



Africa's map in the digital inclusion!

9 July 2012

The Chief Executive Officer
Internet Corporation for Assigned Names & Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina Del Rey, CA 90292-6601
United States of America

Copy to: Dr. Steven Crocker, Chairman of the ICANN Board of Directors

Dear Sirs,

Subject: *An Official Letter to ICANN Leaders to Request the Immediate Disqualification of UniForum ZA Central Registry from the new gTLD Program and Rejection of their Application for the .Africa String on Account of their Illegitimate Contractual Agreement with the African Union Commission and other Infractions that are Contrary to the Stipulations of the ICANN new gTLD Program*

We hereby write to officially request the leadership of ICANN to immediately disqualify UniForum ZA Central Registry (Application ID: 1-1243-89583) from further participation in the new gTLD program and reject their application for the .Africa string name on account of their illegitimate contractual agreement with the African Union Commission coupled with other infractions that are against the stipulations of the new program launched by ICANN to introduce new top-level domains. DCA Trust believes that this letter is warranted by the fact that UniForum has already committed many infractions against the new gTLD program, and **there is no other proper mechanism for recourse under the new gTLD program guidelines to address the issues that we are raising in this letter.** For example, the objection criteria are not wide-ranging enough to be used as a mechanism to examine, object to, and punish the type of infractions that we understand; UniForum acting in concert with the African Union Commission, is already guilty of.

We begin by highlighting **the most serious and most unforgivable infractions** committed by UniForum ZA Central Registry acting in cooperation with the African Union Commission.

1. *The African Union's Role in Selecting a Registry Operator for .AFRICA in Usurpation of the Role of ICANN, and Acting Against the Objectives of the new gTLD Program*

- a. We hereby recall that the African Union had requested the ICANN Board to include the *(.Africa, .Afrique, .Afrikia. (افريقييا))*, name string and its representation in any other language within the Reserved Names List in order to enjoy the level of special legislative protection, to be managed and operated by the structure that is selected and identified by the African Union"; an extraordinary request that was refused by the ICANN Board because it was contrary to the stipulations of the new gTLD Applicant's Guidebook.

- b. In our estimation, the official **communication by ICANN dated 8 March 2012** and signed by Dr. Stephen D. Crocker, chairman of the ICANN Board in response to the AU's request implied that the .AFRICA namespace as an Internet gTLD resource did not belong rightfully to the African Union. In spite of this, the African Union Commission had gone ahead to appoint UniForum ZA Central Registry as the Registry Operator for the DotAfrica (.AFRICA) gTLD. Please see attached letter of appointment from the AU to UniForum.
- c. We believe that this action of appointing a registry operator for DotAfrica (.AFRICA) gTLD by the AU is a major infraction. Nearly five (5) months ago, DCA had commented in an open press briefing titled **'UniForum S.A. and African Union Should beware of wrongdoing over DotAfrica'** that **"If it is generally accepted that the DotAfrica gTLD does not belong to the African Union (AU) but to the Internet Corporation for Assigned Names and Numbers (ICANN), how could the AU legitimately select a registry operator for a gTLD that it does not own?"** DCA Trust now expects that this question needs to be urgently answered both by ICANN leaders and by the ICANN Evaluation in order that the eventual fate of .AFRICA gTLD can be transparently and rightfully determined in the global public interest.
- d. According to the Applicant's Guidebook only ICANN has the right under the approved program to approve a registry operator for any applied-for gTLD based on the technical, operational and financial criteria spelt out in the new gTLD program Guidelines. **The African Union Commission has no authority in this regard, and whatever they have done in appointing a registry operator for .AFRICA is illegitimate since it usurps ICANN's legitimate authority under the new gTLD Registry Agreement.** As per Article 1 (Delegation and Operation of Top-Level Domain: Representations and Warranties) only ICANN can designate a Registry Operator as the registry operator for any TLD. **We believe such an appointment of a registry operator for .AFRICA by the AU contravenes all the stipulations of the new gTLD Registry Agreement since the AU as a third-party has no role or responsibility to determine or approve a registry operator under a separate process that has not taken into consideration ICANN's governance of the new gTLD program or ICANN's approved and mandatory criteria for technical, operational and financial evaluation of new gTLD applications.**
- e. Furthermore, the approval by the ICANN Board of the wide-ranging plan to expand the Internet Domain Name System (DNS) through the comprehensive global programme to introduce new generic Top Level Domains (gTLDs) was aimed at diversifying ownership of registries and encouraging competition in the application process for TLDs. **We believe that the African Union deliberately took control of the process of 'evaluating and selecting' a registry operator against ICANN principles thereby acting against the new gTLD program objective of an open and competitive process that would allow ICANN to independently determine and approve the most compelling applicant for each applied-for gTLD string.** The AU and UniForum have clearly acted against ICANN's policy of promoting competition. We believe that the AU created an environment that made it difficult for other prospective applicants to participate and compete in the new gTLD program. Indeed, the AU Commission created an 'anti-competition' situation regarding .AFRICA and we believe that UniForum, as the ultimate beneficiary of that AU process, should be penalized by having its application for .AFRICA disqualified by ICANN.

