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INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

DOTCONNECTAFRICA TRUST,

Plaintiff,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, *et al.*,

Defendant.

**CASE NO. BC607494**

Assigned for all purposes to
Hon. Robert B. Broadbelt III

**DEFENDANT ICANN'S EVIDENTIARY OBJECTIONS TO PLAINTIFF DCA'S CLOSING TRIAL BRIEF AND [PROPOSED] ORDER**

Date: April 4, 2019
Time: 10:00 a.m.
Location: Dept. 53

Complaint Filed: January 20, 2016
Bench Trial Date: February 6, 2019
Trial Date: T.B.D.

Defendant Internet Corporation for Assigned Names and Numbers ("ICANN") submits its evidentiary objections to Plaintiff DotConnectAfrica Trust's ("DCA") closing trial brief.

| DCA's Closing Trial Brief | ICANN's Objection | Ruling |
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| **Section II.A.1** | | |
| ICANN objects to the evidence DCA relies on for its overarching argument that the Independent Review Process ("IRP") proceeding was not quasi-judicial. DCA's citations to the arguments ICANN made to the IRP Panel and ICANN's actions following the IRP are misleading, irrelevant, and incomplete. DCA's cited evidence does not support DCA's conclusion that the IRP was not a quasi-judicial proceeding.<br><br>ICANN sets forth its objections to specific statements and evidence below. | | |
| Page 3:5–10: "In its June 1, 2015 Letter to the Panel, ICANN stated: '. . . the Bylaws mandate that the Board has responsibility of fashioning the appropriate remedy once the panel has declared whether or not it thinks the Board's conduct was inconsistent with the ICANN's Articles of Incorporation or Bylaws. The Bylaws do not provide the Panel with authority to make any recommendations or declarations in this respect.' [Stipulated Fact No. 37]." | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 352, 356)**<br><br>The evidence relied on by DCA is irrelevant, misleading, and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. DCA cites to an **argument** ICANN made to the IRP Panel, which itself is irrelevant to the issue of whether or not the IRP proceeding was a quasi-judicial proceeding—that question must be examined by looking at what the proceeding actually **was**, rather than what the parties argued it should/should not be. The citation is misleading to the extent it implies that the IRP proceeding actually was limited to what ICANN argued. ICANN requests that the Court consider the following additional evidence under the Rule of Completeness: the actual decision of the IRP Panel in which it stated that it **did** have the authority to make recommendations. *See* Ex. 33, Final Decl., ¶ 126. | |
| Page 3:11–13: "ICANN consistently argued during the IRP proceedings that the ICANN Board was not bound to follow the rulings and recommendations of the IRP Panel, since the Board could not outsource its decision-making authority. [*See* Stipulated Fact Nos. 20, 30, 32, 37]." | **Relevance, Rule of Completeness (Evid. Code §§ 210, 350, 356)**<br><br>The evidence DCA cites is irrelevant and implicates additional evidence necessary to place the cited evidence in context. ICANN's arguments to the IRP Panel are irrelevant for determining whether or not the IRP Proceeding was a quasi-judicial proceeding—that question must be examined by looking at what the proceeding actually **was,** rather than what the parties argued it should/should not be. ICANN requests that the Court consider the following additional evidence under the Rule of Completeness: the actual decisions of the IRP Panel, determining that their decisions were binding and they had the authority to make recommendations. *See* Ex. 18, IRP Decl. on Proc., ¶ 131; Ex. 33, Final Decl., ¶¶ 23, 126, 149–150. | |

| DCA's Closing Trial Brief | ICANN's Objection | Ruling |
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| Page 3:14–20: "ICANN repeatedly argued that the IRP was not an arbitration but was instead a corporate accountability mechanism. [Ex. 121 at Heading I and ¶ 10 ('This proceeding is an internal accountability mechanism constituted under and governed ICANN's bylaws. It is not an international arbitration.'); Ex. 124 at page 2 ('Further, words such as 'arbitration' and 'arbitrator' were *removed* from the Bylaws, making DCA's argument that this IRP Panel's declaration should have the force of normal commercial arbitration even more specious'); Stipulated Fact No. 31]." | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 352, 356)**<br><br>The evidence cited by DCA is irrelevant, misleading, and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. DCA cites to an **argument** ICANN made to the IRP Panel, which itself is irrelevant to the issue of whether or not the IRP proceeding was a quasi-judicial proceeding—that question must be examined by looking at what the proceeding actually **was**, rather than what the parties argued it should/should not be. The citation is misleading to the extent it implies that the IRP proceeding actually was limited to what ICANN argued. ICANN requests that the Court consider the following additional evidence under the Rule of Completeness: the actual decision of the IRP Panel in which it decided it had the power to interpret and determine the IRP procedure, ultimately concluding that it had binding authority on matters of both procedure and merits. *See* Ex. 18, IRP Decl. on Proc., ¶ 131.<br><br>To the extent the Court deems it appropriate to consider ICANN's argument, then under the Rule of Completeness, the Court also should consider that DCA made the exact **opposite** argument, stating that "[u]nder California law and applicable federal law, this IRP qualifies as an arbitration. It has all the characteristics that California courts look to in order to determine whether a proceeding is an arbitration: [including]. . . a binding decision." Ex. 15, DCA Sub. on Proc. Issues, ¶ 4; Stipulated Facts Nos. 21, 22. Under California law, arbitrations constitute quasi-judicial proceedings. *See, e.g.*, *Moore v. Conliffe,* 7 Cal. 4th 634, 644–45 (1994). | |
| Page 3:21–28: "The IRP Panel itself explained why a non-binding IRP lacks the hallmarks of a judicial forum: 'If the waiver of judicial remedies ICANN obtains from applicants is enforceable, and the IRP process is non-binding, as ICANN contends, then that process leaves TLD applicants and the Internet community with no compulsory remedy of any kind. **This is, to put it** | **Misleading, Rule of Completeness (Evid. Code §§ 352, 356)**<br><br>The evidence DCA cites implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. DCA cites a footnote from the IRP Panel's Declaration on the IRP Procedure, in which the IRP Panel ruled (among other things) that its declaration on IRP procedure and on the merits **would be binding**. The footnote cited by the IRP Panel was merely further explanation as to why, in its opinion, the IRP had to be binding—not an admission that it was not binding (or that it did not bear the hallmarks of a quasi-judicial proceeding). ICANN requests that the Court consider the following additional evidence under the Rule of Completeness: | |

