A copy of that 7 letter is attached as Exhibit 7 8 to the Bekele Declaration. DCA did not submit to 9 ICANN with its Application a copy of the AUC's 2010 letter 10 withdrawing its support for DCA. Although the 2010 11 AUC letter indicates that ICANN was copied, the "cc" 12 did not identify any specific 13 person at ICANN, and ICANN has no record of 14 receiving the letter. Inasmuch as the letter was sent two 15 vears before ICANN began receiving gTLD applications, 16 ICANN had no "files" set up 17 for any particular application. 18 19 20 21 22 23 24 25 26 27

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1. Lacks personal knowledge (Evid. Code § 702). 2. Lacks foundation and irrelevant (Evid. Code § 403). 3. Best evidence rule (Evid. Code § 1520). 4. Prejudicial because the statement is materially misleading because it fails to state that DCA specifically identified the purported withdrawal in its application ICANN and has done so on numerous occasions (Evid. Code § 352). 5. Bekele Decl. ¶ , Ex. ("Unlike the initial letter of support from the AUC the subsequent letter omitted any official stamp, was not signed by the AUC Chairman, and instead was signed by the Deputy Chairperson).

Personal Knowledge/ Foundation. Ms. Willett testified that she is the Vice President for Operations of the Global Domains Division of ICANN, and that in that role she has been responsible for overseeing the evaluation of applications received as part of the New gTLD Program. (Willett Decl. ¶¶ 1-2.) As such, she has personal knowledge of the evaluation of New gTLD applications, including DCA and ZACR's applications for .Africa, the contents of those applications, and their supporting documentation.

Best evidence. This testimony is not offered to prove the contents of a writing. Rather, Ms. Willett's testimony is based on her personal knowledge of ICANN's review of DCA's application for .Africa, including information withheld by DCA at the time of its application and subsequent knowledge of the 2010 AUC letter withdrawing the 2009 endorsement. A true and correct copy of the 2010 AUC letter is attached as Exhibit 7 to the Bekele Declaration.

Prejudicial. This testimony is not materially misleading nor prejudicial. Ms. Willet's declaration simply states that DCA did not attach a copy of the 2010 letter with its application, a fact DCA conceded in its deposition.

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1			LeVee Decl., Exh. H.	
2			Fifth Objection. It is unclear	
3			what evidentiary objection	
ا			DCA intended to make with	
4		-	its fifth objection. To the extent DCA is questioning	
5			the authenticity of the April	
			16, 2010 letter, see	
6			Declaration of Moctar	
7			Yedaly, ¶ 10, which authenticates the letter.	
8				A Marie Co.
	Willett Declaration	DCA Objection	Response	Court's Ruling
9	¶ 9: The letter of support from	1. Best evidence	Best Evidence. This	
10	ÜNECA that DCA submitted	rule (Evid. Code	testimony is not offered to	
_,	with its application was dated	§ 1520).	prove the contents of a	
11	August 8, 2008. A copy of	2. Lacks	writing. Rather, Ms.	
12	that letter is attached as	foundation (Evid.	Willett's testimony is based	
	Exhibit 8 to the Bekele	Code § 403.)	on her personal knowledge as the Vice President for	
13	Declaration. In September	3. Irrelevant (Evid. Code §	Operations of the Global	
14	2015, UNECA wrote in a letter to the AUC that it was a	403).	Domains Division of ICANN	
17	"United Nations entity [that]	4. The GNP had	regarding evaluation of New	
15	is neither a government nor	already	gTLD applications, including	
1.6	public authority and therefore	determined that	DCA and ZACR's	
16	is not qualified to issue a letter	UNECA was a	applications for .Africa and	
17	of support for a prospective	valid endorser.	the processing of those	
18	applicant," and that its August 2008 letter was "merely an	McFadden Decl. ¶ 6.	applications.	
10	expression of a view in		Foundation. Ms. Willett	
19	relation to [DCA's] initiatives		testified that she is the Vice	
20	and efforts regarding internet		President for Operations of	
20	governance [and] cannot		the Global Domains Division	
21	be properly considered as a		of ICANN, and that in that	
22	'letter of support' within the		role she has been responsible for overseeing the evaluation	
22	context of ICANN's requirements and cannot be		of applications received as	
23	used as such." A true and		part of the New gTLD	
24	correct copy of UNECA's		Program. (Willett Decl. ¶¶	
24	September 2015 letter is		1-2.) As such, she has	
25	attached as Exhibit 9 to the		personal knowledge of the	
26	Bekele Declaration.		evaluation of New gTLD	
26			applications, including DCA	
27			and ZACR's applications for .Africa, the contents of	
			those applications, and their	
28		6		

