11. SELECTED ASPECTS OF DOMAIN NAME DISPUTE RESOLUTION AND RIGHTS PROTECTION WITHIN THE NEW .AFRICA TOP LEVEL DOMAIN AND THE .ZA COUNTRY CODE TOP LEVEL DOMAIN

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ABSTRACT

During the late 1990s, the exponential growth and importance of the Internet brought to the fore the violation of rights resulting from trademarks used as domain names. The UDRP was sculpted as a remedy against trademark abuse within the domain name system and was proven in part to be successful. The advent of ICANN's New Generic Top Level Domain Program, where close to 2000 new generic top level domains would be added to the domain name system, again created fears of large scale trademark infringement within the domain name space. This article seeks to provide a truncated exposition of the new rights protection mechanisms introduced as part of the New Generic Top Level Domain Program, as well as a brief introduction to the DotAfrica Generic Top Level Domain, and domain name dispute resolution within the South African .ZA Country Code Top Level Domain.

KEYWORDS: *DotAfrica Launch, Domain Name Dispute Resolution, New Generic Top Level Domain (gTLD) Program, Internet Corporation for Assigned Names and Numbers (ICANN), Rights Protection, .ZA Country Code Top Level Domain (ccTLD), UDRP, African Union Commission (AUC), ZA Central Registry (ZACR), .ZA Domain Name Dispute Resolution Regulations*

1. INTRODUCTION

The network simply known as the Internet, without which our modern society cannot function, and without which the majority of individuals today cannot imagine living, is controlled and managed by the Internet Corporation for Assigned Names and Numbers (ICANN).[1]

According to Article I section 1 of ICANN's Bylaws, ICANN's mission is to:

> […] coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:
>
> 1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
>
> a. Domain names (forming a system referred to as 'DNS');
>
> b. Internet protocol ('IP') addresses and autonomous system ('AS') numbers; and
>
> c. Protocol port and parameter numbers.
>
> 2. Coordinates the operation and evolution of the DNS root name server system.
>
> 3. Coordinates policy development reasonably and appropriately related to these technical functions.[2]

In keeping with its mandate, ICANN has deemed it necessary to continuously add Generic Top Level Domains (gTLDs) to the domain name system (DNS). Three new gTLD application rounds have thus far been implemented by ICANN: the first; in 2000 saw the introduction of seven new gTLDs (.pro, .museum, .coop, .info, .aero, .biz, .name) to the then existing eight gTLDs (.com, .edu, .gov, .int, .mil, .net, .org and .arpa);[3] and the second in 2004, heralded the introduction of six new gTLDs (.travel, .asia, .jobs, .mobi, .cat, .tel).[4] The third round of applications was officially born in June 2008 when ICANN's New gTLD Program was approved for implementation by ICANN's Board.[5] ICANN states that: 'via the introduction of new top-level domains (TLDs), the program aims to enhance innovation, competition and consumer choice.'[6]

After the ICANN Board authorised the launch of the New gTLD Program in June 2011, the application window for new gTLDs subsequently opened on 12 January 2012 and the first round of applications closed in April 2012.[7] A total number of 1930 applications were received. The number of new gTLD applications that were approved and had already been delegated (introduced into the Internet) totalled 1227 in November 2017.[8] The breakdown of applications by regions indicates that the

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[1] ICANN Homepage <https://www.icann.org/> accessed 28 November 2017.

[2] ICANN, *Bylaws*, as amended, 11 February 2016 <https://www.icann.org/resources/pages/bylaws-2016-02-16-en#I> accessed 28 November 2017.

[3] The '.arpa' top level domain is used for reverse IP look-ups.

[4] ICANN, *Background Information Regarding Previous New gTLD Application Rounds*, available at <http://archive.icann.org/en/topics/background-info-newgtld-apps-13feb08.htm> accessed 28 November 2017.

