

1 Ethan J. Brown (SBN 218814)
ethan@bnsllawgroup.com
2 Sara C. Colón (SBN 281514)
sara@bnsllawgroup.com
3 **BROWN NERI & SMITH LLP**
11766 Wilshire Boulevard, Suite 1670
4 Los Angeles, California 90025
Telephone: (310) 593-9890
5 Facsimile: (310) 593-9980

6 *Attorneys for Plaintiff*
7 DOT CONNECT AFRICA TRUST

8
9 **UNITED STATES DISTRICT COURT**

10
11 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

12 DOTCONNECT AFRICA TRUST

13 Plaintiff,

14 v.

15
16 INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,
17 a California corporation; ZA Central
Registry, a South African non-profit
18 company; and DOES 1 through 50,
19 inclusive,

20 Defendants.
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Case No. 2:16-cv-00862-RGK (JCx)

**SUPPLEMENTAL
DECLARATION OF SOPHIA
BEKELE ESHETE**

Date: April 4, 2016
Hearing: 9:00 a.m.
Courtroom: 850

[Filed concurrently: Reply in Support
of Motion for Preliminary Injunction;
Declaration of Sara C. Colón;
Evidentiary Objections to the
Declarations of Christine Willet,
Moctar Yedaly, Jeffrey LeVee, Kevin
Espinola, & Akram Atallah]

DECLARATION OF SOPHIA BEKELE ESHETE

I, Sophia Bekele Eshete, hereby declare as follows:

1. I am the founder and executive director of DotConnectAfrica Trust (“DCA”) and I coordinated DCA’s application for the .Africa generic Top-level Domain (“gTLD”). I submit this declaration in support of DCA’s Reply in support of its Motion for Preliminary Injunction. The matters referred to in this declaration are based upon my personal knowledge, and if called as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of an excerpt of DCA’s .Africa gTLD application.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the June 25, 2013 email and attachment from Trang Nguyen, the director of gTLD Operations at the Internet Corporation for Assigned Names and Numbers (“ICANN”) to Mark McFadden at the International Chamber of Commerce (“ICC”), as I received it from ICANN in discovery during the internal review process (“IRP”).

4. Attached hereto as **Exhibit 3** is a true and correct copy of the September 22, 2015 letter I received from The United Nations Economic Commission for Africa.

5. Neither ICANN, nor any of its agents, ever drafted an endorsement letter for DCA.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 21, 2016 at Walnut Creek, California.



Sophia Bekele Eshete

CERTIFICATE OF SERVICE

I, Ethan J. Brown, hereby declare under penalty of perjury as follows:

I am a partner at the law firm of Brown, Neri & Smith LLP, with offices at 11766 Wilshire Blvd., Los Angeles, California 90025. On March 21, 2016, I caused the foregoing **SUPPLEMENTAL DECLARATION OF SOPHIA BEKELE ESHETE** to be electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on March 21, 2016

/s/ Ethan J. Brown

EXHIBIT 1

NOTE ON ENDORSEMENT

What follows is the answer to Question No. 21 (“Is the application for a geographic name? If geographic, documents of support required)

Yes, the application is for DotAfrica, a geographic TLD.

The applied-for DotAfrica gTLD string is not for a country our territory. However, the guidebook expressly stipulates that the geographical regions are defined by UNESCO, and Africa is clearly stated as one of the UNESCO regions (see <http://www.unesco.org/new/en/unesco/worldwide/>); that is, a name listed as a UNESCO region or appearing on the “Composition of macro geographic(continental) or regions, geographic subregions, and selected economic and other groupings” list, and as such is a geographic name that requires government support. On the basis of this, we understand that DotAfrica is a geographic TLD and is not a Community-based TLD.

In recognition of the centrality of this requirement, we had undertaken early efforts to obtain an unequivocal endorsement for our DotAfrica proposal from the relevant United Nations body for Africa which is the **regional economic grouping**, namely the United Nations Economic Commission for Africa (UNECA). (Please see attached document signed by the Executive-Secretary of UNECA and United-Nations Under-Secretary-General, H.E. Abdoulie Janneh)

DCA had worked closely with UNECA leaders and presented the DotAfrica initiative for their endorsement and support.