1			supporting documentation.	
2			Relevance. Testimony	
3			regarding the 2015 letter	
			from UNECA is relevant to	
4			show that DCA would not have been able to obtain an	
5			updated letter from UNECA	
			that conformed with the	
6			Guidebook's requirements	
7			following the IRP]
			Declaration. This evidence	
8			supports ICANN's argument that DCA has no likelihood	
9			of success on the merits as to	
			its second and fifth causes of	
10			action.	
11			Fourth Objection Again it	
12			Fourth Objection. Again, it is unclear what evidentiary	
12			objection DCA intends to	
13			make with its fourth	
14			objection. Because the 2008	
14			UNECA letter failed to conform to the Guidebook's	
15			requirements, DCA was	
16			required to obtain an updated	
			letter from UNECA if it were	
17			to rely on a letter from	
18			UNECA to fulfill the 60% requirement of support or	
10			non-objection from	
19			government authorities.	
20			Regardless of any	1
21			determination by the GNP as	
21			to whether UNECA qualifies as a valid endorser, the	
22			September 2015 UNECA	
23			letter shows that DCA would	
23			have been unable to do so.	
24	Willett Declaration	DCA Objection	Response	Court's
25				Ruling
	¶ 10: On June 5, 2013, at the	1. Lacks	Foundation. Ms. Willett	
26	time when ICANN's Board	foundation (Evid.	testified that she is the Vice	
27	accepted the Governmental	Code § 403)	President for Operations of the Global Domains Division	
	Advisory Committee's ("GAC's") advice objecting to		of ICANN, and that in that	
28	(Cric b) and the cojecting to	7		

1	DCA's Application, DCA had	role she has been responsible	
2	not yet passed the Geographic	for overseeing the evaluation	
	Names Panel review. At that	of applications received as part of the New gTLD	
3	time, the Geographic Names Panel had been in the midst of	Program. (Willett Decl. ¶¶	
4	its review of DCA's	1-2.) As such, she has	
_	Application; it had determined	personal knowledge of the	
5	that the support documentation submitted by	evaluation of New gTLD applications, including DCA	
6	DCA, including the letters	and ZACR's applications,	
7	from the AUC and UNECA,	and including ICANN's and	
,	did not meet the criteria set	the Geographic Names	
8	forth in the Guidebook, and was therefore planning to send	Panel's handling of the .Africa applications	
9	"clarifying questions" to	following the GAC advice in	
10	DCA. Clarifying questions are	2013.	
	sent where support documentation does not meet		
11	the criteria set forth in the		
12	Guidebook, and they are an		
13	accommodation to provide		
	applicants an opportunity to explain/supplement their		
14	documentation. However, as a		
15	result of the ICANN Board's		
16	acceptance of the GAC's advice, DCA's Application		
	was removed from processing,		
17	and the clarifying questions		
18	were not sent at that time.		
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26			:
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1	Willett Declaration	DCA Objection	Response	Court's Ruling
2	¶ 11: By July 31, 2015,	1. Lacks	Foundation/Personal	Kanng
3	following the ICANN Board's	foundation (Evid.	Knowledge. Ms. Willett	
4	adoption of the	Code § 403)	testified that she is the Vice	
4	recommendations of the	2. Lacks personal	President for Operations of	
5	Independent Review Panel in	knowledge (Evid.	the Global Domains Division	
	DCA v. ICANN ("IRP Panel"),	Code § 702).	of ICANN, and that in that role she has been responsible	
6	DCA's Application was returned to processing as the		for overseeing the evaluation	
7	Board directed. DCA's		of applications received as	
	Application was returned to		part of the New gTLD	
8	precisely the portion of the		Program. (Willett Decl. ¶¶	
9	review that was pending on		1-2.) As such, she has	
	the date the Application was		personal knowledge of the	
10	removed from processing—		evaluation of New gTLD	
11	the Geographic Names Panel review. As the Geographic		applications, including ICANN's and the Geographic	
**	Names Panel had been		Names Panel's processing of	
12	preparing to do when DCA's		DCA's application following	
13	Application was removed		the IRP Declaration.	
13	from processing, the		!	
14	Geographic Names Panel			
15	issued clarifying questions to			
13	DCA on September 2, 2015,			
16	regarding the documentation DCA had submitted with its			
17	Application. Those clarifying			
17	questions are attached as			
18	Exhibit 13 to the Bekele			
10	Declaration. DCA was given			
19	an opportunity to respond to			
20	those clarifying questions.			
_,	Instead of supplementing its documentation, DCA wrote to			
21	ICANN on September 28,			
22	2015, taking the position that			
	the documentation that it had			
23	submitted with its Application			
24	in 2012 was sufficient.			1
	Willett Declaration	DCA Objection	Response	Court's
25	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	continues and the second		Ruling
26	¶ 12: On October 13, 2015,	1. Best evidence	Best Evidence. This	
	ICANN issued the Initial	rule (Evid. Code	testimony is not offered to	
27	Evaluation Report regarding	§ 1520).	prove the contents of a writing. Rather, Ms.	
28	DCA's Application. The Initial Evaluation Report		Willett's testimony is based	
	Initial Dialaction Report	9		l

