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Our Reference:	PM Carter / 6133626	Your Reference:	Case No 50 2013 001083
Direct Line:	Contact Information Redacted	Date:	11 May 2015
E-mail Address:	Contact Information Redacted		

BY E-MAIL

Independent Review Panel for Case No 50 2013 001083
International Centre for Dispute Resolution

Attention: The President of the IRP, Babak Barin
Professor Catherine Kessedjian
Judge William J Cahill

E-mail address: Contact Information Redacted

Dear Sirs,

Request for representatives to be permitted to attend the Independent Review Process (IRP) Panel hearing in relation to the dispute between DotConnectAfrica Trust (DCA) and Internet Corporation for Assigned Names and Numbers (ICANN) Case No 50 2013 001083

1. Introduction

1.1 We act for the ZA Central Registry (ZACR), a South African Registry Operator and contracted party for the .AFRICA (dotAfrica) gTLD under ICANN application number 1-1243-89583. We note from the Third Declaration on the IRP Procedure issued by the IRP on 20 April 2015 that the hearing in relation to the dispute between DCA and ICANN will take place in-person in Washington D.C. on 22 and 23 May 2015.

1.2 ZACR has the support of the African Union Commission (AUC) in regard to its application for the dotAfrica gTLD, and the award of that gTLD to it, and this letter is addressed to you with the knowledge and approval of the AUC.

2. Request for representatives to attend IRP Panel Hearing

2.1 We are instructed to request that the IRP permit two representatives of ZACR to attend the IRP hearing on 22 and 23 May 2015 on the basis that ZACR has a direct and substantial interest in the conduct and outcome of the hearing.

2.2 In addition, we are instructed to request that one AUC representative also be permitted to attend the hearing on the basis of its direct and substantial interest in the outcome of the hearing and the public interest aspect of the matter.

3. **ZACR's interest in the matter**

3.1 ZACR submitted its application, which is and was supported by the AUC, for delegation of the new dotAfrica gTLD to ICANN in June 2012. ZACR was subsequently informed by ICANN that it had passed the Initial Evaluation and, in March 2014, ZACR concluded a Registry Agreement with ICANN for the delegation of the dotAfrica gTLD to ZACR.

3.2 The delegation of the dotAfrica gTLD to ZACR was suspended following the IRP's Decision on Interim Measures of Protection in May 2014 in relation to DCA's dispute with ICANN regarding its own application for the dotAfrica gTLD.

3.3 ZACR has been severely prejudiced by the delay occasioned by this suspension, being the successful applicant and having incurred substantial costs in preparing to operate the dotAfrica gTLD. In spite of this, neither ZACR nor the AUC has once been consulted in relation to the present proceedings or their impact on the delegation of the dotAfrica gTLD to ZACR.

3.4 We therefore request that the ZACR, as an affected party, be permitted to send representatives to observe the IRP Panel hearings.

3.5 ZACR does not seek any right to make submissions at the hearing.

4. **The AUC's interest and the public interest aspect of the delegation of the dotAfrica gTLD**

4.1 It is clear that the delegation of geographic domain names has an important public interest aspect. The efficient administration of the dotAfrica gTLD would be of great benefit to both the African and global internet communities. Specifically, the African internet community stands to benefit via reinvestment through development of African ccTLDs, the African registrar market and African online content. The dotAfrica gTLD could also provide a platform from which to support socio-economic projects and initiatives in Africa. There are therefore multiple African stakeholders with an interest in the eventual delegation of the dotAfrica gTLD, and therefore in the decision of the IRP. These are the interests that would be represented by the AUC observer, should the IRP grant this request.

4.2 The need for the various stakeholder interests to have observers present is intensified by the recent procedural changes to the manner in which the IRP hearing will proceed, as set out in The Third Declaration on the IRP Procedure. The fact that witnesses from both ICANN and DCA will be called upon to answer *viva voce* questions directed to them by

the Panel, as well as follow up questions put to them by counsel for the parties, rather than addressing written testimony and responses to questions in writing, necessitates the need for representatives of affected and interested parties to be present to observe the proceedings.

5. **Submission**

5.1 We submit that it would be mutually beneficial for the IRP to permit representatives from both ZACR and the AUC to attend the IRP in-person hearings on 22 and 23 May 2015, and indeed any further hearings that may follow if the matter is not resolved on these dates.

5.2 In terms of Article 4 of the Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (the Supplementary Procedures) it is only in an "extraordinary event" that the IRP will consider an in-person hearing necessary, and this emphasises the unusual circumstances faced by the parties to the dispute and those having an interest, such as ZACR and the AUC. As proceedings such as these are normally concluded following an exchange of documents and argument, interested parties are able to follow the proceedings without being present. However, in the present circumstances this is not possible.

5.3 Allowing for the interests of a materially affected party such as ZACR, the successful applicant for the dotAfrica gTLD, as well as broader public interests, to be present enhances the legitimacy of the proceedings and therefore the accountability and transparency of ICANN and its dispute resolution procedures. Attendance by interested parties (even if only as observers) in the decision-making process promotes an increased likelihood that the interested parties will understand and support the decision and, indeed, the ultimate choice in relation to the delegation of the dotAfrica gTLD.

6. As we can only find an e-mail address for the President of the IRP, we ask that he forward this request to the other members of the Panel and that you let us have your response as soon as possible in view of the dates of the hearing.

Yours faithfully

Bowman Gilfillan Inc
per: PM Carter

c.c. **ICANN**
c/o Jones Day (Att Mr J LeVee - Contact Information Redacted)

c.c. **DCA**
c/o Weil, Gotshal, Manges (Att Mr A Ali – Contact Information Redacted