| DCA's Closing Trial Brief | ICANN's Objection | Ruling |
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| **mildly, a highly watered down notion of 'accountability.' Nor is such a process 'independent,' as the ultimate decision maker, ICANN is also a party to the dispute and directly interested in the outcome. Nor is the process 'neutral,'** as ICANN's 'core values' call for it in its Bylaws.' [Joint Ex. 18, fn. 62, emphasis added]." | the IRP Panel reasoned that the fact that its decisions were binding was reinforced by the exclusive nature of the IRP, and the IRP Panel **rejected** ICANN's arguments in support of a contrary conclusion (i.e. that the IRP Panel's decisions should be non-binding). *See* Ex. 18, IRP Decl. on Proc., ¶ 111 & n.62. | |
| Page 4:3: "ICANN argued that the IRP should be non-binding. [Stipulated Fact No. 20]." | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 352, 356)**<br><br>The evidence cited by DCA is irrelevant, misleading, and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. DCA cites to an **argument** ICANN made to the IRP Panel, which itself is irrelevant to the issue of whether or not the IRP proceeding was a quasi-judicial proceeding—that question must be examined by looking at what the proceeding actually **was**, rather than what the parties argued it should/should not be. The citation is misleading to the extent it implies that the IRP proceeding actually was limited to what ICANN argued. Under the Rule of Completeness, ICANN requests that the Court also consider the actual decision of the IRP Panel in which it decided it had the power to interpret and determine the IRP procedure, ultimately concluding that it had binding authority on matters of both procedure and merits. *See* Ex. 18, IRP Decl. on Proc., ¶ 131.<br><br>To the extent the Court deems it appropriate to consider ICANN's argument, under the Rule of Completeness, ICANN also requests that the Court consider that DCA made the exact **opposite** argument, asserting that "[t]he governing instruments of the IRP—i.e., the Bylaws, the ICDR Rules, and the Supplementary Procedures—confirm that the IRP is final and binding." Ex. 15, DCA Sub. On Proc. Issues, ¶ 23; *see also id.* ¶ 22; Ex. 16, DCA Resp. to the IRP Panel's Questions on Proc. Issues, ¶ 7; Stipulated Facts Nos. 22, 24, 27. | |
| Page 4:4–5: "After the IRP issued its final declaration on July 9, 2015, the ICANN | **Misleading, Rule of Completeness (Evid. Code §§ 352, 356)**<br><br>The evidence DCA cited is misleading and implicates | |

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| Board voted on whether or not to accept it. [Joint Ex. 41]." | additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. DCA cites to the ICANN Board's July 2015 Resolution where the Board did not vote on whether to "accept" the final declaration on the merits. Rather, the Board voted on the IRP's recommendations as to ICANN's course of action. Under the Rule of Completeness, ICANN requests that the Court also consider evidence that any recommended course of action is not self-implementing and requires a vote by ICANN Board. *See* 2/8/19 Trial Tr. at 318:21–28; 319:27–320:17 (Willett). | |
| Page 4:6–8: "The ICANN Board never resolved to accept the Panel's finding that the IRP was binding. [Transcript of Christine Willet's Trial Testimony at 323:27–324:3; Joint Ex. 41]." | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 352, 356)**<br><br>The evidence DCA cited is irrelevant, misleading, and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. Ms. Willett testified that the ICANN Board **did not need to make** a resolution regarding whether the IRP was binding. Under the Rule of Completeness, ICANN requests that the Court also consider evidence that the IRP ruled that its declaration on procedure and merits would be binding, that the ICANN Board did not need to vote on the binding nature of the IRP with regard to the IRP Panel's declaration on the merits and, as for the IRP Panel's recommendations, that the ICANN Board resolved to accept the recommendations in full. *See* 2/8/19 Trial Tr. at 323:27–324:3 (Willett); Ex. 18, IRP Decl. on Proc., ¶ 131; Ex. 33, Final Decl., ¶¶ 23, 126, 149–150; Ex. 41, Resolution, at 1–2. | |
| Page 4:14–18: "The ICANN Board's resolutions regarding the processing of DCA's application after the IRP were selectively adopted from the IRP Panel's Final Declaration. The ICANN Board also made resolutions that were not from the IRP Final Declaration and were instead independent directions fashioned by the ICANN Board. [Transcript of Christine Willet's Trial Testimony at 342:3–346:8; Joint Ex. 41]." | **Misleading, Rule of Completeness (Evid. Code §§ 352, 356)**<br><br>The evidence DCA cited is misleading and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. The IRP Panel's recommendations were not adopted selectively—they were adopted **in full.** DCA's citation to Ms. Willett's testimony regarding the additional resolutions concerning the Governmental Advisory Committee ("GAC") is misleading. Ms. Willett and Mr. Atallah testified that ICANN added specific provisions to the Board Resolution because, if DCA's application later passed all evaluation phases, that would be in contradiction to the GAC's 2013 consensus advice.<br><br>Under the Rule of Completeness, ICANN requests that the Court consider evidence that the ICANN | |