ICANN'S RESPONSES TO DCA'S OBJECTIONS TO THE DECLARATION OF C. WILLETT

1	noted that the Application had		on her personal knowledge	
_	passed all reviews except for		as the Vice President for	
2	the Geographic Names Panel		Operations of the Global	
3	review. As provided by the		Domains Division of ICANN	
ا د	Guidebook, the report stated		regarding the evaluation of	
4	that DCA would have the		New gTLD applications,	
.	opportunity to participate in		including ICANN's and the	
5	"Extended Evaluation," which		Geographic Names Panel's	
	offered DCA additional time		handling of the .Africa	
6	to provide the requisite		applications.	
7	documentation of support or			
· /	non-objection from African			
8	governments. A true and			
۱	correct copy of the Initial			
9	Evaluation Report is attached			
	hereto as Exhibit A.			
10		() () () () () () () () () ()	THE STATE OF	
	Willett Declaration	DCA Objection	Response	Court's
11	, ightha 2.48 (c. c.)			Ruling
12	¶ 13: As part of Extended	1. Lacks	Foundation/Personal	
12	Evaluation, the Geographic	foundation (Evid.	Knowledge. Ms. Willett	
13	Names Panel again issued	Code § 403).	testified that she is the Vice	
	clarifying questions to DCA	2. Lacks personal	President for Operations of	
14	on October 30, 2015,	knowledge (Evid.	the Global Domains Division	
	identifying the issues with the	Code § 702).	of ICANN, and that in that	
15	documented support		role she has been responsible	
16	submitted by DCA. Those		for overseeing the evaluation	
10	clarifying questions are		of applications received as	
17	attached as Exhibit 15 to the		part of the New gTLD	
	Bekele Declaration. DCA was		Program. (Willett Decl. ¶¶	
18	given until January 28, 2016,		1-2.) As such, she has	
10	to supplement its		personal knowledge of the	
19	documentation. However,		evaluation of New gTLD	
20	rather than supplementing its		applications, including DCA	
20	documentation, DCA		and ZACR's applications,	
21	submitted a letter from its		and including ICANN's and	
	counsel and again took the		the Geographic Names	
22	position that the		Panel's handling of	
	documentation that it had		the .Africa applications.	
23	submitted with its Application			1
24	in 2012 was sufficient.			
27	Willett Declaration	DCA Objection	Response	Court's
25	Wiffett Declaration	DCA Objection	A STATE OF THE STA	Ruling
	¶ 14: Notably, nearly identical	1. Lacks	Foundation/Personal	8
26	clarifying questions were sent	foundation (Evid.	Knowledge. Ms. Willett	
<u></u>	to ZACR in 2013 when	Code § 403).	testified that she is the Vice	
27		2. Lacks personal	President for Operations of	
28	ZACR's application	knowledge and	the Global Domains Division	
20	for .AFRICA was undergoing	Miowiedge alid	the Global Dolliants Division	L
	ICANN'S RESPONSES TO I	OCA'S OBJECTIONS	TO THE DECLARATION OF C. W	ILLETT