2. *An Illegitimate Agreement between the African Union and UniForum that Grants the AU all the Rights to the .AFRICA TLD and all rights to Registry Databases for the .AFRICA gTLD*

- a. According to the published parts of the application for .AFRICA submitted by UniForum, we read the following statement: **"It should be noted that the AUC shall retain all rights relating to the dotAfrica TLD, including in particular, intellectual property and other rights to the registry databases required to ensure the implementation of the agreement between the AUC and the ZACR, and the right to re-designate the registry function"**. We have examined every aspect of the guidebook, and wish to note that there is no provision for a third-party organization such as the AU, a non-applicant, and an

organization that is not a registry operator, to have all rights to a TLD and other rights over registry databases and the right to re-designate the registry function. We believe that all TLD rights belong to ICANN, including the registry databases that have to be escrowed to enable ICANN implement user and registrant protection to guard against the risk of registry failure, and the imperative of continuing registry functions with an ICANN-appointed emergency back-end registry (EBERO) services provider.

- b. The new gTLD Registry agreement is very clear on the technical and legal requirements regarding the escrow of Registry Data. ICANN is the principal beneficiary of any registry data which is held by a third-party data escrow agent. **Therefore, we do not see the legality of an agreement between UniForum and the African Union that grants the African Union the rights to the registry databases for the .AFRICA gTLD in direct contradiction and violation of Specification 2 (Data Escrow Requirements) of the new gTLD Registry Agreement of ICANN.** We believe that accepting UniForum's application for evaluation would give legitimacy to the illegal agreement between UniForum and the AU that contravenes the new gTLD program objective by making the AU the beneficiary of registry databases, something that is not provided for within the new gTLD Registry agreement of ICANN.

3. *The Agreement Between the African Union and UniForum Grants the AU the Right to Re-Designate the Registry function of the .AFRICA gTLD String*

- a. According to the published parts of the application for .AFRICA submitted by UniForum, we read the following statement: **"It should be noted that the AUC shall retain all rights relating to the dotAfrica TLD, including in particular, intellectual property and other rights to the registry databases required to ensure the implementation of the agreement between the AUC and the ZACR, and the right to re-designate the registry function".** Our understanding therefore is that the Agreement between the African Union Commission and UniForum grants the AU the right to re-designate or re-delegate the registry function of the .AFRICA string. This implies that the AU expects to be able to appoint or re-designate the registry function of .AFRICA to another operator if it has all rights relating to the dotAfrica (.AFRICA) TLD, coupled with the rights to the registry databases. Again, we believe that these provisions are a clear usurpation of the role, rights, privileges, responsibilities and governance authority of ICANN under the new gTLD program. **There is no specification within the Applicants Guidebook or the new gTLD Agreement that gives this type of authority to re-delegate strings or re-designate registry functions to the African Union Commission.** Our understanding is that based on successful evaluation and other approved requirements such as pre-delegation testing, ICANN will approve the delegation of a successful application for a string for a 10-year period based on the new gTLD Registry Services Agreement to be signed between ICANN and the approved registry operator. Therefore, any agreement between a third-party organization such as the AU and an applicant for a string name such as UniForum that gives the AU the right to re-delegate the string name or re-designate the registry function is a clear violation of the new gTLD program stipulations, and we believe this should be severely penalized by ICANN.
- b. Moreover, we believe that such an opaque contractual agreement that grants the AU the right to re-delegate a string that it does not legitimately own or re-designate a registry function to another operator, is similar to the request made by the AU to include the .AFRICA name string and its representation in any other language in the List of Top-Level Reserved Names. We believe that if ICANN has already made it clear that the .AFRICA name string does not belong to the African Union, then the African inter-governmental organization has no legal basis to **retain all rights relating to the dotAfrica TLD and appoint a registry operator for it, assume the rights to the registry databases for .AFRICA, and the right to re-delegate the .AFRICA string or re-designate the registry function;** all in violation of the new gTLD program guidelines and new gTLD Registry Agreement of ICANN. We think that these issues are serious enough since they clearly attempt to undermine ICANN's legitimate authority over .AFRICA.