The UNECA is a public diplomatic authority that was founded in 1958 and preceded the establishment of the Organization of African Unity (OAU) that was formed in 1963; and is similar to other UN regional economic groupings covering different regions of the globe such as the UN Economic Commission for Europe (ECE), the UN Economic Commission for Asia (UN-ASIA), and the UN Economic Commission for Latin America (UNECLA).

The List of countries under Africa as defined by UNESCO (located at <http://www.unesco.org/new/en/unesco/worldwide/africa/>) is as follows:

Africa

The Africa region presented here follows the specific UNESCO definition, as required by the ICANN new gTLD Guidebook, and the countries within this region of UNESCO activities comprising the Africa region are:

1.	Algeria
2.	Angola
3.	Benin
4.	Botswana
5.	Burkina Faso
6.	Burundi

7.	Cameroon
8.	Cape Verde
9.	Central African Republic
10.	Chad
11.	Comoros
12.	Congo
13.	Côte d'Ivoire
14.	Democratic Republic of the Congo
15.	Djibouti
16.	Egypt
17.	Equatorial Guinea
18.	Eritrea
19.	Ethiopia
20.	Gabon
21.	Gambia
22.	Ghana
23.	Guinea
24.	Guinea-Bissau
25.	Kenya
26.	Lesotho
27.	Liberia
28.	Libya
29.	Madagascar
30.	Malawi
31.	Mali
32.	Mauritania
33.	Mauritius
34.	Morocco
35.	Mozambique

36.	Namibia
37.	Niger
38.	Nigeria
39.	Rwanda
40.	Sao Tome and Principe
41.	Senegal
42.	Seychelles
43.	Sierra Leone
44.	Somalia
45.	South Africa
46.	South Sudan
47.	Sudan
48.	Swaziland
49.	Togo
50.	Tunisia
51.	Uganda
52.	United Republic of Tanzania
53.	Zambia
54.	Zimbabwe

ECA Member States

Similarly, the List of Members of the UNECA (located at <http://www.uneca.org/>) organized into English-speaking and French-speaking countries are:

English-Speaking

1. Botswana
2. Cameroon (also French)
3. Egypt (also French and Arabic)
4. Eritrea
5. Ethiopia
6. Gambia
7. Ghana
8. Kenya
9. Lesotho
10. Liberia
11. Libyan Arab Jamahiriya (also Arabic)
12. Malawi
13. Mauritius
14. Mozambique
15. Namibia
16. Nigeria
17. Seychelles
18. Sierra Leone
19. Somalia
20. South Africa
21. Sudan (also Arabic)
22. South Sudan
23. Swaziland
24. Uganda
25. Tanzania
26. Zambia
27. Zimbabwe

French-Speaking

28. Algérie (also Arabic)
29. Angola (Portugese)
30. Bénin
31. Burkina Faso
32. Burundi
33. Cap-Vert
34. Comores
35. Rep. du Congo
36. Dem. Rep. du Congo
37. Niger
38. Côte d'Ivoire
39. Djibouti
40. Gabon
41. Guinée
42. Guinée-Bissau
43. Guinée équatoriale
44. Madagascar
45. Mali
46. Maroc (also Arabic)
47. Mauritanie
48. Rép. Centrafricaine
49. Rwanda
50. Sao Tomé-et-Principe
51. Sénégal
52. Tchad
53. Togo
54. Tunisie (also Arabic)

By these two separate List of countries presented above, we believe that the UNECA endorsement of DCA's DotAfrica proposal covers about 100 per cent of the countries of Africa as defined by UNESCO, and is representative of the regional economic group - UNECA- that is responsible for the development of Africa to the global United Nations (UN) body. Also, kindly note that Morroco is a country on the UNESCO and UNECA Lists and geographically located within the African Continent,

but is presently not a member of the African Union (AU) at this time. Therefore, the UNECA presently covers more countries in Africa than the AU, and also continues to support the programmes of the AU in terms of capacity building and knowledge sharing and management.