∥		1	CTC 42 D.T. 1.1	
1	Geographic Name Review.	speculative (Evid.	of ICANN, and that in that	
2	True and correct copies of the	Code § 702).	role she has been responsible	
4	clarifying questions issued to	3. Best evidence	for overseeing the evaluation	
3	ZACR related to the AUC and	rule (Evid. Code	of applications received as	
	UNECA letters are attached	§ 1520).	part of the New gTLD	
4	hereto as Exhibits B and C.		Program. (Willett Decl. ¶¶	
	Unlike DCA, ZACR		1-2.) As such, she has	
5	submitted an updated letter		personal knowledge of	
Ì	from the AUC endorsing		ICANN's processing of DCA	
6	ZACR on July 3, 2013, which		and ZACR's applications	
7	provided ZACR with the		for .Africa during the	
′∥	requisite support of 60% of		Geographic Names Review	
8	the governments of Africa and		and the contents of the	
Ĭ	allowed ZACR to pass		Guidebook.	
9	Geographic Names Review. A			
ļ	true and correct copy of that		Best Evidence. Ms. Willett's	
10	letter is attached hereto as		statement is not offered to	
	Exhibit D. Had DCA been		prove the contents of a	
11	able to obtain an updated,		writing, but is based on her	
12	fully satisfactory letter from		personal knowledge of	
12	the AUC, it too would have		ICANN's processing of DCA	
13	passed Geographic Names		and ZACR's applications	
	Review. In that instance,		for .Africa during the	
14	contention resolution would		Geographic Names Review.	
1.5	have proceeded in accordance		True and correct copies of	
15	with Guidebook procedures;		the Clarifying Questions	
16	and, had the AUC not		issued to ZACR related to	
10	expressed a preference for one		the AUC and UNECA letters	
17	applicant over another, the		are attached to the Willett	
	contention may have been		Declaration as Exhibits B	
18	resolved by way of an auction		and C.	
4.0	between the two parties.			
19	between the two parties.			
20	Willett Declaration	DCA Objection	Response	Court's
20				Ruling
21	¶ 15: On February 17, 2016,	1. Best evidence	Best Evidence. Ms. Willett's	
	ICANN issued an Extended	rule (Evid. Code	statement is not offered to	
22	Evaluation Report stating that	§ 1520).	prove the contents of a	
	the Geographic Names Panel		writing, but is based on her	
23	had determined that DCA had		personal knowledge of	
24	failed to provide the requisite		ICANN's processing of DCA	
24	documentation of support or		and ZACR's applications	
25	nonobjection from relevant		for .Africa and including	
	governments, despite the		ICANN's and the	
26	extended opportunity to do so.		Geographic Names Panel's	
	A copy of the Extended		handling of the .Africa	
27	Evaluation Report is attached		applications.	
28	as Exhibit 18 to the Bekele			
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1	Declaration. As a result, and			
2	as provided by the Guidebook, ICANN stopped			
3	processing DCA's Application. (Guidebook at			
4	174 (§ 2.2.1.4.4).)			
5	Willett Declaration	DCA Objection	Response	Court's Ruling
6	¶ 16: On March 3, 2016,	1. Lacks	Foundation/personal	
7	ICANN's Board adopted a	foundation (Evid.	knowledge. Ms. Willett	
/	resolution lifting the stay on the delegation of .AFRICA. A	Code § 403). 2. Lacks personal	testified that she is the Vice President for Operations of	
8	true and correct copy of the	knowledge (Evid.	the Global Domains Division	
9	Board's March 3, 2016	Code § 702).	of ICANN, and that in that	
	resolution is attached to this	3. Best evidence	role she has been responsible	
10	declaration as Exhibit E.	rule (Evid. Code § 1520).	for overseeing the evaluation of applications received as	
11		g 1520).	part of the New gTLD	
12			Program. (Willett Decl. ¶¶	
			1-2.) As such, she has personal knowledge of the	
13			evaluation of New gTLD	
14		:	applications, including DCA	
15			and ZACR's applications	
13			for .Africa, and certain actions taken by ICANN	
16			pertaining to those	
17			applications.	
18			Best evidence. This	
19			testimony is not offered to	
			prove the contents of a writing. Rather, Ms.	
20			Willett's testimony is based	
21			on her personal knowledge	
22			as the Vice President for Operations of the Global	
23			Domains Division of ICANN	
23			regarding the evaluation of New gTLD applications,	
24			including DCA and ZACR's	
25	400		applications for .Africa.	
26	Willett Declaration	DCA Objection	Response	Court's Ruling
27	¶ 17: As described in the	1. Irrelevant	Relevance. Testimony	
28	concurrently-filed declaration of Akram Atallah, ICANN's	(Evid. Code § 403).	regarding the accountability mechanisms provided by	
		12		
	icann's responses to i	DCA'S OBJECTIONS	TO THE DECLARATION OF C. W	TLLETT.