[5] ICANN, New TLD Program Factsheet <https://archive.icann.org/en/topics/new-gtlds/factsheet-new-gtld-program-oct09-en.pdf> accessed 28 November 2017.

[6] ICANN, 'About the Program' <https://newgtlds.icann.org/en/about/program> accessed 28 November 2017.

[7] ibid..

[8] ICANN 'Current Statistics' <https://newgtlds.icann.org/en/program-status/statistics> accessed 28 November 2017.

North American region submitted a total of 911 applications; Europe 675; Asia Pacific 303; South America 24; while the African region only submitted 17 applications.[9] The breakdown of applications by type indicates: 84 community applications; 66 geographic applications; 116 applications for internationalised domain names, representing 12 scripts. The Internet is therefore undergoing enormous change with gTLDs such as .grocery, .hotel, .xyz, .arab, .ghuru and even .ninja being part of the new domain name landscape.[10]

2. THE BIRTH, HISTORY AND LAUNCH OF DOTAFRICA

ICANN's new gTLD Program presented a unique opportunity for Africa as a continent in bringing to life a much-needed collective identity within the global network: a 'virtual' space that could promise so much, for a continent that so desperately needs to realise its potential.

While the development and conceptualisation of ICANN's New gTLD Programme were progressing in full steam,[11] the African Union ministers tasked with Communication and Information Technologies concluded the 'Oliver Tambo Declaration',[12] which re-affirmed that information technologies are key to Africa's development and economic competitiveness, and made, amongst others, a commitment to work together to ensure that the technical and administrative operations of Africa's TLDs are at international standards. The 'Oliver Tambo Declaration' also expressed the vision that trust, and the use of, 'African' domain names will bring financial, economic and socio-cultural benefits to the continent of Africa.[13]

After being ratified by the African Union Head of States and Governments Summit in January 2010,[14] the 'Abuja Declaration' was concluded in August 2010, in which the African Union Commission (AUC) was tasked to 'set up the structure and modalities for the implementation of the DotAfrica project.[15] A tender process for the operation of the DotAfrica gTLD on behalf of the AUC commenced shortly after.[16] The ZA Central Registry (ZACR),[17] was appointed as the 'Official Applicant and Registry Operator for the DotAfrica gTLD' in April 2012.[18] The ZACR subsequently submitted an official application for the DotAfrica gTLD to ICANN on 13 June 2012.[19]

As part of the initial evaluation of an application, a 'string review' was conducted on the applied-for gTLD in order to determine whether the evidence necessary to support a particular geographic name had been garnered.[20] 'Africa' is regarded as a 'geographic name' for purposes of ICANN's New gTLD 'Applicant Guidebook'.[21] Proof of support 'from at least 60% of the respective governments in the region' and:

> [that] 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'[22]

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[9] ibid.

[10] For a full list of delegated domains see ICANN, 'Delegated Strings' <https://newgtlds.icann.org/en/program-status/delegated-strings> accessed 28 November 2017.

[11] ICANN 'Historical Documents' https://newgtlds.icann.org/en/about/historical-documentation accessed 5 November 2017.

[12] African Union, *Oliver Tambo Declaration* 5 November 2009 Johannesburg, South Africa.

[13] African Union, *Oliver Tambo Declaration* 5 November 2009 Johannesburg South Africa Commitment 7. See also Eddie Hurter and Tana Pistorius, 'The New .Africa Top Level Domain: An African Initiative in Ensuring Africa's Rightful Place on the Global Network' (2014) (17) 3 PER 1079, <https://www.ajol.info/index.php/pelj/article/view/107851>accessed 28 November 2017.

[14] African Union, 14th *African Union Summit* 25 January – 2 February 2010 Addis Ababa Ethiopia.

[15] African Union, '*Third Ordinary Session* 6 – 7 August 2010' 3 Abuja Nigeria <http://africainonespace.org/downloads/AUC_AbujaDeclaration.pdf> accessed 5 November 2017. Hurter and Pistorius Ibid.