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| | Board adopted the recommendations in full, and that additional resolutions related to the GAC advice merely recognized that the GAC might be given an opportunity in the future to give **further** advice or information that the Board would then (consistent with the Bylaws) be required to consider before proceeding. *See* 2/8/19 Trial Tr. at 320:18–330:13 (Willett); 381:22–383:5 (Atallah); *see also* Ex. 33, Final Decl., ¶¶ 149–150; *compare with* Ex. 41, Resolution., at 1–3, 4 ¶ 3; Ex. 4, Article XI, Section 2.1(j). | |
| Page 4:19–22: "These ICANN Board resolutions included instructions that ICANN consider the very GAC objection advice that the IRP Panel found that ICANN had inappropriately adopted in the first place. [Transcript of Christine Willet's Trial Testimony at 381:18–382:12][.]" | **Misleading, Rule of Completeness (Evid. Code § § 352, 356)**<br><br>The evidence DCA cites is misleading and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. Mr. Atallah testified that ICANN added specific provisions to the Resolution because, if DCA's application **later** passed all evaluation phases, that would be in contradiction to the GAC's 2013 consensus advice. Thus, ICANN would need to engage in a consultation with the GAC before going against the GAC advice, as required by ICANN's Bylaws. The Board Resolution did not include instructions that ICANN should consider "the very GAC objection advice" that the IRP had addressed. Under the Rule of Completeness, ICANN requests that the Court also consider that the Resolution merely recognized that the GAC might be given an opportunity in the future to give **further** advice or information that the Board would then (consistent with the Bylaws) be required to consider before proceeding. *See* 2/8/19 Trial Tr. at 382:13–383:5 (Atallah); Ex. 41, Resolution, at 2–3; *see also id.* at 4 ¶ 3; Ex. 4, Article XI, Section 2.1(j). | |
| Page 5:1–4: "ICANN also sought ZACR's opinion on how to proceed with DCA's application after the IRP – in contravention of the gTLD guidebook procedures on 'independence' a move that had no basis in the IRP panel's final declaration. [Transcript of Akram Attalah's Trial Testimony at 372:24–375:7; Exhibit 137]." | **Misleading, Rule of Completeness (Evid. Code § § 352, 356)**<br><br>The evidence DCA cited is misleading and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. Mr. Atallah testified that DCA's application not passing Geographic Names Review in 2015 (after the IRP Panel issued its declaration) had nothing to do with communications with ZACR. Mr. Atallah further testified that ICANN did not take into consideration any advice from ZACR. Under the Rule of Completeness, ICANN requests that the Court consider Mr. Atallah's additional testimony. *See* 2/8/19 Trial Tr. at 379:12–22; 383:23–28. | |

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| **Section II.A.2** | | |
| ICANN objects to the evidence DCA relies on to support its argument that DCA did not succeed on its initial position—that it could not sue ICANN (made in varying language throughout the IRP proceeding)—because the IRP Panel did not rule on the position. The evidence DCA relies on is irrelevant and misleading to the extent it suggests that, in order for judicial estoppel to apply, DCA's position must have been **adjudicated** by the IRP Panel. Unlike collateral estoppel, judicial estoppel does not require that the first position taken be adjudicated: "Collateral estoppel. . . deals with the finality of judgment on factual matters that were fully considered and decided. Judicial estoppel, on the other hand, prevents inconsistent positions **whether or not they have been the subject of a final judgment**." *Jackson v. Cty. of Los Angeles*, 60 Cal. App. 4th 171, 182 (1997); *see also AFN, Inc. v. Schlott, Inc.*, 798 F. Supp. 219, 223 (D.N.J. 1992) (stating that judicial estoppel is "distinct from other forms of estoppel" such as "*res judicata* and collateral estoppel [that] focus on the effect of a final judgment") (citations omitted). Accordingly, the **relevant** inquiry for judicial estoppel is whether the IRP Panel relied on or accepted as true DCA's representations that DCA could not sue ICANN (made in varying language throughout the IRP). Here, the evidence shows that the IRP Panel accepted as true DCA's position when it granted DCA the relief it sought on seven different issues. ICANN further objects to the evidence DCA relies on because there are several examples where the IRP Panel **explicitly** adopted DCA's position that it could not sue ICANN in Court when ruling in DCA's favor.<br><br>ICANN sets forth its objections to specific statements and evidence below. | | |
| Page 7:9–14:<br>"<u>DCA's Position</u><br>'DCA has a right to be heard in a meaningful way in the only proceeding available to review the ICANN Board's Decisions[.]' Joint Ex. 11 (Request for Emergency Arbitrator and Interim Measures of Protection ¶ 29)."<br><br>"<u>Evidence DCA Was Not Successful on the Position</u><br>Q: Do you agree…that the panel limited its findings to the manner in which the GAC advice was treated only?<br>A: That is my understanding.<br>2/8/19 Trial Transcript of Mike Silber Deposition Testimony at 419:7–419:14. | **Relevance, Lacks Foundation/Personal Knowledge, Calls for Speculation, Calls for Legal Conclusion, Misleading, Rule of Completeness (Evid. Code §§ 210, 310, 350, 351, 352, 356, 400 *et seq.*, 702)**<br><br>DCA's evidence is misleading, irrelevant, and implicates additional evidence that must be considered to place the cited evidence in context. DCA's evidence ignores that DCA was successful on its position that the IRP is "the only proceeding available" because the IRP Panel granted DCA's request for interim measures of protection— the relief DCA was seeking when it took the quoted position. *See* Ex. 33, Final Decl., ¶ 19. Under the Rule of Completeness, ICANN requests that the Court consider the IRP Panel's ruling in DCA's favor on this issue. *See id*.<br><br>Additionally, the citation to Mr. Silber's testimony is irrelevant because this testimony does not relate to the position DCA took that it cannot sue ICANN in court, DCA's request for interim measures of protection, or any other procedural advantages or relief DCA sought throughout the IRP. Mr. Silber's testimony was that the IRP Panel limited its "findings" to the manner in | |