1	Bylaws provide for several	2. Best evidence	way of ICANN's Bylaws is	
	accountability mechanisms to	rule (Evid. Code	directly relevant to DCA's	
2	ensure that ICANN operates	§ 1520).	claim that ICANN	
3	in accordance with its Articles		misrepresented the	
ا ر	of Incorporation, Bylaws,		availability of accountability	
4	policies and procedures. For		mechanisms.	
	example, an aggrieved			
5	applicant can file a "request			
	for reconsideration," which is			
6	a mechanism that asks the			
7	ICANN Board to re-evaluate			
′	certain Board or staff actions			
8	or inactions that the applicant		Best Evidence. This	
	believes have harmed it. In		testimony is not offered to	
9	addition, an aggrieved		prove the contents of a	
10	applicant can file a "request		writing. Rather, Ms.	j
10	for independent review," a		Willett's testimony is based	
11	unique process set forth in		on her personal knowledge	
	ICANN's Bylaws that asks		as the Vice President for	
12	independent panelists to		Operations of the Global	
12	evaluate whether an action of		Domains Division of ICANN	
13	ICANN's Board was		regarding the mechanisms	
14	consistent with ICANN's		that ensure ICANN operates	
- ·	Articles of Incorporation and		in accordance with its	
15	Bylaws. Bekele Decl., Ex. 4		Articles of Incorporation,	
1.0	(Bylaws, Art. IV, §§ 2-3).		Bylaws, policies and procedures. A true and	
16	DCA could have filed, but did		correct copy of the ICANN	
17	not file, a reconsideration		Bylaws can be found at	
- '	request or a request for an independent review process		Bekele Decl., Ex. 4 (Bylaws,	
18	("IRP") related to the		Art. IV, §§ 2-3).	
10	clarifying questions issued to		7111.11, 33 2 3).	
19	it, or to the determination that			
20	DCA had failed the			
~	Geographic Names Review.			
21		2.70	10 mm	01
	Willett Declaration	DCA Objection	Response	Court's
22	The Harting	1 T 1	Dalamana This tagtim any is	Ruling
23	¶ 18: There is nothing in the	1. Irrelevant	Relevance. This testimony is	
23	Guidebook that prevents an	(Evid. Code §	directly relevant to counter DCA's claim that ZACR's	
24	applicant for a new gTLD	403).	application was improper	
	from assigning intellectual	2. Misleading as the Masilela	because it assigned certain	
25	property rights to a third	declaration	intellectual property rights to	
26	party. Accordingly, that	clearly shows that	the AUC.	İ
20	ZACR intends to assign	the AUC was	ine Acc.	
27	certain rights to the AUC upon delegation of .AFRICA	ZACR's partner	Second Objection. Again, it	
	does not violate any terms of	in applying.	is unclear what evidentiary	
28	does not violate any terms of	13	TO WILLIAM TITLE OF THE PARTY	
		13		

