



**Comments by InterContinental Hotels Group
on the
Draft Applicant Guidebook 4 (DAG4)
July 21, 2010**

InterContinental Hotels Group (IHG) strongly supports the implementation of a viable, strong and cost-effective Trademark Clearinghouse and Uniform Rapid Suspension System. Each year, IHG expends significant resources in defensive registrations, UDRP and other domain name dispute complaints and legal proceedings in a hard-fought effort to protect its trademarks and, accordingly, its customers. As technology becomes increasingly advanced and more widely available, the burden on IHG to protect its intellectual property becomes heavier and heavier. The status-quo is inefficient, costly and reactionary; it is time to reform the way intellectual property rights are enforced in the domain name system in light of the threats posed by the upcoming addition of new top-level domains.

While IHG applauds the progress that has been made and the commitment of many in the business constituency, IRT and GNSO for the establishment of a strong TMC and URS, significant issues of concern remain.

TMC

A common tactic employed by cyber-squatters and phishers is to purchase domain names that are "confusingly similar" to registered trademarks. As a result, Internet users attempting to identify a particular brand online may find themselves directed to an alternative website (including misleading pay-for-click sites, unauthorized competitors engaging in unfair practices, etc). As it is, web users face a high risk of fraud and abuse that is costly to both consumers and businesses. Because of this, it is imperative the TMC broaden its detection of domain names to include those which are "confusingly similar", **NOT** just identical. If the TMC is limited in its detection, it will be considerably less effective in mitigating this expanding problem.

In addition to detection, the TMC should not be biased in a selective recognition of valid trademarks. If the TMC adopts exclusionary standards of trademark validity, many trademark holders will remain unjustly exposed to fraud and abuse. It is not the role of the TMC to judge the quality of international trademark regulations, but to enforce them.

URS

While the UDRP is invaluable in combating trademark abuse, its proceedings demand an immense amount of time and resources. The URS presents a prime opportunity to improve the existing worthwhile arbitration procedure in instances of clear-cut infringement. The purpose of the URS is not to replace the UDRP but to relieve the system, prevent obvious abuse and promote efficiency by handling only the most clear-cut cases.

For this reason, it is imperative the URS not be crippled by unnecessary, burdensome regulations, high expenses and limited remedies. In instances in which a registrant fails to present a defense (default), an immediate judgment should be rendered in favor of the complainant. A panel should NOT be appointed to debate hypothetical points of defense. What is more, the burden of proof should not fall on the trademark holder. The complainant's case should be considered legitimate by virtue of evidence of a valid trademark and, in such instances, the registrant should be responsible for proving its "good faith".

In the case of any judgment (default or otherwise), the appeals process should be tailored in the same nature as the initial proceedings- efficient and succinct. Allowing a defendant to appeal the results of a proceeding up to two years later is counter-intuitive and counter-productive. Further, allowing a registrant to re-register a domain name after an adverse URS decision exacerbates the "revolving door" problem. As a result of repeated fraudulent registrations, IHG and others are forced to maintain thousands of domain names for defensive purposes, a costly undertaking. This defies the purpose of the trademark proceedings and is unacceptable.

PDDRP

The Post-Delegation Dispute Resolution Procedure fails to adequately address the issue of infringement. As stated in the text, "The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry". Further, if the registry operator cannot be

shown to have provided "direct or indirect encouragement" to an offending registrant, the operator cannot be held liable. Registry operators have an inherent responsibility to ethically manage their domains; as it stands, the PDDRP relieves them of liability for failing to meet this responsibility. If registry operators fail to monitor their registration process, whether due to financial interests or simple negligence, they should be held accountable.

IHG is firmly committed to establishing a safer, more secure environment for consumers and trademark holders alike. The online community will benefit tremendously from a smartly designed TMC and URS, and we look forward to seeing them through.

Respectfully Submitted,

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