[16] African Union, *Briefing Note on .Africa* May 2011 <http://africainonespace.org/downloads/launch/AUCdotAfricaBriefingNote_ENG.pdf> accessed 28 November 2017.

[17] Detailed information regarding Uniforum SA trading as the ZACR is available at <http://co.za/> and <https://www.registry.net.za/content.php?gen=1&contentid=100&title=About%20Us> accessed 28 November 2017.

[18] African Union *Letter of Appointment* (4 April 2012), 1 <http://africainonespace.org/content.php?tag=1&title=&title=The%20African%20Union%20and%20dotAfrica> for an exposition of the African Union's involvement in the .Africa application accessed 28 November 2017.

[19] ICANN, *New TLD Application* 13 June 2012 <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1184> accessed 28 November 2017.

[20] ICANN, *Applicant Guidebook Module 2* <https://newgtlds.icann.org/en/applicants/agb> accessed 28 November 2017.

[21]ICANN, *Applicant Guidebook Module 1* 26 <http://unstats.un.org/unsd/methods/m49/m49regin.htm.> accessed 28 November 2017.

[22] ICANN, *Applicant Guidebook Module 2*, <https://newgtlds.icann.org/en/applicants/agb> accessed 28 November 2017.

was therefore needed to accompany the application. The ZACR received the support of 78% of African governments for its application for the DotAfrica gTLD and therefore met the required 60% threshold of regional government support.[23] The ZACR's application passed the initial evaluation for the DotAfrica gTLD on the 12th of July 2013.[24] ICANN and the ZACR signed the official DotAfrica gTLD 'Registry Agreement' in Singapore, on 24 March 2014.[25]

Unfortunately, and rather sadly, 'DotAfrica' still needed to wait more than three years for the dream of its very own gTLD to be realised. ICANN also received a second application for the delegation of the DotAfrica gTLD. This applicant was, however, not endorsed by the AUC, and therefore did not have the required regional support and consequently did not pass the initial evaluation stage.[26] The Applicant insisted on exhausting all of ICANN's internal review processes,[27] and ultimately turned to the courts in the State of California in the United States of America (where ICANN is incorporated), in an effort to frustrate the delegation of the DotAfrica gTLD to the ZACR. These efforts (until present) turned out to be fruitless after the Superior Court of California denied the motion for an injunction to stop the delegation of the DotAfrica gTLD to the ZACR.[28] The dawn of Africa's online renaissance eventually arrived. The CEO of the ZACR, Mr Lucky Masilela, announced a few months later that:

> .africa will bring the continent together as an Internet community under one umbrella allowing e-commerce, technology and infrastructure to flourish. It is truly an African initiative established by Africans for Africa and the world.[29]

The official DotAfrica 'Launch Process' started on 4 April 2017, with the Sunrise Application Period, followed by four Land Rush Application Periods spanning from 5 June 2017 to 2 July 2017.[30] On 4 July 2017, the long-awaited day for the 'General Availability' of DotAfrica domain names arrived.[31]

3. RIGHTS PROTECTION WITHIN THE NEW GENERIC TOP LEVEL DOMAINS AND WITHIN THE DOTAFRICA GENERIC TOP LEVEL DOMAIN

Since its introduction in 1998, the, by now well-established and successful, Uniform Dispute Resolution Policy (UDRP)[32] has been the primary rights protection mechanism within the domain name context. The UDRP has proven itself to be a very effective remedy against the vice generally known as 'cybersquatting', whereby names or marks in which complainants have rights are registered as a domain name.[33] ICANN and its constituencies acknowledged the need to expand the rights protection mechanism frame-work for the New gTLD Programme in light of the enormous risks posed to rights protection with the introduction of the more than 1900 new gTLDs.