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| '*Assuming* that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.' Joint Ex. 33 (IRP Final Declaration, ¶ 73)." | which ICANN treated the GAC advice, which relates only to the IRP's Final Declaration, in which the IRP Panel determined whether ICANN violated its Articles of Incorporation and Bylaws when ICANN accepted the GAC advice. Further, Mr. Silber lacks personal knowledge of the IRP Panel's findings that were premised on DCA's position that it could not sue ICANN because Mr. Silber was not involved in the IRP proceeding, the parties' submissions, or the IRP Panel's rulings, and did not attend the IRP hearing – and DCA did not establish any such personal knowledge. Moreover, the question posed called for an improper legal conclusion, as it asked Mr. Silber to interpret the "findings" of a quasi-judicial body.<br><br>DCA's citation to Paragraph 73 of the Final Declaration is irrelevant because Paragraph 73 relates to the IRP Panel's decision to apply a *de novo* standard of review, not DCA's request for interim relief. DCA's citation to Paragraph 73 is also misleading because this paragraph further **supports** that the IRP Panel accepted DCA's position as true. And, to the extent the Court considers Paragraph 73, ICANN requests under the Rule of Completeness that it also consider Paragraph 72, which demonstrates that the IRP Panel explicitly relied on DCA's position when it ruled in DCA's favor and applied a *de novo* standard of review. Ex. 33, Final Decl. ¶ 72. | |
| Page 7:15–23:<br>"DCA's Position<br>'The Panel should be guided by the cardinal principal set out in the ICDR Arbitration Rules that each party be given a full and fair opportunity to be heard; a principle that must also be viewed in the context of the fact that these proceedings will be the first and last opportunity that DCA Trust will have to have its rights determined by an independent body.'<br>Ex. 39 (April 20, 2014 Letter to the IRP Panel at 3)[.]"<br><br>"Evidence DCA Was Not Successful on the Position<br>Q: Ms. Willett, are you aware | **Relevance, Misleading, Lacks Foundation/Personal Knowledge, Speculative, Calls for a Legal Conclusion, Rule of Completeness (Evid. Code §§ 210, 310, 350, 351, 352, 356, 400 *et seq.*, 702)**<br><br>DCA's sole support for this statement is the testimony of Ms. Willett, which is improper for a number of reasons. The citation is misleading because it ignores that DCA succeeded on its position that the IRP was the "first and last opportunity" for DCA to have its rights adjudicated by an independent body: the IRP Panel ruled in DCA's favor and required document exchange, additional briefing, and live witness testimony at the IRP hearing—the relief DCA was seeking when it took the quoted position. *See* Ex. 18, IRP Decl. on Proc., ¶¶ 129–131; Ex. 32, ¶¶ 37–38. (ICANN requests that the Court consider this evidence under the Rule of Completeness.)<br><br>And, in so ruling, the IRP Panel explicitly relied on DCA's position. Under the Rule of Completeness, ICANN requests that the Court also consider that, in awarding DCA the relief it sought, the IRP Panel stated, "[t]he avenues of accountability for applicants | |

| DCA's Closing Trial Brief | ICANN's Objection | Ruling |
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| of the IRP making any procedural ruling that the proceedings, that the IRP proceedings, will be the first and last opportunity that DCA trust has to have its rights determined by an independent body?...<br><br>A: I am not aware. I didn't read the – any of the intermediate IRP declarations.<br><br>2/8/19 Trial Transcript of Willett Testimony at 339:26-340:8." | that have disputes with ICANN do not include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts." Ex. 18, IRP Decl. on Proc., ¶ 39; *id*. at ¶¶ 129–131 (deciding that the IRP Panel's declaration on procedure and the merits should be binding on the parties, and ordering document exchange and extended briefing); *see also* Ex. 32, Third Panel Decl. on IRP Proc., ¶ 15; *id*. at ¶¶ 37–38 (requiring witnesses to appear live at the IRP hearing).<br><br>Additionally, Ms. Willett testified that she did not attend the IRP proceedings, had not reviewed the pleadings, had not reviewed the exhibit in front of her, and had not reviewed all the filings in the IRP. *See* 2/8/19 Trial Tr. at 338:13–25, 340:16–21 (ICANN requests that the Court consider this evidence under the Rule of Completeness). Thus, Ms. Willett had no basis upon which to answer the question, and any response lacks foundation and personal knowledge. Moreover, the question posed improperly called for a legal conclusion, which Ms. Willett is not qualified to opine about. | |
| Page 7:24–Page 8:6:<br>"DCA's Position<br>'It is also critical to understand that ICANN created the IRP as an alternative to allowing disputes to be resolved by courts. By submitting its application for a gTLD, DCA agreed to eight pages of terms and conditions, including a nearly page-long string of waivers and releases. Among those conditions was the waiver of all of its rights to challenge ICANN's decision on DCA's application in court. For DCA and other gTLD applicants, the IRP is their only recourse; no other legal remedy is available.[']<br>Joint Ex. 15 (May 5, 2014 Submission on Procedures ¶ 22)." | **Relevance, Misleading, Lacks Foundation/Personal Knowledge, Speculative, Calls for a Legal Conclusion, Rule of Completeness (Evid. Code § 210, 310, 350, 351, 352, 356, 400 *et seq.*, 702)**<br><br>DCA's sole support for this statement is the testimony of Ms. Willett, which is improper for several reasons. DCA's citation is misleading because it completely ignores the evidence that DCA succeeded on its position that the IRP was its "only recourse" and that "no other legal remedy is available." The IRP Panel ruled in DCA's favor and required document exchange, additional briefing, and live witness testimony at the IRP hearing—the relief DCA was seeking when it took the quoted position. *See* Ex. 18, IRP Decl. on Proc., ¶¶ 129–131; Ex. 32, ¶¶ 37–38.<br><br>DCA's citation is further misleading because it ignores that the IRP Panel explicitly relied on DCA's position when it granted DCA the relief it sought. Under the Rule of Completeness, ICANN requests that the Court also consider that, in awarding DCA the relief it sought, the IRP Panel stated, "[t]he avenues of accountability for applicants that have disputes with ICANN do not include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts." Ex. 18, IRP | |