In addition to the UNECA endorsement, we have also obtained an early endorsement from the African Union Commission in 2009. **(See copy of letter signed by H.E. Mr. Erastus D. Mwencha, Deputy-Chairperson of the African Union Commission on behalf of Monsieur Jean Ping, Chairperson of the African Union Commission).**

DCA had worked closely with the AU officials and introduced the initiative and made many technical and operational clarifications regarding the project with a view to aiding the understanding of officials, and explaining the overall desirability and imperatives of DotAfrica as an Internet gTLD initiative that is good for the African continent and its people. **To the best of our knowledge, the endorsement that DCA received from AU was valid at the time it was issued to us, and we believe that it is still valid, since the attempt to invalidate it was based on a forged, unstamped letter;** what we believe is a work of sabotage coupled with other unethical practices to prevent DCA from submitting an application to ICANN for the DotAfrica gTLD. If the issue is contentious, it could be resolved at the Dispute Resolution Service Provider; however, we believe that the UNECA endorsement is sufficient for the purpose of the Geographic Names Evaluation Panel and satisfies this particular application requirement.

Also, note that DCA Trust had started approaching individual African governments to provide it with their respective endorsements to demonstrate support on a country-by-country case. On the basis of this initial effort, DCA Trust obtained important endorsements from some countries such as Ethiopia, South Africa, and the Kingdom of Lesotho. **Even though we had achieved some initial successes in this regard (as attested to by the attached letters), our efforts were thwarted by our detractors in the AU DotAfrica Task Force who tried to discourage African countries and the sub-regional economic blocs and other organizations, not to provide any more endorsements to DCA.** Even an organization such as the Corporate Council on Africa which had originally provided DCA an endorsement was prevailed upon to withdraw its endorsement. In a nutshell, our efforts of getting the letters from different African countries were also sabotaged.

EXHIBIT 2

From: Trang Nguyen
Sent: Tuesday, June 25, 2013 11:37 AM
To: Mark McFadden
Cc: Cheri Bolen
Subject: AU template letter for Uniforum
Attachments: AU template letter.docx
Signed By: Contact Information Redacted

Hi Mark,

Per our conversation this morning, attached is the letter that I drafted based on the template in the AGB. We will forward the official letter from the AUC as soon as we receive it. The goal is to have results for this application published on 12 July 2013.

Warm regards,

Trang

[This letter should be provided on official letterhead]

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA USA
90094-2536

Attention: New gTLD Evaluation Process

Subject: Letter for support for .Africa

This letter is to confirm that the African Union Commission fully supports the application for .Africa submitted to ICANN by UniForum SA (NPC) trading as Registry.Africa in the New gTLD Program. As the Commissioner I confirm that I have the authority of the African Union Commission to be writing to you on this matter. The African Union Commission is the Secretariat of the Union entrusted with executive functions. The structure represents the Union and protects its interest under the auspices of the Assembly of Heads of State and Government as well as the Executive Committee. The African Union Commission is made up of Portfolios. They are: Peace and Security; Political Affairs; Trade and Industry; Infrastructure and Energy; Social Affairs; Rural Economy and Agriculture; Human Resource, Science and Technology; and Economic Affairs.

The primary objective of the gTLD is summarised as follows: “To establish a world class domain name registry operation for the .Africa Top Level Domain (TLD) by engaging and utilising African technology, know-how and funding; for the benefit and pride of Africans; in partnership with African governments and other ICT stakeholder groups”.

Our mission is to establish the .Africa TLD as a proud identifier of Africa’s online identity, fairly reflecting the continent’s rich cultural, social and economic diversity and potential. In essence we will strive to develop and position the .Africa TLD as the preferred option for individuals and businesses either based in Africa or with strong associations with the continent and its people.