The most important new rights protection mechanism sculpted with ICANN's New gTLD Program in mind is the

[23] Africa in One Space, *African Regional Support* <http://www.africainonespace.org/dotAfrica.php?tag=5> accessed 28 November 2017.

[24] ICANN, *New gTLD Program Initial Evaluation Report* 12 July 2013 <http://newgtlds.icann.org/sites/default/files/ier/bqe3so7p3lu2ia8ouwp7eph9/ie-1-1243-89583-en.pdf> accessed 28 November 2017. See also Hurter and Pistorius, n 13 1081.

[25] The Registry Agreement is available at <https://www.icann.org/resources/agreement/africa-2014-03-24-en> accessed 28 November 2017.

[26] See ICANN, 'Decision Tree/Process Flow for Geographic Names Evaluation' https://www.internetnews.me/2013/09/13/humor-icanns-new-decision-tree/icann-decision-tree/ accessed 28 November 2017. An applicant would 'immediate fail' the evaluation phase should it be recorded that the applicant was not able to meet the 'complete reporting requirements' for a geographic name. InterConnect Communications *New TLD Progam Evaluation Panels: Geographic Names: Decision Tree/ ProcessFlow for Geographic Names Evaluation* 7 June 2013 <https://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-process-07jun13-en.pdf> accessed 28 November 2017.

[27] See Hurter and Pistorius, n13 p 1081 – 1084 for a discussion in this regard.

[28] *Dotconnectafricatrust v Internet Corporation for Assigned Names and Numbers* [2017] BC607494 Superior Court of California County of Los Angeles – Central District. <https://www.icann.org/en/system/files/files/litigation-dca-icann-order-denying-plaintiff-motion-prelim-injunction-03feb17-en.pdf> accessed 28 November 2017.

[29] Registry Africa, 'Countdown to DotAfrica Landruch Phase' 1 (1 June 2017) http://registry.africa/countdown-dotafrica-landrush-phase/ accessed 28 November 2017.

[30] ZACR, *Official Launch Pamphlet* March 2017 <http://registry.africa/countdown-dotafrica-landrush-phase/> accessed 28 November 2017.

[31] ZACR, 'Floodgates Open for Africa's New Domain' <http://registry.africa/floodgates-open-africas-new-domain/> accessed 28 November 2017.

[32] ICANN, '*Uniform Dispute Resolution Policy*' <https://www.icann.org/resources/pages/policy-2012-02-25-en> accessed 28 November 2017.

[33] The WIPO Arbitration and Mediation Center, the most prominent dispute resolution service provider for complaints filed under the UDRP, received a record 3036 domain name dispute resolution cases in 2016. See WIPO, 'WIPO Cybersquatting Cases Hit Record in 2016, Driven by New Top Level Domain Names' (16 March 2017) <http://www.wipo.int/pressroom/en/articles/2017/article_0003.html> accessed 28 November 2017.

Trademark Clearinghouse (TMCH).[34] The TMCH is a centralised database of trademarks that have been 'verified'. The database is connected to all new gTLDs. It is stated in the Trademark Clearinghouse Guidelines that it will accept and verify the following intellectual property rights: '(i) nationally or regionally registered trademarks; (ii) court validated marks; and (iii) marks protected by statute or treaty'.[35] Trademark proprietors can submit trademark data to a centralised database and after the data has been verified, the trademark proprietor will be provided with an 'authentication key' which provides the proprietor with first priority in the registration of trademarks in every 'Sunrise period' (a period that provides priority in registration to trademarks) of the New gTLD Program.[36] In the event that someone else wishes to register a domain name that matches an authenticated key, the person wanting to register the domain name in any of the new gTLDS will be informed of the trademark proprietors' rights and will consequently need to acknowledge the proprietors' rights before the registration of the domain name.[37] If the domain name is registered, the trademark proprietor will also be notified of the registration and the proprietor will therefore be made aware of a potential trademark infringement.[38]