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| "Evidence DCA Was Not Successful on the Position<br>Q: Okay. And are you aware of any ruling anywhere in the IRP declarations that for DCA and other gTLD applicants, the IRP is their only recourse with no other legal remedy available?<br><br>A: I'm not aware.<br><br>2/8/19 Trial Transcript of Willett Testimony at 339:9–15." | Decl. on Proc., ¶ 39; *id*. at ¶¶ 129–131 (deciding that IRP declarations on procedure and the merits should be binding on the parties, and ordering document exchange and extended briefing); *see also* Ex. 32, Third Panel Decl. on IRP Proc., ¶ 15; *id*. at ¶¶ 37–38 (requiring witnesses to appear live at the IRP hearing).<br><br>Additionally, Ms. Willett testified that she did not attend the IRP proceedings, had not reviewed the pleadings, had not reviewed the exhibit in front of her, and had not reviewed all the filings in the IRP. *See* 2/8/19 Trial Tr. at 338:13–25, 340:16–21. (ICANN requests that the Court consider this evidence under the Rule of Completeness.) Thus, Ms. Willett had no basis upon which to answer the question, and any response lacks foundation and personal knowledge. Moreover, the question posed improperly called for a legal conclusion, which Ms. Willett is not qualified to opine about. | |
| Page 8:7–15:<br>"DCA's Position<br>'. . .[A]s a condition of applying for a gTLD, DCA unilaterally surrendered all of its rights to challenge ICANN in court or any other forum outside of the accountability mechanisms in ICANN's Bylaws. As a result, the IRP is the sole forum in which DCA can seek independent, third-party review of the actions of ICANN's Board of Directors.'<br>Joint Ex. 17 (May 29, 2014 letter to IRP Panel at 2–3)."<br><br>"Evidence DCA Was Not Successful on the Position<br>2/8/19 Trial Transcript of Willett Testimony at 341:3–342:2." | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 351, 352, 356)**<br><br>DCA's only support for this statement is Ms. Willett's testimony, which does not support its position. DCA's reliance on Ms. Willett's testimony is misleading because it completely ignores the evidence that DCA succeeded on its position that the IRP was the "sole forum in which DCA can seek independent, third-party review of the actions of ICANN's Board of Directors." The IRP Panel granted DCA the exact relief DCA sought when it took this position, and ruled that its declaration on procedure and the merits would be binding. *See* Ex. 18, IRP Decl. on Proc., ¶ 131.<br><br>Under the Rule of Completeness, the Court should also consider the evidence that, in ruling that its declaration on procedure and the merits would be binding, the IRP Panel expressly relied on DCA's position that it could not sue ICANN: "[t]he avenues of accountability for applicants that have disputes with ICANN do not include resort to the courts. Applications for gTLD delegations are governed by ICANN's Guidebook, which provides that applicants waive all right to resort to the courts." Ex. 18, IRP Decl. on Proc., ¶ 39; *id*. at ¶ 131 (deciding that IRP declaration on procedure and the merits would be binding on the parties).<br><br>Further, the testimony DCA cited is irrelevant as it concerns a completely unrelated topic. In its closing brief, DCA quotes Exhibit 17, which relates to its | |

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| | request that the IRP issue a binding decision. Yet, in the testimony DCA cited, Ms. Willett testifies regarding DCA's request for interim measures of protection, and its request that ICANN reimburse DCA for its IRP costs. Thus, Ms. Willett's testimony is irrelevant and an improper evidentiary basis for this statement. | |
| Page 8:16–21, Page 8:22–27:<br>"DCA's Position<br>'This is the only opportunity that a claimant has for independent and impartial review of ICANN's conduct, *the only opportunity*.'<br>Joint Ex. 35 (May 22, 2015 IRP Hearing at 22:16–23:3).<br><br>'We cannot take you to Court. We cannot take you to arbitration. We can't take you anywhere. We can't sue you for anything.'<br>Joint Ex. 36 (May 23, 2015 Hearing Tr. at 507:24–508:5)."<br><br>"Evidence DCA Was Not Successful on the Position<br>[']Q: Do you agree…that the panel limited its findings to the manner in which the GAC advice was treated only?'<br>A: That is my understanding.<br>2/8/19 Trial Transcript of Mike Silber Deposition Testimony at 419:7–419:14.<br><br>'*Assuming* that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.' Joint Ex. 33 (IRP Final Declaration, ¶ 73)." | **Relevance, Misleading, Lacks Foundation/Personal Knowledge, Calls for Speculation, Calls for Legal Conclusion, Rule of Completeness (Evid. Code §§ 210, 310, 350, 351, 352, 356, 400 *et seq.*, 702)**<br><br>DCA's reliance on this evidence is misleading because it completely ignores the evidence that DCA succeeded on its position that the IRP was the "only opportunity that a claimant has for independent and impartial review of ICANN's conduct" and that DCA "can't sue [ICANN] for anything." Under the Rule of Completeness, ICANN requests that the Court also consider the IRP Panel's Final Declaration in which the Panel ruled in DCA's favor and applied a *de novo* standard of review—the relief DCA was seeking when it took the quoted positions. *See* Ex. 33, Final Decl. ¶ 76. And, in so ruling, the IRP Panel explicitly relied on DCA's position. S*ee id*. ¶ 72. DCA's citation to Paragraph 73 of the Final Declaration is also misleading because it further **supports** that the IRP Panel accepted DCA's position as true, particularly when viewed in conjunction with Paragraph 72.<br><br>Additionally, the citation to Mr. Silber's testimony is irrelevant because his testimony does not relate to the position DCA took that it cannot sue ICANN in court, DCA's request for a *de novo* standard of review, or any other procedural advantages or relief DCA sought throughout the IRP. Mr. Silber's testimony was that the IRP Panel limited its "findings" to the manner in which ICANN treated the GAC advice, which relates only to the IRP Panel's Final Declaration, in which it determined whether ICANN violated its Articles of Incorporation and Bylaws when it accepted the GAC advice. Further, Mr. Silber lacks personal knowledge of the IRP Panel's findings related to DCA's position that it could not sue ICANN because Mr. Silber was not involved in the IRP proceeding, the parties' submissions, or the IRP Panel's rulings, and did not attend the IRP hearing—and DCA did not establish any such personal knowledge. Moreover, the question posed called for an improper legal conclusion, as it asked Mr. Silber to interpret the "findings" of a quasi-judicial body. | |

