

1 December 2015

Dr. Steven Crocker  
Chair, Board of Directors  
Internet Corporation for Assigned Names and Numbers (ICANN)

Ref: Reply to ICANN Board regarding the DCA vs ICANN IRP proceedings  
outcome

Dear Mr. Crocker,

Thank you for your letter dated 28<sup>th</sup> September 2015 regarding the DotConnectAfrica Trust (DCA) vs ICANN Independent Review Process (IRP) proceedings. On behalf of the GAC, I take the opportunity to respond to the four concerns you state as raised by the IRP Declaration, as headlined below.

**“The GAC did not act with transparency or in a manner to ensure fairness”**

The principles governing the application for geographic names are very well documented in the new gTLD Applicant Guidebook (AG). The formulation and adoption of the geographic name protection mechanisms contained in the AG was the result of an open and transparent multi-stakeholder engagement process, eventually adopted by ICANN. This set of rules is applicable to all new gTLD applications and affected parties. Accordingly, any applicant seeking to apply for a geographic name should have had the understanding of these protection mechanisms for geographic names and in particular the provisions requiring relevant governmental support or non-objection. These applicants must have been willing to accept the conditions under which the string would be made available as provided for in the AG.

Paragraph 2.2.1.4.2 of the AG prescribes that certain applied strings may qualify as “Geographic Names” and must therefore be accompanied by documentation of support or non-objection from the relevant governments or public authorities.

Africa is a clearly designated geographic region as defined in the UNESCO “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list. Module 2 Section 2.2.1.4.2. 5 of the AG notes that “An application for a string listed as a UNESCO region or appearing on the composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” will be considered to represent a geographic name and will therefore require: “documentation of support from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.”

There is a shared, GAC-wide understanding that the dot Africa applications represent a geographic name and are therefore subject to the terms and conditions established in the AG.

**“DCA was not given any notice or opportunity to make its position known or defend its own interest before the GAC reached consensus advice”**

Section 1.1.2.3 (Module 1 of the AG) states that “Governments may provide a notification using the application comment forum to communicate concerns relating to national laws.”

According to section 1.1.2.4 (Module 1 of the AG) “Concurrent with the 60--day comments period, the GAC may issue Early Warning notices concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments. While GAC Early Warning is a notice only it should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (subsection 1.1.2.7) or of a formal objection (subsection 1.1.2.6) at a later stage in the process.”

Whilst GAC Early Warnings can be issued for “any reason” according to the AG, the AUC and African governments provided DCA with a number of reasons when they lodged 16 Early Warning notices relating to the DCA application. DCA was given an opportunity to respond to the concerns raised by the Early Warning notices. DCA did not respond adequately to the

concerns raised.

Prior to the new gTLD application process, African governments mandated the African Union Commission (AUC), through the Abuja Declaration to “set up the structure and modalities for the implementation of the dot Africa Top Level Domain”. The AUC adopted an open and transparent process at the regional level through a Request for Proposals (RFP) and at the end of this process exclusively endorsed the application submitted by the ZA Central Registry (ZACR) for the dot Africa Top Level Domain (.AFRICA). DCA was fully aware of this process and its intended objective, yet DCA opted not to participate. DCA was also fully aware of the final outcomes of the AUC regional RFP process and the subsequent opposition to the DCA application by the AUC before the ICANN new gTLD application period opened. This shows that, even before the GAC processes for new gTLD became effective, DCA was fully aware of African governments’ opposition to the DCA application.

GAC consensus advice was thus the culmination of African government opposition to the DCA application and not the cause of that opposition.

### **“The GAC did not provide a rationale for consensus objection”**

The procedure for GAC Advice and objections on new gTLDs is described in Module 3 of the AG. To be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by close of the objection-filing period. If the Board receives GAC Advice on new gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. That GAC Advice had to be submitted before the end of the objection-filing period indicates that GAC Advice must be regarded as a form of objection process available to governments.

As stated above, Section 1.1.2.4 (Module 1 of the AG) provides for a 60-day comment period, for the GAC to issue Early Warning notices concerning any applications. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more

governments. The module notes that GAC Early Warning “should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs or have a formal objection at a later stage in the process”. This is indeed what transpired and it should therefore not have come as any surprise to any applicant.

As stated above, the DCA dot Africa application [application ID: 1-1165-42560] received 16 Early Warnings from African governments and from the AUC. DCA was given sufficient time to respond to the concerns raised by the GAC early warnings, which were made public. DCA has to date not responded adequately to smooth out the concerns raised by the issuers of the Early Warnings, which provide detailed rationale.

Following the submission of Public Comments, the issuance of Early Warnings and the delivery of consensus GAC Advice, African governments would reasonably have assumed that they had completed every reasonable step in terms of the AG for raising their concerns and provided rationale for their objections against the DCA application.

**“The GAC reached consensus advice without any discussions of the substance behind the reasons for each country’s objection.”**

The GAC has its own internal mechanisms for developing and providing consensus advice.

In the case of dot Africa, all GAC members were notified (via the GAC mailing list and teleconference to discuss the GAC Beijing agenda) prior to the Beijing meeting of intentions by individual GAC members to seek consensus GAC objection to a specific new gTLD string. There was a shared, GAC-wide understanding that the dot Africa applications represented a geographic name subject to the terms established in the Applicant Guidebook, which included a requirement for the documentation of support from the relevant government and government authorities.

The African Union Commission (AUC) and its member states provided GAC members attending the Beijing meeting an overview of the national and regional deliberations and processes, which resulted in the appointment and support of only one of the two applications that had been submitted to

ICANN. Subsequently the AUC and African member states sought GAC consensus to object to the application filed by DCA.

The GAC members in Beijing acknowledged and accepted the rationale provided by the African members and provided consensus advice contained in the Beijing communiqué.

In addition and as stated above, prior to the Beijing meeting, African governments and the AUC had submitted 16 detailed Early Warning notices that provided rationale and background information for further GAC deliberations during the April 2013 Beijing meeting. The Early Warnings were not only circulated to the entire GAC membership list, but also to DCA. DCA and other applicants who received Early Warnings were provided with an opportunity to address concerns raised.

Furthermore, the GAC had provided relevant rationale and advice in other forms even prior to the launch of the new gTLD round, including, the GAC principles on new gTLDs from March 2007, which notes that “ICANN should avoid assigning geographic or territory names unless in agreement with relevant authorities”, as well as the GAC new gTLD scorecard and GAC comments on Geographic names in 2009.

In response to a request to reserve the dot Africa TLD, contained in the Dakar communiqué, ICANN had assured African governments that there were adequate protections for geographic names, such as for .AFRICA, contained in the new gTLD AG. A key and pivotal component of these protection mechanisms is GAC Advice process. The AUC, African governments and the GAC therefore operated well within these parameters to make their objections and rationale for those objections against the DCA application known.

The Beijing consensus advice contained in the 11<sup>th</sup> April GAC Beijing Communiqué was therefore the culmination of a long process of providing rationale for GAC advice on new gTLDs.

I trust that the above clarifies how the GAC and its Members have acted in this matter, while also clarifying the inaccuracy of the referenced allegations from the Declaration. I and the GAC look forward to any further questions or

comment you and the Board may have in this regard.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Th. Schneider", followed by a long horizontal flourish.

Thomas Schneider  
Chair, Governmental Advisory Committee