ICANN'S RESPONSES TO DCA'S OBJECTIONS TO THE DECLARATION OF C. WILLETT

1	the Guidebook. The AUC	Masilela Decl. ¶8,	objection DCA intended to	,
	itself could have applied	Ex. A.	make with its second	
2	for .Africa. There is no basis		objection. Even if this	
3	to assert that any assignment		accusation were accurate,	
3	of rights to the AUC was		"misleading" is not an	İ
4	improper.		evidentiary objection.	
				_
5	Willett Declaration	DCA Objection	Response	Court's Ruling
6	¶ 19: Both DCA and ZACR	1. Best evidence	Best evidence. This	
_	submitted standard (meaning,	rule (Evid. Code	testimony is not offered to	
7	not community-based)	§ 1520).	prove the contents of a	
8	applications for the .AFRICA		writing. Rather, Ms.	
°	gTLD. Even if the applicants		Willett's testimony is based	
9	intend to operate		on her personal knowledge	
	the .AFRICA gTLD on behalf		as the Vice President for	
10	of the African community,		Operations of the Global	
	they are not obligated to		Domains Division of ICANN	
11	submit a "community"		regarding procedures	
12	application for the gTLD. A		governing the evaluation of	
12	"community" application is a		New gTLD applications,	
13	special application available		including DCA and ZACR's	
	under the Guidebook that		applications for .Africa.	
14	requires an application to			
1.5	meet heightened criteria; and,			
15	if a community application			
16	prevails in Community			
10	Priority Evaluation, that			
17	application is given priority			
	over all other applications in			
18	the contention set. Here,			
19	neither DCA nor ZACR			
17	submitted, nor were required			
20	to submit, a community			
	application.		11.000 (20.00) (1.000) (1.000)	
21	Willett Declaration	DCA Objection	Response	Court's
22	Part of the second of the seco		A STATE OF THE STA	Ruling
	¶ 21: A "registrar" is an entity	1. Best evidence	Best evidence. This	
23	that sells domain name	rule (Evid. Code	testimony is not offered to	
	subscriptions to consumers.	§ 1520).	prove the contents of a	
24	This is in contrast to a	2. Speculative.	writing. Rather, Ms.	
25	"registry" which is the entity	(Evid. Code §	Willett's testimony is based	
	that operates the gTLD. In	702).	on her personal knowledge	
26	nearly all situations, it is		as the Vice President for	
-~	permissible for a gTLD		Operations of the Global	
27	registry operator to also act as		Domains Division of ICANN	
	registrar. ICANN has allowed		regarding the mechanisms	
28	such "cross-ownership" of	14	that ensure ICANN operates	
	ICANN'S RESPONSES TO DCA'S OBJECTIONS TO THE DECLARATION OF C. WILLETT			
	TOTALL DE MANDE OF DOLLO OPPOSITO TO THE PROPERTY OF OF WILLIAM			

1	TLDs since 2010. The	in accordance with its
_	ICANN Registry Agreement	Articles of Incorporation,
2	compels registry operators to	Bylaws, policies and
3	deal with all registrars in a fair and equitable manner, and	procedures.
4	ICANN has compliance	Speculative. Ms. Willett
5	mechanisms in place to monitor cross-ownership.	testified that she is the Vice President for Operations of
6	Thus, ZACR cannot provide	the Global Domains Division
	preferential treatment or access to its own registrar;	of ICANN, and that in that role she has been responsible
7	instead, ZACR (like any	for overseeing the evaluation
8	gTLD registry) must treat all	of applications received as part of the New gTLD
9	of its registrars equally and on the same terms.	Program. (Willett Decl. ¶¶
10		1-2.) As such, she has personal knowledge of the
11		mechanisms that ensure
12		ICANN operates in accordance with its Articles
		of Incorporation, Bylaws,
13		policies and procedures.
14		
15	Dated: February 1, 2017	Jones Day
16		
17		By:
18		Jeffrey A. L. d. Vee
19		Attorneys for Defendant INTERNET CORPORATION FOR
20		ASSIGNED NAMES AND NUMBERS
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22		
23		
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27		
28		
	'	15

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 is 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90071.2300. On February 1, 5 6 2017, I served a copy of the within document(s): ICANN'S RESPONSES TO DCA'S EVIDENTIARY OBJECTIONS TO THE 7 DECLARATION OF CHRISTINE WILLETT 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 forth below. 10 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 Service agent for delivery. 12 by personally delivering the document(s) listed above to the person(s) at the 13 address(es) set forth below. 14 by transmitting via e-mail or electronic transmission the document(s) listed above X to the person(s) at the e-mail address(es) set forth below. 15 16 David W. Kesselman, Esq. Ethan J. Brown Kesselman Brantly Stockinger LLP ethan@bnslawgroup.com 17 1230 Rosecrans Ave, Suite 690 Sara C. Colón Manhattan Beach, CA 90266 sara@bnslawgroup.com Rowennakete "Kete" Barnes 18 (310) 307-4556 (310) 307-4570 fax kete@bnsklaw.com 19 dkesselman@kbslaw.com BROWN NERI & SMITH LLP 11766 Wilshire Boulevard, Suite 1670 20 Los Angeles, California 90025 Telephone: (310) 593-9890 21 I declare that I am employed in the office of a member of the bar of this court at whose 22 direction the service was made. 23 Executed on February 1, 2017, at Los Angeles, California. 24 Diane Sanchez 25 26 NAI-1501037652v2 27 28

Proof of Service