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| Page 8:28–Page 9:5:<br>"DCA's Position<br>The IRP is 'the only independent accountability mechanism available to parties such as DCA.'<br>Joint Ex. 31 (July 1, 2015 Submission on Cost at 2)."<br><br>"Evidence DCA Was Not Successful on the Position<br>[']Q: Do you agree…that the panel limited its findings to the manner in which the GAC advice was treated only?'<br>A: That is my understanding.<br>2/8/19 Trial Transcript of Mike Silber Deposition Testimony at 419:7–419:14.<br><br>'*Assuming* that the foregoing waiver of any and all judicial remedies is valid and enforceable, then the only and ultimate "accountability" remedy for an applicant is the IRP.' Joint Ex. 33 (IRP Final Declaration, ¶ 73)." | **Relevance, Lacks Foundation/Personal Knowledge, Calls for Speculation, Calls for Legal Conclusion, Misleading, Rule of Completeness (Evid. Code §§ 210, 310, 350, 351, 352, 356, 400 *et seq.*, 702)**<br><br>DCA's reliance on this evidence is misleading because it completely ignores that DCA succeeded on its position that the IRP is "the only independent accountability mechanism available to parties such as DCA." Under the Rule of Completeness, ICANN requests that the Court also consider the IRP Panel's Final Declaration in which the IRP Panel granted DCA's request that ICANN reimburse DCA for its IRP costs—the relief DCA was seeking when it took the quoted position. *See* Ex. 33, Final Decl., ¶ 150.<br><br>Additionally, the citation to Mr. Silber's testimony is irrelevant because his testimony does not relate to the position DCA took that it cannot sue ICANN in court, DCA's request that ICANN reimburse its IRP costs, or any other procedural advantages or relief DCA sought throughout the IRP. Mr. Silber's testimony was that the IRP Panel limited its "findings" to the manner in which ICANN treated the GAC advice, which relates only to the IRP Panel's Final Declaration, in which it determined whether ICANN violated its Articles of Incorporation and Bylaws when it accepted the GAC advice. Mr. Silber lacks personal knowledge of the IRP Panel's findings related to DCA's position that it could not sue ICANN because Mr. Silber was not involved in the IRP proceeding, the parties' submissions, or the IRP Panel's rulings, and did not attend the IRP hearing—and DCA did not establish any such personal knowledge. Moreover, the question posed called for an improper legal conclusion, as it asked Mr. Silber to interpret the "findings" of a quasi-judicial body.<br><br>DCA's citation to Paragraph 73 of the Final Declaration is irrelevant because Paragraph 73 relates to the IRP Panel's decision to apply a *de novo* standard of review, not DCA's request that ICANN reimburse its IRP costs. DCA's citation to Paragraph 73 is also misleading because this paragraph further **supports** that the IRP Panel accepted DCA's position as true. And, to the extent the Court considers Paragraph 73, it should also consider under the Rule of Completeness Paragraph 72, which demonstrates that the IRP Panel explicitly relied on DCA's position when it ruled in DCA's favor and applied a *de novo* standard of review. Ex. 33, Final Decl. ¶ 72. | |
| Page 9:13–18: "Ultimately, | **Relevance, Misleading (Evid. Code §§ 210, 350,** | |

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| as DCA showed during trial, the IRP could not have made findings with respect to the applicability of the litigation waiver or the IRP as the sole forum for any and all of DCA's claims because to do so was outside the scope of the IRP's jurisdiction: the IRP is limited to making findings with respect to ICANN Board action or inaction pursuant to the bylaws and articles of incorporation. *See* Joint Ex. 4 (April 2013 Bylaws Section 3.11); *see* Stipulated Fact Nos. 8 and 32." | **351, 352)**<br><br>The evidence DCA relies on is irrelevant and misleading because DCA is confusing judicial estoppel with collateral estoppel. Unlike collateral estoppel, judicial estoppel does not require that the first position taken be adjudicated: "Collateral estoppel. . . deals with the finality of judgment on factual matters that were fully considered and decided. Judicial estoppel, on the other hand, prevents inconsistent positions **whether or not they have been the subject of a final judgment**." *Jackson v. Cty. of Los Angeles*, 60 Cal. App. 4th 171, 182 (1997); *see also AFN, Inc. v. Schlott, Inc.*, 798 F. Supp. 219, 223 (D.N.J. 1992) (stating that judicial estoppel is "distinct from other forms of estoppel" such as "*res judicata* and collateral estoppel [that] focus on the effect of a final judgment") (citations omitted). Accordingly, the relevant inquiry for judicial estoppel is whether the IRP Panel relied on or accepted as true DCA's position that the IRP was the sole forum for its claims. Here, the evidence shows that the IRP Panel accepted as true DCA's position when it granted DCA the relief it sought on seven different issues.<br><br>As to DCA's cite to Stipulated Fact No. 32, ICANN's arguments and position before the IRP Panel are completely irrelevant because the judicial estoppel factors focus entirely on the positions DCA took and whether DCA was successful in maintaining those positions. | |
| Page 10:11–13: "In fact, the only substantive issue that the IRP actually ruled on was the ICANN Board's treatment of the GAC objection advice. [Joint Ex. 33, ¶¶ 148–151; Deposition testimony of Michael Silber at 117:14–23, 144:21–145:8." | **Relevance, Lacks Foundation/Personal Knowledge, Calls for Speculation, Calls for Legal Conclusion, Misleading (Evid. Code §§ 210, 310, 350, 351, 352, 400 *et seq.*, 702)**<br><br>The evidence DCA relies on is irrelevant and misleading, because, unlike collateral estoppel, judicial estoppel does not require that the first position taken be adjudicated. Instead, the relevant inquiry for judicial estoppel is whether the IRP Panel relied on or accepted as true DCA's representations that the IRP was the sole forum for its claims. Here, the evidence shows that the IRP Panel accepted as true DCA's position when it granted DCA the relief it sought on seven different issues.<br><br>Also, California case law makes clear that judicial estoppel applies to bar lawsuits, even where the position taken did not relate to the merits of the first proceeding. *See Bucur v. Ahmed*, 244 Cal. App. 4th 175, 193 (2016) (first position related to agreement to | |