The Uniform Rapid Suspension System (URS), and the Post Delegation Dispute Resolution Procedure (PDDRP), joined the UDRP as rights enforcement mechanisms in addressing domain name disputes within ICANN's New gTLD Program.[39]

The URS is similar to the UDRP, but is aimed at a more timely and definite resolution of disputes.[40] The URS also carries a higher burden of proof than the UDRP, and avails additional defences to registrants.[41] A temporary suspension of the domain name for the duration of a gTLD's registration period is the only available remedy.[42]

The PDDRP seeks to remedy situations where registry operators played a role in the infringement of rights. There are three Post Delegation Dispute Resolution Procedures: (i) the Trademark Post-Delegation Dispute Resolution Procedure aiming to address registry operator's involvement in trademark infringement; (ii) the Registration Restriction Dispute Resolution Procedure which seeks to deal with Registry Operators that do not comply with the registration restrictions of community-based New gTLDs; and (iii) the Public Interest Commitments Dispute Resolution Procedure addressing non-compliance with Public Interest Commitments within Registry Agreements.[43]

A. SUPPLEMENTARY DOTAFRICA RIGHTS PROTECTION MECHANISMS

Similar, and ancillary to the TMCH, the DotAfrica Mark Validation System (MVS) creates an additional level of trademark protection for registrants within the DotAfrica domain. Unlike the TMCH, the MVS not only caters for registered trademarks, but also allows for applications based on other existing priority rights such as 'unregistered trademark rights' (accompanied by sufficient 'proof of use'), as well as business, company and trust names.[44] When validated,[45] a 'validation token' (VT) for the name or mark applied for is issued. The allocation of 'validated marks' will be conducted according to a Priority Ranking System: (i) domain name applications with a VT will receive priority, and rank higher than domain name applications without a VT; (ii) registered trademarks receive a higher ranking than unregistered marks; (iii) trademarks registered in Africa receive a higher ranking than those registered on other

[34] Trademark Clearinghouse homepage available at <http://www.trademark-clearinghouse.com/> accessed 28 November 2017.

[35] Clearinghouse, *Trademark Clearinghouse Guidelines* 2 (November 2013) <http://www.trademarkclearinghouse.com/sites/default/files/files/downloads/TMCH%20guidelines%20v1.0%20_1.pdf.> accessed 28 November 2017.

[36] Clearinghouse, '*What is the Trademark Clearinghouse*' <http://www.trademark-clearinghouse.com/content/what-trademark-clearinghouse> accessed 28 November 2017.

[37] Ibid 2.

[38] Ibid 1. See also ICANN, 'Trademark Clearinghouse Independent Review' February 23 2017 https://newgtlds.icann.org/en/reviews/tmch accessed 28 November 2017.

[39] ICANN, 'New gTLD Domains: Information for Rights Holders' January 2013 <https://newgtlds.icann.org/en/about/program/materials> accessed 28 November 2017.

[40] ICANN, 'Understanding the Uniform Rapid Suspension System' <https://newgtlds.icann.org/en/applicants/urs> accessed 28 November 2017.

[41] ICANN, 'URS Resources' <https://www.icann.org/resources/pages/urs-2014-01-09-en> accessed 28 November 2017; Hurter and Pistorius, n13 1088.

[42] ICANN, 'Uniform Rapid Suspension Procedure' (1 March 2013) <https://newgtlds.icann.org/en/applicants/urs> accessed 28 November 2017.

[43] ICANN 'Understanding Post-Delegation Dispute Resolution Procedures' https://newgtlds.icann.org/en/program-status/pddrp accessed 28 November 2017.

[44] Registry Africa, 'Rights Protection' <http://registry.africa/support/rights-protection/> accessed 28 November 2017.

