

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION (ICDR)
A Division of the American Arbitration Association (AAA)
CASE # 50 117 T 1083 13

In the matter of an Independent Review Process pursuant to the Internet Corporation for Assigned Names and Number's (ICANN's) Bylaws, the *International Dispute Resolution Procedures of the ICDR, and the Supplementary Procedures for ICANN Independent Review Process*

Between: **DotConnectAfrica Trust**, a non-profit organization established under the laws of the Republic of Mauritius with its registry operation – DCA Registry Services (Kenya) Limited – as its principal place of business in Nairobi, Kenya;
(Claimant)

Represented by Mr. Arif H. Ali, Ms. Marguerite Walter and Ms. Erica Franzetti of Weil, Gotshal, Manges, LLP located at 1300 Eye Street, NW, Suite 900, Washington, DC 2005, U.S.A.

And

Internet Corporation for Assigned Names and Numbers, a non-profit corporation established under the laws of the State of California and headquartered in Marina de Rey, California, U.S.A.;;
(Respondent)

Represented by Mr. Jeffrey A. LeVee of Jones Day, LLP located at 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, U.S.A.

The Claimant and the Respondent are hereafter jointly referred to as the **(Parties)**.

PROCEDURAL ORDER No. 1

1. Further to the telephone conference call of 22 April 2013 at 6 p.m. Montreal and Washington, DC time, 3 p.m. Los Angeles time and 12 a.m. Paris time with counsel for the Claimant, Mr. Arif H. Ali, Ms. Marguerite Walter and Ms. Meredith Craven of Weil, Gotshal, Manges, LLP and counsel for the Respondent, Mr. Jeffrey A. LeVee and Ms. Rachel Zernik of Jones Day LLP, the Arbitral Tribunal, having read the various letters and written submissions of the Parties filed to date and having heard oral presentations from their respective counsel by telephone, issues the following directions concerning the specific items set out in the Agenda (dated 21 April 2014 and circulated among the Parties on that same date)

for the Parties and their respective counsel to follow in this Independent Review Process (**IRP**).

2. For ease of reference and consistency, the list and title of the items described in the 21 April 2014 Agenda have been kept the same.

A. Claimant's Request for Interim Measures of Protection initially dated 28 March 2014 and filed before the Arbitral Tribunal on 13 April 2014.

Issue:

- a) Stay of any further processing of any application for .AFRICA until after the Telephone Hearing of Claimant's Request for Interim Measures of Protection.

Ruling:

Based on the telephone agreement between the Parties, counsel for the Respondent has circulated an email dated 23 April 2014 at 5:43:12 p.m. (attached to this Procedural Order No. 1 as an exhibit) confirming that ICANN will not be taking any further steps between April 23 and May 5 that will in any way prevent the Arbitral Tribunal from granting the full relief requested in the Claimant's Request for Interim Measures of Protection, should the Arbitral Tribunal decide to do so after it has heard oral presentations from the Parties' counsel on 5 May 2014.

Issue:

- b) Proposed date for the Telephone Hearing of Claimant's Request for Interim Measures of Protection – 5 May 2014 at 12 p.m. Montreal and Washington, DC time, 9 a.m. Los Angeles time and 6 p.m. Paris time.

Ruling:

The Telephone Hearing of Claimant's Request for Interim Measures of Protection is confirmed for **5 May 2014 at 12 p.m. Montreal and Washington, DC time, 9 a.m. Los Angeles time and 6 p.m. Paris time.** The ICDR in New York will be circulating in advance of that hearing the appropriate call-in numbers.

Issue:

- c) Duration and allocation of time for oral representations to be made by the Parties' representatives during the Telephone Hearing of Claimant's Request for Interim Measures of Protection.

Ruling:

Following oral representations from the Parties' respective counsel in this regard, the Arbitral Tribunal has decided to reserve 2.5 hours for the Telephone Hearing of Claimant's Request for Interim Measures of Protection to be used in the following manner. Prior to the Telephone Hearing, on **2 May 2014 by 12 p.m. Montreal and Washington, DC time, 9 a.m. Los Angeles time and 6 p.m. Paris time**, the Arbitral Tribunal will send the Parties a non-exhaustive list of written questions that it wishes their counsel to focus on during the hearing.