The .Africa TLD represents a unique opportunity for Africa to develop and enhance its domain name and Internet eco-systems and communities by collaborating with each other to:

- identify, engage and develop African-based specialist skills and resources;
- share knowledge and develop DNS thought-leadership; and
- implement world class registry standards and contribute towards their continued development.

The African Union Commission has worked closely with the applicant in the development of this proposal.

The African Union Commission supports this application, and in doing so, understands that in the event that the application is successful, UniForum SA (NPC) trading as Registry.Africa will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

The African Union Commission further understands that, in the event of a dispute between the African Union Commission and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of the African Union Commission.

The African Union Commission understands that the Geographic Names Panel engaged by ICANN, will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, to contact my office in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely,

[signature/seal from the African Union Commission signatory]

EXHIBIT 3



United Nations
Economic Commission for Africa

CARLOS LOPES
Executive Secretary

Date: 22 September 2015
Ref: OES/15/09/0157

Dear Dr. Ibrahim, *Elham*

Request for Support to (dotAfrica) Project

I am writing to acknowledge receipt of your letter dated 4 August 2015, Ref. No. CIE/L/20/292.15, regarding the issue of dotAfrica.

After internal review of the issue, which is of a legal nature, I have requested the Secretary of the Commission, Ms. Sandra Baffoe-Bonnie to write to you and provide you with the Economic Commission for Africa's position.

The Secretary of the Commission can be contacted for any clarification of this matter at Contact Information Redacted

A handwritten signature in black ink, appearing to read 'Elham M.A. Ibrahim'.

Dr. Elham M.A. Ibrahim
Commissioner
Infrastructure and Energy
Africa Union
Addis Ababa,
Ethiopia



United Nations
Economic Commission for Africa

Date: 21 September 2015
Ref: OES/15/09/0157

Dear Dr. Ibrahim

Re: Request for Support to Dot Africa Project

I am writing in connection with the request made to the Executive Secretary, Dr. Lopes for his support to the African Union's (AU) efforts in getting the regional identifier top level domain "dotAfrica" delegated to ZA Central Registry ("ZACR"), the entity we understand is authorized by the AU to apply for and administer the DotAfrica top level domain.

I understand from your letter that, in addition to ZACR, another competing entity, DotConnectAfrica ("DCA") has submitted an application to obtain the same delegation as ZACR, and that DCA is purporting to use a letter of support obtained from ECA in 2008 as an endorsement from ECA for its application.

We also note that in September 2011, ECA wrote to you in response to a letter you sent regarding the setting up of the structure and modalities for the implementation of the DotAfrica project and in that letter, ECA reaffirmed its continued commitment and support to the AU in the management of Internet-based resources in Africa.

As you are aware, one of ICANN's requirement for the application for delegation for geographic Top Level Domain ("gTLD") as detailed in ICANN's 2012 Applicant Guidebook, is a minimum of 60% support from *relevant governments or public authorities*, with no more than one government objection from any country from the region.

ECA as a United Nations entity is neither a government nor a public authority and therefore is not qualified to issue a letter of support for a prospective applicant in support of their application. In addition, ECA does not have a mandate to represent the views or convey the support or otherwise of African governments in matters relating to application for delegation of the gTLD.

Dr. Elham M.A. Ibrahim
Commissioner
Infrastructure and Energy
African Union
Addis Ababa

P.O. Box 3001, Addis Ababa, Ethiopia Tel: (251-11) 551 72 00 Fax: (251-11) 551 4416



United Nations
Economic Commission for Africa

In this regard, the August 2008 letter referenced above is merely an expression of a view in relation to the entity's initiatives and efforts regarding internet governance, including efforts to obtain gTLD for Africa. It is ECA's position that the August 2008 letter to Ms Bekele cannot be properly considered as a "letter of support or endorsement" within the context of ICANN's requirements and cannot be used as such.

I hope this clarifies ECA's position on the matter. Please feel free to contact me if you need any further clarification on tel: Contact Information Redacted

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Baffoe-Bonnie'.

Sandra Baffoe-Bonnie
Secretary of the Commission and Legal Advisor

Cc: Ms Sophia Bekele, DotConnectAfrica