[45] Please note that the validation process of a MVS application is done by a panel of trademark professionals measured against a list of stringent requirements that is not discussed here in detail.

continents; (iv) so-called contention sets will be referred to an external auction process.[46]

Because of its geographical nature and cultural sensitivity, the ZACR (in collaboration with the AUC, the 'custodian' of DotAfrica), has added yet another rights protection mechanism; the Reserve Names List (RNL).[47] The RNL is a unique initiative for African governments to reserve significant country specific and geographic names. The categories within which names may fall are listed as: (i) recognised geographic areas; (ii) religious, cultural and linguistic names; (iii) cultural or historic significant names; (iv) economic and/or public interest names; (v) offensive names.[48] The AUC is also in the process of making provision for a dispute resolution procedure in order to facilitate a possible dispute resolution mechanism regarding the RNL.[49]

4. DISPUTE RESOLUTION WITHIN THE .ZA DOMAIN

South Africa has enacted its own domain name dispute resolution regulations as early as 2006.[50] The South African Electronic Communications and Transaction Act[51] provided in S 69 for the promulgation of regulations 'for an alternative mechanism for the resolution of disputes in respect of the .za domain name space' and further that these regulations should take heed of existing international instruments. In keeping with the mandate, the regulations were mainly reflective of the international standard setting UDRP with certain carefully considered variations. These variations were similar to those of the Nominet Dispute Resolution Service (URS), the domain name dispute resolution mechanism for the .UK domain,[52] that endeavoured to reflect the then current, state of domain name jurisprudence.[53]

Succinctly, the most significant differences between the .ZA domain name dispute resolution regulations and the UDRP are:

(i) the definition of what constitutes 'rights' in order to be able to file a domain name dispute is much broader in terms of the .ZA regulations than that of the UDRP. The UDRP was drafted with a very limited scope of rights protection, for specific and well debated reasons.[54] Reg 1 of the .ZA regulations defines 'Rights' in order to file a domain name dispute within the .Za domain much more broadly than the UDRP (which is limited to trade – or service marks) as:

> intellectual property rights, commercial, cultural linguistic, religious and personal rights protected under South African law, but is not limited thereto.[55]

(ii) The terminology and concepts employed within the .Za regulations are not as trademark-centric as those found within the UDRP. According to Reg 3(1)(a) of the .Za regulations, a complainant needs to prove only identity or similarity and not 'confusing' similarity between the name or mark and the domain name which is required in the context of the UDRP.[56] As to the indications that a domain name may be indicative of an abusive registration, Reg 4(1)(b) of the .za Regulations again omits the term 'confusion'[57] and reads in Reg 4(1)(b):

> circumstances indicating that the registrant is using, or has registered the domain name in a way that *leads* people or businesses to believe that the domain name is registered to, operated or authorised by, or otherwise connected with the complainant.[58]

The innovative but yet illusive concept of an 'offensive registration' is introduced in the .Za regulations as a basis of submitting a complaint. Under Reg 1 of the .Za Regulations, an 'offensive registration is defined as:

[46] ZACR, 'Rights Protection Mechanisms DotAfrica' <https://markvalidation.co.za/com> accessed 28 November 2017.

[47] Africa in One Space, 'Government Reserved list Name Policy' <http://www.africainonespace.org/rnl_policy.php> accessed 28 November 2017.

[48] Ibid.

[49] Personal interviews; E Hurter and M Masilela May 2017.

[50] General Notice R1166 in *GG* 29405 of November 2006.

[51] Act 25 of 2002 (ECT Act).

[52] Nominet *Dispute Resolution Service Policy* 30 September 2016 *https://s3-eu-west-1.amazonaws.com/nominet-prod/wp-content/uploads/2017/10/17150434/final-proposed-DRS-policy.pdf* accessed 28 November 2017.

[53] Eddie Hurter, 'An Evaluation of the Concept of 'Rights' as Applied in Domain Name Dsipute Resolution Adjudications in the '.ZA' Domain: Comments and Suggestions' (2015) 27 SA Merc LJ 418.

