

1 David W. Kesselman (SBN 203838)
2 *dkesselman@kbslaw.com*
3 Amy T. Brantly (SBN 210893)
4 *abrantly@kbslaw.com*
5 Kara D. McDonald (SBN 225540)
6 *kmcdonald@kbslaw.com*
7 KESSELMAN BRANTLY STOCKINGER LLP
8 1230 Rosecrans Ave., Suite 690
9 Manhattan Beach, CA 90266
10 Telephone: (310) 307-4555
11 Facsimile: (310) 307-4570
12 *Attorneys for Intervenor*
13 **ZA Central Registry, NPC**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES – CENTRAL**

12 DOTCONNECTAFRICA TRUST, a
13 Mauritius Charitable Trust,

14 Plaintiff,

15 v.

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

CASE NO. BC607494

*Assigned for all purposes to the Honorable
Howard Halm*

**DECLARATION II OF MOKGABUDI
LUCKY MASILELA IN SUPPORT OF
OPPOSITION TO PLAINTIFF’S MOTION
FOR PRELIMINARY INJUNCTION**

[Filed concurrently: Opposition to Plaintiff’s
Motion for Preliminary Injunction; Declarations
of Amy T. Brantly; Moctar Yedaly; and
Mokgabudi Lucky Masilela in Support of
Opposition to Plaintiff’s Motion for Preliminary
Injunction]

Date: February 2, 2017

Time: 8:29 a.m.

Dept.: 53

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF MOKGABUDI LUCKY MASILELA

I, Mokgabudi Lucky Masilela, hereby declare as follows:

1. I am the Chief Executive Officer of Intervenor ZA Central Registry, NPC (“ZACR”). I have personal knowledge of the matters contained herein, except as to those matters asserted on information and belief, and as to those, I believe them to be true. If called upon as a witness, I could and would testify competently thereto.

2. ZACR is a South African non-profit company with its principal place of business in Midrand, South Africa.

3. ZACR was originally formed in 1988 under the name UniForum S.A. The purpose of the company was to promote open standards and systems in computer hardware and software. In 1995, the company was assigned the administration rights for the South African domain name, “co.za.” Today ZACR has registered over 1 million co.za domain name registrations – or about 95% of the total registrations for “.za.” Due to its well-known reputation for independence and neutrality, as well as technical competence and operational excellence, ZACR is the single largest domain name registry on the African continent. ZACR has significant experience working with Internet Corporation For Assigned Names and Numbers (“ICANN”) as a registry operator and is familiar with ICANN protocols.

4. As a registry operator, ZACR works directly with registrars and is familiar with ICANN’s Registry and Registrar accreditations. ICANN expressly permits the functions of the registry operator and the registrar to be handled by a single body (“cross ownership” or “vertical integration”). ICANN approved vertical integration in 2010, even before the new gTLD process began. Vertical Integration is a practical way for registry operators to distribute or provide domain names to underserved markets or communities. In practice, this means that the registry operator can utilize its own vertical registrar channel to reach end user markets not adequately serviced by the traditional registrar channel. In the case of .Africa, ZACR plans to implement a proxy service which will allow it to establish a more competitive, and widely distributed, reseller channel for .Africa. This is in line with ZACR’s enterprise developmental

1 obligations. This has become a common practice amongst the leading registry providers
2 worldwide.

3 5. A Registry Operator is contractually compelled by the ICANN Registry
4 Agreement to deal with all Registrars in a fair and equitable manner. ZACR, therefore, cannot
5 provide preferential treatment or access to its own vertical registrar. ICANN has compliance
6 mechanisms in place to monitor vertical integration. Pricing and treatment of registrars is also
7 regulated by clauses 2.9 and 2.10 of the ICANN Registry Agreement.

8 6. Through my experience as CEO of a registry operator, I know that the “sunrise”
9 process is not intended to auction “premium” names to the highest bidder, but is rather a
10 compulsory rights protection mechanism prescribed by ICANN to assist trademark owners in
11 obtaining their corresponding domain names. It involves a third party (the Trademark
12 Clearinghouse) who pre-validates trademark rights so these applicants can be given preference
13 during the initial stages of the domain name launch.

14 7. Contrary to DCA’s baseless insinuation, no ZACR employee or officer was
15 involved with the AUC committee that selected ZACR as the successful applicant in the AUC’s
16 Request for Proposal (“RFP”).

17 8. As part of the AUC’s open RFP process, the AUC required all applicants for
18 AUC endorsement of .Africa to agree that the AUC would be a partner in the .Africa process.
19 A true and correct copy of the Request for Proposals by the African Union Commission for the
20 Operation of Dot Africa, dated November 2011, is attached hereto as **Exhibit A**.

21
22 I declare under penalty of perjury under the laws of the United States of America and the
23 State of California that the foregoing is true and correct.

24 Executed this 20 day of January 2017 at Midrand South Africa.

25
26 
27 _____
28 MOKGABUDI LUCKY MASILELA