- c. Even though we expect that a thorough evaluation exercise should flag these issues, we believe that on our part, it is in the global public interest to report these observations which are deliberate infractions that have been committed by UniForum acting arbitrarily, and with impunity **is in clear and open violation of new gTLD program guidelines**. We firmly believe that the political and diplomatic influence exercised by the African Union over African country governments does not give it the legal rights relating to the dotAfrica (.AFRICA) TLD.

We therefore strongly request ICANN to disqualify UniForum and reject its application for .AFRICA.

Having mentioned the most serious infractions committed by UniForum, we wish to also report other observations which we believe should be noted as evidence gleaned from UniForum's submitted application to **disqualify them from the program**.

4. Submitting a Standard Application for .AFRICA without applying on behalf of the 'African Community'

- a. In an open Communiqué released by the AU not too long ago, the organization revealed that it had selected UniForum as registry operator that would be applying for .AFRICA on behalf of the African Community. The Communiqué notes inter alia: **"the AU Commission selected UniForum SA (the ZA Central Registry Operator or ZACR), to administer and operate dotAfrica gTLD on behalf of the African community."** (See attached Communiqué on DotAfrica gTLD issued by the African Union Commission dated 29th March 2012) However, following the publication of the information on applied-for strings and the list of applicants by ICANN on 13th June 2012, it was revealed that UniForum has not applied for .AFRICA as a Community TLD but **has instead submitted a standard application for the geographic TLD**. Their answer to Question 19 (Is the application for a community-based TLD?) is indicated "No".
- b. According to the African Union's RFP for the selection of a registry operator for DotAfrica (copy attached herewith), we note the following enshrined stipulations in the RFP document: "the winning bidder should bear in mind that: **This is a geographical TLD which should be run on behalf of the community**", and **"Collaborate with the Internet community on the project"** and **"Lead the effort to create an active domain name community in Africa"**.
- c. At the time the AU RFP was issued we highlighted the fact that a deliberate but illegitimate attempt was being made to take over a geographic TLD for the use and ownership of a 'community'. ***We believe that by failing to make a community TLD application for .AFRICA, UniForum has deliberately falsified its intentions whilst trying to win the support of the African Union to support its application for .AFRICA and submit an application to ICANN that masks the true mission and purpose of UniForum's applied-for .AFRICA gTLD string name.*** Therefore, by not making a truthful application, we believe that this should be the basis for outright disqualification.
- d. Further evidence of the above is buttressed by the fact that the published description of the registration policies indicated in UniForum's application refers to a Policy Committee that will help to enforce certain restrictions that are somewhat of a community-nature on .AFRICA but without clearly designating the application as one for a Community TLD even though the AU has clearly stated that **"the AU Commission selected UniForum SA (the ZA Central Registry Operator or ZACR) to administer and operate dotAfrica gTLD on behalf of the African community."** It is patent that UniForum got the support of the AU for a Community TLD Application to operate the .AFRICA gTLD on behalf of the African Community, but has deviated from this and made a standard (non-community) application. **We think UniForum has deliberately misled a large segment of the global Internet Community and the ccTLD managers (or organizations) that were used to obtain the support of individual African governments in this matter.** We expect that this type of deceptive gambit should not be allowed in any form or manner by ICANN and should be severely penalized

- e. We therefore believe that such deliberate misrepresentation and or falsification of intentions should be immediately punished by ICANN through the outright disqualification and rejection of the application for .AFRICA submitted by UniForum.

5. Legal or Executive Responsibility Granted to Mr. Mohammed El-Bashir who has no Legal Role or Executive Responsibility in UniForum

- a. In answer to Question no. 11(d) (For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility) the application for .AFRICA that was submitted by UniForum ZA Central Registry indicates that Mr. Mohammed El-Bashir has Legal or Executive Responsibility over the gTLD application submitted. Mr. Mohammed El-Bashir is described as the Chairperson of the dotAfrica Steering Committee, but this organ has no legal establishment.
- b. Question 11d is meant for applying entities without directors or officers, but UniForum clearly has directors as indicated in their answer to Question 11(a). (Name(s) and position(s) of all directors) which lists the names of the directors of UniForum as **Calvin Scott Browne, Neil Duncan Dundas, Mark James Elkins, Theodorus Kramer and Fiona Jean Wallace**. *We think that granting legal or executive responsibility of UniForum's .AFRICA application to somebody who is obviously not a director of UniForum is a deliberate misrepresentation with the intention to obfuscate the true legal and or executive responsibility over the UniForum application for .AFRICA.*
- c. Moreover, Mr. Mohammed El-Bashir has no legal or executive role within UniForum. He is not a director or management executive of the organization, **so we believe that mentioning him as the person having Legal or Executive Responsibility over the application for .AFRICA submitted by UniForum is not only misleading but legally incongruous and rather problematic**. The application already lists the directors of UniForum, so there is no legal basis for the same application to grant legal or executive authority to Mr. Mohammed El-Bashir who is not a director of UniForum. Again, we believe that this is one way of giving the 'African Internet Community' and or so-called dotAfrica Steering Committee, illegitimate organs or bodies constituted without any form of legal establishment, a community oversight role over the UniForum Application, **but without actually designating the UniForum application as a Community TLD application.**
- d. Therefore, it is important for ICANN to understand that UniForum as applicant is being used as a 'front' to enable certain groups who have no legal establishment to accomplish their illegitimate ownership designs over the .AFRICA gTLD registry, and the application should be disqualified by ICANN for this reason.