During the 22 April 2014 telephone conference call, the Parties' representatives explicitly confirmed that there is no need for any further written memorials concerning the issues raised by the Claimant in its Request for Interim Measures of Protection, the Parties having already filed all of the written materials that they deem necessary in this respect.

Agenda for the Telephone Hearing of Claimant's Request for Interim Measures of Protection (120 minutes or 2 hours):

5 minutes – Opening of the Telephone Hearing by the Chair of the Arbitral Tribunal and necessary introductions by the co-arbitrators and counsel.

5 minutes – Brief introductory remarks from Counsel for the Claimant.

5 minutes – Brief introductory remarks from Counsel for the Respondent.

30 minutes – Claimant's submissions directed at answering the questions asked by the Arbitral Tribunal.

30 minutes – Respondent's submissions directed at answering the questions asked by the Arbitral Tribunal.

15 minutes – Additional or follow-up questions by the Arbitral Tribunal, if any.

15 minutes – Claimant's reply submissions.

15 minutes – Respondent's reply submissions.

In addition to the two (2) hours reserved, the Arbitral Tribunal will reserve an additional 30 minutes for the Telephone Hearing in the exceptional event that that time is needed.

Issue:

d) Proposed date for the delivery of the Arbitral Tribunal's decision on Claimant's Request for Interim Measures of Protection – on or about 12 May 2014.

Ruling:

The Arbitral Tribunal will endeavor to deliver its decision on Claimant's Request for Interim Measures of Protection to the Parties **on or about 12 May 2014**.

Issue:

e) Other related issues, if any.

N/A

B. Future conduct of the IRP proceedings, including the hearing of the merits of Claimant's Amended Notice of Independent Review Process, if required.

Issues:

- a) Interpretation of the provisions of ICANN's Bylaws, the *International Dispute Resolution Procedures* of the ICDR, and the *Supplementary Procedures for ICANN Independent Review Process*, including whether or not there should be *viva voce* testimony permitted.
- b) Document request and exchange.
- c) Additional filings, including any memoranda and hearing exhibits (if needed and appropriate).
- d) Consideration of method of hearing of the Parties, i.e., telephone, video or in-person and determination of a location for such a hearing, if necessary or appropriate, and consideration of any administrative issues relating to the hearing.
- e) Date for the hearing of the merits.
- f) Date for the delivery of the Declaration requested from the Arbitral Tribunal.

Ruling:

Following extensive oral representations by telephone from the Parties' respective counsel with respect to paragraphs a), b), c) and d) above, in light of the fact that some of the questions raised by the Parties in this proceeding implicate important fairness, due process and equal treatment of the parties related issues and indeed some of those issues are *primaie impressionis* or first impression as they particularly relate to, *inter alia*, the IRP proceedings and the *Supplementary Procedures for ICANN IRP*, after careful deliberation by the members of the Arbitral Tribunal, the Parties are hereby directed to file complete written memorials (not to exceed 25 to 30 pages – in light of the exceptional circumstances of this case) excluding exhibits, together with all supporting materials, including national and international case law and authorities on the above listed issues in accordance with the following schedule:

- Simultaneous exchange of round one memorials between the Parties – **5 May 2014 by 12 p.m. Montreal and Washington, DC time, 9 a.m. Los Angeles time and 6 p.m. Paris time;**
- Follow-up written questions, if any, from the Arbitral Tribunal – **12 May 2014 by 12 p.m. Montreal and Washington, DC time, 9 a.m. Los Angeles time and 6 p.m. Paris time;**
- Simultaneous exchange of rebuttal memorials (not to exceed 10 pages, and excluding exhibits) between the Parties – **20 May 2014 by 12 p.m. Montreal and Washington, DC time, 9 a.m. Los Angeles time and 6 p.m. Paris time;**

For ease of reference, the Parties are directed to use the following reference notations in the filing of any exhibits to their memorials: For Claimant, C-M (1) and following and for the Respondent, C-R (1) and following. In this way, if necessary, the Parties may continue to use subsequent sequential numbers for any future memorial exhibits filed.