[54] WIPO *Final Report of the First WIPO Internet Domain Name Process* 30 April 1999 http://www.wipo.int/amc/en/processes/process1/report/ accessed 28 November 2017.

[55] Act 25 of 2002 (ECT Act). For a discussion on the 'Rights' definition within the .ZA domain see Eddie Hurter, n 54 .

[56] UDRP, n 33 para 4(a)(i).

[57] Ibid para 4(b).

[58] Act 25 of 2002 (ECT Act)..

> … a domain name in which the complainant cannot necessarily establish rights but the registration of which is contrary to law, contra bonos mores or is likely to give offence to any class of persons. [59]

Reg 4(2) of the .ZA regulations, which lists the factors that may serve as evidence of an 'abusive registration', describes that:

> an offensive registration may be indicated if the domain name advocates that is based on race, ethnicity, gender or religion and/or that constitutes incitement to cause harm.[60]

The South African legislature has as recently as November 2017 further refined the regulations by amongst others: (i) introducing an informal mediation procedure; (ii) adding the 'cancellation' of the disputed domain name as a possible remedy; (iii) introducing the possibility of a 'summary decision' to be made by an adjudicator if no response is received from the registrant; and (iv) introducing a 'penalty' by not accepting any further complaints from a particular complainant if within a period of two years, three disputes from the complainant were refused based on reverse domain name hijacking.[61]

The South African Institute for Intellectual Property Law (SAIIPL) is the primary domain name dispute resolution service provider for the .za domain name space and is well-respected and competent in providing the service. Close to three hundred complaints have been submitted since the promulgation of the regulations,[62] and the quality of the adjudication of disputes is mostly world-class, considering the nuanced differences between the regulations, the UDRP and DRS.

5. CONCLUSION

A concerted effort is needed in Africa in the context of rights protection within the domain name industry. Two workshops, organised and hosted by ICANN, have been held during the past few years in an effort to address rights protection within the domain name context in Africa: in Benin,[63] and Zimbabwe.[64] Most African ccTLD registries and important domain name players were represented.

There were encouraging signs in taking forward the shared realisation that Africa as a continent needed to do a lot more regarding rights protection in the domain name context. It is clear that Africa has a huge mountain to climb.

There is, however, an encouraging African proverb that reads:

If you wish to move mountains tomorrow you must begin by moving stones today[65]

Africa, as a continent, is becoming more relevant every day. Africa should not allow itself to become less relevant than our counterparts in other parts of the world in the realm of rights protection in the domain name industry. Africa as an important and relevant player within the domain name industry needs to be honest with itself: Africa as a continent is at present not on par with the global community in the context of rights protection. With effort, and over time, there is no reason, or excuse, for Africa not to take its rightful place within the domain name eco-system, including rights protection.

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[59] Act 25 of 2002 (ECT Act) Reg 1.

[60] For a more comprehensive discussion of the differences between the Regulations and the UDRP, see Eddie Hurter, 'An Evaluation of Selected Aspects of the Alternative Dispute Resolution Regulations for the Resolution of Domain Name Disputes in the .za Domain Name Space' (2007) 19 SA Merc LJ 165-186.

[61] Amendsments of the Alternative Dispute Resolution Regulations Issued in Terms of Act 25 of 2002 (ECT Act). General Notice R1246 in *GG* 41237 November 2017.

[62] SAIIPL, 'Cases and Decisions' https://domaindisputes.co.za/decisions.php?tag=6 accessed 28 November 2017.

[63] ICANN, 'First Topical Workshop: Rights Protection in the African Domain Name Industry' (May 2014) Cotonou Benin.

[64] ICANN, 'Second Topical Workshop: Emerging Issues in the Domain Name Industry in Africa' (May 2016) Harare Zimbabawe.

[65] Neeraj Kaple '40 African Quotes that Will Make Your Life Easier' 4 (27 September 2015) http://influence.techmazic.com/african-quotes-motivational/> accessed 28 November 2017.

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