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| | arbitrate claims); *Padron v. WachtowerBible & Tract Society of New York, Inc.*, 16 Cal. App. 5th 1246 (2017) (first position related to imposition of monetary sanctions for discovery violations).<br><br>Mr. Silber's testimony (at 117:14–23) is also irrelevant to DCA's assertion that the only substantive issue the IRP Panel actually ruled on was the GAC advice. His testimony (at 144:21–145:8) is speculative, and lacks foundation and personal knowledge. Mr. Silber has no personal knowledge of the IRP Panel's procedural rulings throughout the IRP because Mr. Silber was not involved in the IRP proceeding or the IRP Panel's rulings, and did not attend the IRP hearing—and DCA did not establish any such personal knowledge. Moreover, the question posed called for an improper legal conclusion, as it asked Mr. Silber to interpret the "findings" of a quasi-judicial body. Similarly, the question of what is a "substantive issue" calls for a legal conclusion. | |
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| **Section II.A.3** | | |
| ICANN objects to DCA's evidence in support of its overarching argument that DCA was mistaken when it took the position that it could not sue ICANN on the grounds that it is highly misleading and incomplete. The majority of DCA's evidence comprises testimony by Ms. Bekele that is either taken out of context or omits pertinent testimony on the same topic.<br><br>ICANN sets forth its objections to specific statements and evidence below. | | |
| Page 11:14–19: "DCA could not have brought this case before the IRP, which adjudicates whether board action or inaction violated ICANN's own rules, because it involves wrongdoing by ICANN staff and the ICC [Joint Ex. 4, Section 4, ¶ 2; *see also* 2/07/19 Transcript of Sophia Bekele Trial Testimony at 234:2–24; Transcript of Christine Willet Trial at 353:12–19]; it was not the ICANN board that ultimately rejected DCA's application.; [Transcript of Christine Willet Trial Testimony at 360:21– | **Misleading, Rule of Completeness (Evid. Code §§ 352, 356)**<br><br>The evidence DCA cites implicates additional testimony necessary to place the cited testimony in context and to avoid misleading the Court. Under the Rule of Completeness, ICANN requests that the Court consider the following additional evidence: Ms. Willett and Mr. Atallah each testified that, while an applicant cannot directly challenge ICANN staff or ICC action via an IRP, an applicant can file an IRP after first submitting a Request for Reconsideration to a subset of the ICANN Board; if the Board denies the Request for Reconsideration, that denial becomes an action that the applicant can challenge via an IRP, thereby bringing the underlying staff or vendor (i.e., ICC) action under IRP review. 2/8/19 Trial Tr. at 335:23–336:27 (Willett); 379:28–381:7 (Atallah). | |

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| 361:10]."<br><br>Page 16:3–6: "Third, the post IRP actions on DCA's application that DCA complains of in this lawsuit were taken by ICANN staff and the ICC and could not be directly adjudicated by the IRP. [2/07/19 Transcript of Sophia Bekele Trial Testimony at 234:2–24]." | | |
| Page 11:20–21: "Sophia Bekele, the CEO of DCA is not a lawyer and before this lawsuit had no litigation experience. [Transcript of 2/07/19 Sophia Bekele Trial Testimony at 189:7–16]." | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 351, 352, 356)**<br><br>The evidence DCA cites is irrelevant, misleading, and implicates additional evidence necessary to place the cited evidence in context and to avoid misleading the Court. Whether Ms. Bekele is an attorney or has litigation experience is irrelevant to whether DCA should be judicially estopped from pursuing this lawsuit. This is particularly true given that Ms. Bekele testified that DCA was represented in the IRP by a national law firm, and that she sought out her lawyer because he had litigated, and won, an IRP against ICANN in the past. *See* 2/6/19 Trial Tr. at 89:11–21; 2/7/19 Trial Tr. at 195:7–16 (Bekele). (ICANN requests that the Court consider this additional testimony under the Rule of Completeness.)<br><br>Further, DCA's evidence is irrelevant and/or misleading because California case law makes clear that judicial estoppel applies to positions taken by both "a party or a party's legal counsel." *Blix Street Records, Inc. v. Cassidy*, 191 Cal. App. 4th 39, 48 (2010). Positions taken at the advice of counsel and ignorance of the law are not "mistakes" for purposes of judicial estoppel. *See Galin v. IRS*, 563 F. Supp. 2d 332, 341 (D. Conn. 2008) (stating that "[t]he law is clear that legal advice and ignorance of the law are not defenses to judicial estoppel"); *Carr v. Beverly Health Care & Rehab. Servs., Inc.*, No. C-12-2980 EMC, 2013 WL 5946364, at *6 (N.D. Cal. Nov. 5, 2013) (for purposes of judicial estoppel "'ignorance of the law is no excuse,' particularly where, as here, [the declarant] was represented by counsel") (citations omitted). | |
| Page 11:22–25: "The litigation waiver relevant to the judicial estoppel trial was | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 351, 352, 356)** | |