6. UniForum's application for .AFRICA gTLD Gives Oversight Responsibility to an entity that has not yet been established through the process of formal incorporation.

- a. **The published parts of the .AFRICA gTLD application submitted by UniForum also states inter alia:** *"the Applicant, in consultation with Internet community representatives from all over Africa, at a meeting held in Johannesburg, established a Steering Committee to exercise moral and ethical oversight over the dotAfrica project. Representatives of the broader African Internet community are currently participating in the project through the SteerCom, which comprises African Internet experts, country code managers, registrars and others volunteers. For a list of the SteerCom members refer to www.AfricaInOneSpace.org. The SteerCom is engaged under formal Terms of Reference, which include, amongst others, a mandate to identify the criteria and processes for the incorporation of a new non-profit organisation, namely the **dotAfrica Foundation**. The SteerCom is therefore the precursor to the dotAfrica Foundation, which will*

work closely with the Applicant in assuming the moral and ethical oversight of the dotAfrica TLD and the development of policy issues. The SteerCom will be dissolved once the Foundation is incorporated and established.”

- b. The above statements buttress our belief that **UniForum’s application for .AFRICA gTLD is being used to facilitate an application on behalf of an entity that has not yet been established through the process of formal incorporation.** We strongly believe that this should not be allowed by the ICANN leadership and should be noted by the ICANN Evaluation for the purpose of rejecting UniForum’s application for the .AFRICA gTLD which is actually a ‘front’ for a yet to be established organization.
- c. It is easy for one to deduce that the application is being submitted by UniForum who have already signed an agreement with the African Union Commission that all the rights to the TLD and registry databases will be retained by the AU, including the right to re-designate the registry function; all in anticipation that a dotAfrica Foundation will be incorporated and established later, and the .AFRICA gTLD registry will be transferred from UniForum to this yet to be incorporated entity. We hereby strongly urge ICANN to act immediately and disqualify the .AFRICA application submitted by UniForum so that such illegitimate plans that are in clear violation of the stipulations of the new gTLD program will not be allowed to prevail.

Concluding Statement

We believe that this communication to ICANN should also be construed as part of our official comments against the application submitted by UniForum for the .AFRICA gTLD and **should be made available to the ICANN Evaluation Panels performing the Initial Evaluation Reviews** according to the stipulations indicated within Section 1.1.2.3 of the Applicant’s Guidebook. DCA Trust will also endeavor to submit these comments in the prescribed manner.

The pieces of evidence that we have presented are based on our assessment of the published parts of UniForum’s application which we have cited in this document, coupled with other public communication and documents such as official Communiqué released by the African Union Commission or the AU RFP document that was publicly circulated. **We have at this stage only attempted to highlight in this communication what we consider as pertinent issues which cannot be dealt with (or addressed) according to the published Objection Criteria of the new gTLD program.**

Finally, we believe that it would be expedient for ICANN to act early and with utmost urgency and disqualify UniForum from further participation in the new gTLD program **so as give the applicant an opportunity to withdraw its application in order not to expose ICANN to any further legal, financial or other liabilities regarding the .AFRICA application submitted by UniForum.**

We therefore look forward to the actions that will be undertaken by the ICANN against UniForum ZA Central Registry on account of the infractions and other illegitimate actions that they have committed contrary to the new gTLD program of ICANN.

Yours sincerely,

Sbekele

Sophia Bekele

For DCA Trust (An Applicant for the DotAfrica (.AFRICA) gTLD

Application ID: 1-1165-42560

Attach: AUC Letter of Appointment

AUC dotAfrica Communiqué

AUC RFP for the Operation of Dot Africa

AUC dotafrica RFP