The Arbitral Tribunal will endeavor to deliver its decision on the above issues **on or about 30 May 2014 by 12 p.m. Montreal and Washington, DC time, 9 a.m. Los Angeles time and 6 p.m. Paris time**, following which the Arbitral Tribunal will be in contact with the Parties' counsel to consider the future conduct of these proceedings.

C. Other miscellaneous issues, if any.

N/A

This Procedural Order No. 1 has eight (8) pages (including the exhibit). The members of the Arbitral Tribunal have all reviewed this Procedural Order No. 1 and agreed that the Chair may sign it alone on their behalf.

Signed in Montreal, Quebec for delivery to the Parties in Los Angeles, California.

Dated 24 April 2013.



Babak Barin, Chair of the Arbitral Tribunal and
on behalf of himself, Prof. Catherine Kessedjian
and the Hon. Richard C. Neal (Ret.)

Subject: Re: ICDR Case 502013001083 - DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)
Date: Wednesday, 23 April, 2014 5:43:12 PM Eastern Daylight Time
From: Jeffrey LeVee
To: Babak Barin
CC: Ali, Arif, Carolina Cardenas-Soto, LL.M. (Cardenasc@adr.org), ckarbitre@outlook.fr, Cindy Reichline (creichline@JonesDay.com), Eric P. Enson (epenson@JonesDay.com), Franzetti, Erica, Walter, Marguerite, Craven, Meredith, Justice Richard C. Neal (Ret.) (rreal47@gmail.com)

Members of the Panel and Counsel:

I am writing to follow up on yesterday's administrative conference call conducted with respect to the timing of the ultimate delegation by ICANN to ZA Central Registry of .AFRICA into the root zone. As I have previously written and now reconfirm, ICANN will not, as a practical matter, be able to conclude the delegation process prior to 15 May 2014. As a result, the schedule adopted by the Panel yesterday evening would give ICANN the opportunity to consider the Panel's recommendation in the event the Panel recommends a stay.

Jeff LeVee

[JONES DAY® - One Firm Worldwide](#)

Telephone: 213-243-2572

From: Babak Barin <bbarin@barinavocat.ca>
To: "Ali, Arif" <Arif.Ali@weil.com>, "Walter, Marguerite" <Marguerite.Walter@weil.com>, "Franzetti, Erica" <Erica.Franzetti@weil.com>, "Craven, Meredith" <Meredith.Craven@weil.com>, Jeffrey LeVee <jlevee@JonesDay.com>, "Cindy Reichline (creichline@JonesDay.com)" <creichline@JonesDay.com>, "Eric P. Enson (epenson@JonesDay.com)" <epenson@JonesDay.com>,
Cc: "ckarbitre@outlook.fr" <ckarbitre@outlook.fr>, "Justice Richard C. Neal (Ret.)" <rreal47@gmail.com> (rreal47@gmail.com)" <rreal47@gmail.com>, "Carolina Cardenas-Soto, LL.M. (Cardenasc@adr.org)" <Cardenasc@adr.org>
Date: 04/21/2014 03:24 PM
Subject: ICDR Case 502013001083 - DotConnectAfrica Trust (DCA Trust) vs. Internet Corporation for Assigned Names and Numbers (ICANN)

Dear Counsel,

Attached please find an Agenda for use during tomorrow's telephone conference call with the members of the Arbitral Tribunal. The call, as previously confirmed by the ICDR, is scheduled to take place at 6 p.m. Montreal and Washington, DC time, 3 p.m. California time and 12 a.m. Paris time.

Best regards.

Sent on behalf of the Chair of the Arbitral Tribunal:

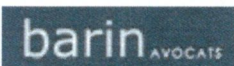
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