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| drafted by ICANN; Ms. Bekele had no involvement in the drafting or creation of the waiver. [Transcript of Christine Willet Trial Testimony at 338:10–12; Transcript of 2/07/19 Sophia Bekele Trial Testimony at 197:14–19]." | The evidence DCA cites is irrelevant, misleading and implicates additional evidence necessary to place the cited evidence in context. Whether Ms. Bekele drafted the litigation waiver (i.e., the Covenant Not to Sue or "Covenant") is irrelevant to whether DCA should be judicially estopped from pursuing this lawsuit, as it does not relate to any of the judicial estoppel factors.<br><br>Additionally, the evidence DCA cites is misleading, and ICANN requests that the Court consider the following additional testimony under the Rule of Completeness: Ms. Bekele testified that she participated in the development of the Guidebook; that the Covenant was included in largely the same form in the very first draft of the Guidebook, published for public comment in 2008 (years before DCA submitted its application for .AFRICA in 2012); that Ms. Bekele commented on drafts of the Guidebook; that Ms. Bekele questioned whether the Covenant was enforceable in a public comment in 2009; that DCA understood that it was agreeing to be bound by the terms of the Guidebook, including the Covenant, when it submitted its application for .AFRICA; and that it was commonly understood that the Covenant prevented applicants from filing lawsuits against ICANN. *See* 2/6/19 Trial Tr. at 78:3–80:10; 2/7/19 Trial Tr. at 236:28–237:24, 238:26–244:24, 245:27–247:3 (Bekele). | |
| Page 12:7–8: "At the time of the IRP, DCA was ignorant or mistaken as to the scope of the litigation waiver. [Transcript of Sophia Bekele's 2/07/19 Trial Testimony at 205:11–18]." | **Misleading, Rule of Completeness (Evid. Code §§ 352, 356)**<br><br>The evidence DCA cites implicates additional testimony necessary to place the cited testimony in context and to avoid misleading the Court. Under the Rule of Completeness, ICANN requests that the Court also consider Ms. Bekele's testimony that the Covenant was included in largely the same form in the very first draft of the Guidebook, published for public comment in 2008 (years before DCA submitted its application for .AFRICA in 2012), that she questioned whether the Covenant was enforceable in a public comment in 2009, and that she was represented by counsel in the IRP. *See* 2/6/19 Trial Tr. at 89:11–21; 2/7/19 Trial Tr. at 195:7–16, 236:28–237:24, 238:26–244:24, 245:27–247:3 (Bekele). | |
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| **Section II.A.4** | | |
| ICANN objects to the evidence DCA relies on in this section to the extent DCA attempts to change its first position from "DCA cannot sue ICANN" to any other position; and to the extent DCA misleads the Court regarding the fact that DCA could have filed a second IRP challenging the denial of its application.<br><br>ICANN sets forth its objections to specific statements and evidence below. | | |
| Page 13:15–26: "DCA has always taken the position that the waiver is invalid if the IRP is not binding. . . . . DCA has consistently taken the position that ICANN should not be judgment proof:<br><br>It is fundamentally inconsistent with California law, U.S. federal law, and principles of international law for ICANN to require applicants to waive all rights to challenge ICANN in court or any other forum and not provide a substitute accountability mechanism capable of producing a binding remedy. Such one-sided terms imposed on parties signing litigation waivers have been flatly rejected by California courts. Where California courts have considered and upheld broad litigation waivers, the alternative to court litigation provided by the parties' contract is inevitably a binding dispute resolution mechanism. *See* Joint Ex. 16 at ¶ 7[.]" | **Relevance, Misleading, Rule of Completeness (Evid. Code §§ 210, 350, 351, 352, 356)**<br><br>The evidence DCA cites is both misleading and irrelevant to the extent that DCA is attempting to change its first position from "DCA cannot sue ICANN" to "ICANN should not be judgment proof." That ICANN should not be judgment proof is **not**, and has never been, the relevant inconsistent position that ICANN argues is the basis for judicial estoppel. And there has never been any evidence that ICANN was judgment proof.<br><br>The evidence is further misleading because DCA omits the concluding and pivotal sentence of its quoted language in which DCA stated: "Thus, in order for this IRP not to be unconscionable, it must be binding." Under the Rule of Completeness, ICANN requests that the Court consider that DCA expressly argued that the IRP is binding and that DCA succeeded when the IRP Panel decided that its declaration on procedure and on the merits would be binding. *See* Ex. 18, IRP Decl. on Proc., ¶ 111. | |
| Page 14:1–5: "During trial ICANN took DCA's statements about the IRP being the 'sole forum' out of the context of the aforementioned positions. Ms. Bekele testified that her understanding of DCA's position with regard to the | **Misleading, Rule of Completeness (Evid. Code §§ 352, 356)**<br><br>The testimony DCA cites implicates additional testimony necessary to place the cited testimony in context and to avoid misleading the Court. Under the Rule of Completeness, ICANN requests that the Court also consider that Ms. Bekele testified that DCA repeatedly and unequivocally took the position that DCA was unable to sue ICANN, and that DCA's statements were not qualified. *See* 2/6/19 Trial Tr. at | |

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| waiver throughout the IRP was that it was unconscionable if the IRP was not binding. [Transcript of Sophia Bekele Trial Testimony at 213:23–215:20; 216:4–12]." | 92:9–104:10; 104:24–109:1; 109:2–4; 109:18–110:16; 110:17–115:8; 117:27–127:3; 127:4–131:2.<br><br>The evidence DCA relies on is further misleading because DCA attempts to change its first position from "DCA cannot sue ICANN" to "the IRP is unconscionable if it is non-binding." Whether the Covenant is unconscionable or the IRP is non-binding is **not** and has never been the relevant inconsistent position that ICANN argues is the basis for judicial estoppel. | |
| Page 15:6–9: "The former president of the Global Domains Division at ICANN admitted at trial that the decisions made during the evaluation process by Interconnect Communications ('ICC') at issue in the instant litigation could not be the subject of an IRP. [Transcript of Christine Willet's Trial Testimony at 353:8–11]."<br><br>Page 16, fn. 3: "ICANN has suggested that DCA could have filed a Reconsideration Request regarding ICANN staff treatment of its application and then filed an IRP if the Board denied the Reconsideration Request. However, the IRP would still have been limited to whether the Board properly rejected the Reconsideration Request pursuant to its bylaws and would not have answered the question of whether ICANN staff or ICANN contractor ICC processed DCA's application unfairly. [Transcript of Christine Willet's Trial Testimony at 336:6–19]." | **Misleading, Rule of Completeness (Evid. Code §§ 352, 356)**<br><br>The testimony DCA cites implicates additional testimony necessary to place the cited testimony in context and to avoid misleading the Court. Under the Rule of Completeness, ICANN requests that the Court consider the following additional evidence: Ms. Willett—who is not, in fact, the former president of the Global Domains Division at ICANN—actually testified that an IRP could not **directly** review a decision of a third party. Ms. Willett later explained that, if an applicant's application for a new gTLD was denied, as DCA's was, the applicant could submit to the ICANN Board a Request for Reconsideration of the denial; if that Request for Reconsideration was denied by ICANN's Board, the applicant could then institute an IRP—just as multiple applicants have done. *See* 2/8/19 Trial Tr. at 335:23–336:27 (Willett). The IRP Panel can then consider and issue a declaration that the Board should have granted a Request for Reconsideration about staff action. *Id.* at 359:28–360:3.<br><br>Mr. Atallah, who **was** the president of the Global Domains Division at ICANN during this time period, similarly testified that, if a vendor makes a determination with respect to an application—for example, ICC determining that DCA's application did not pass Geographic Names Review because DCA's letters of support did not meet Guidebook requirements—the applicant can submit a Request for Reconsideration. That request is considered by the ICANN Board, and if the request is denied, the applicant can institute an IRP regarding the denial of its request (which would include the vendor's evaluation). *See id.* at 379:28–381:7 (Atallah). Therefore, even if the IRP is limited to whether the Board properly denied the Request for Reconsideration, the underlying action being considered is ICANN staff or vendor action. | |

Dated: March 28, 2019

Jones Day

By: 
Jeffrey A. LeVee

Attorneys for Defendant
INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS

**IT IS SO ORDERED.**

Dated: April , 2019

Honorable Robert B. Broadbelt III
Los Angeles County Superior Court Judge

NAI-1506610279