

January 12, 2007

Via e-mail: whois-services-comments@icann.org

Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way
Suite 330
Marina del Rey, California 90292-6601

Re: Comments from Hotel Consumer Protection Coalition on ICANN's Preliminary Task Force Report on Whois Services

To Whom It May Concern:

I am writing on behalf, and in my capacity as chair, of the Hotel Consumer Protection Coalition ("HCPC"), an organization described in more detail below whose current members are Global Hyatt Corporation; InterContinental Hotels Group; Marriott International, Inc.; and Starwood Hotels & Resorts Worldwide, Inc. Collectively, our companies include more than 6,600 hotels in more than 100 countries.

I am writing with regard to the Preliminary Task Force Report on Whois Services and ICANN's request for public comments on it (<http://www.icann.org/announcements/announcement-24nov06.htm>). In the report, the task force stated that it has been unable to reach agreement on (1) the purpose of the Whois contacts and (2) whether different data should be published in Whois. The task force invited public comments on various proposals relating to this issue.

Background of the Hotel Consumer Protection Coalition

The HCPC addresses industry-wide problems arising from e-commerce practices that harm or mislead consumers, and in turn damage the reputation of coalition member companies, their brands and the hospitality industry as a whole. Coalition activities focus on the research and resolution of unfair, false, misleading or deceptive online practices and marketing-related activities. The coalition also intends to educate consumers on such practices and how to protect themselves and to work with government authorities and other appropriate entities to reduce harmful e-commerce-related activities.

To protect our hotel consumers, members of the HCPC use Whois repeatedly on a daily basis to identify domain name registrants and website operators that are creating websites using our trademarks to mislead consumers. Given the large number of hotel consumers we serve and the well-known brands represented by members of the HCPC – including, among others, Holiday Inn, InterContinental, Crowne Plaza, Marriott, Ritz-Carlton, Sheraton, Westin, W Hotels, Hyatt and AmeriSuites – our hotel consumers and our companies are prime targets for cybersquatters, phishers, spammers and other bad actors on the Internet.

How Members of the Hotel Consumer Protection Coalition Use Whois Data

To help shield our hotel consumers from illegal activities on the Internet, all members of the HCPC have filed complaints under ICANN's Uniform Domain Name Dispute Resolution Policy ("UDRP") to obtain the transfer of domain names that were being used by others in bad faith. For example:

- To protect hotel consumers from viewing a pornographic website using its famous Holiday Inn trademark in a domain name, Six Continents Hotels, Inc. ("SCH") (an InterContinental Hotels Group company), last year obtained the transfer of the domain name <holidayinnmanassas.com>. *Six Continents Hotels, Inc. v. CredoNIC.com / Domain For Sale*, WIPO Case No. D2005-0755. SCH has also obtained the transfer of numerous other domain names through the UDRP process and in other ccTLDs.
- To protect hotel consumers who use its popular frequent traveler program known as Marriott Rewards, Marriott International, Inc., obtained the transfer of the domain name <marriottreward.com>. *Marriott International, Inc. v. Thomas, Burstein and Miller*, WIPO Case No. D2000-0610.
- To protect hotel consumers from being misled by a website that used its well-known Hyatt Regency trademark in the domain name and redirected visitors to hotel and travel services in competition with its hotel and travel services, Hyatt Corporation obtained the transfer of the domain name <hyattregency.com>. *Hyatt Corporation v. NA*, WIPO Case No. D2005-0419.
- To protect hotel consumers from a single registrant who used multiple domain names that all contained the names of its hotel brands, Starwood Hotels & Resorts Worldwide, Inc., obtained the transfer of 28 domain names that were used in connection with competing services. *Starwood Hotels & Resorts Worldwide, Inc. v. Domaincar*, WIPO Case No. D2006-0136.

In addition to using Whois to identify the domain name registrants in the UDRP cases listed above, members of the HCPC also regularly use Whois to contact domain name registrants and successfully negotiate the voluntary transfer of problematic domain names without incurring the time and expense of the UDRP process. Furthermore, members of the HCPC also regularly use Whois for other legal purposes, such as to identify copyright infringers and others who are violating our companies' legal rights.

The Importance of Broad Access to Reliable Whois Data

Without the benefit of unrestricted access to a database of information about, and contact information for, domain name registrants, members of the HCPC would find it difficult, if not impossible, to protect the public and enforce our rights on the Internet as we currently do. Any

effort to reduce the amount of information in the Whois database or to limit our access to it would undermine our ability to assert our legal rights; consequently, our consumers would be harmed by, for example, being led to pornographic and inappropriate websites. Furthermore, our consumers might be forced to bear the burden of the increased financial expenses we would have to incur to identify website operators through court proceedings and private investigations if the Whois database were modified.

At the very least, we believe that accessibility to the existing types of information in the Whois database should remain as-is. We also have serious doubts about the existing accuracy and reliability of this database and its abuse by domain name registrants. For example, in one UDRP case filed (and won) by HCPC member InterContinental Hotels Group's Six Continents Hotels, Inc., the registrant was listed in Whois as, literally, "Sdf fdgg" – an obvious random typing of characters on a computer keyboard. (The domain name was being used in connection with a website that automatically redirected users to a site that contained pornographic images of partially clothed people urinating, and links to other pages, including those labeled "Rape Site" and "Incest & Mature Site.") *Six Continents Hotels, Inc. v. Sdf fdgg*, WIPO Case No. D2004-0384.

Indeed, according to the Arbitration and Mediation Center at the World Intellectual Property Organization (WIPO) – the most active provider of services under the UDRP – a recent sample of WIPO UDRP cases shows that up to 10 percent of Whois e-mail addresses used in cases appear not to function and up to 15% of Whois postal mailing addresses used in cases appear not to function.

In light of the above, for the protection of our consumers, the public and our companies – as well as for the overall integrity of the Internet – the Hotel Consumer Protection Coalition strongly encourages ICANN to ensure the continued unrestricted access to the Whois database and to take all steps practical to improve the accuracy and reliability of Whois data.

Benefits of the Special Circumstances Proposal

With respect to the proposals set forth in the Preliminary Task Force Report on Whois Services, the HCPC finds acceptable the "Special Circumstances" proposal, which was introduced by the Intellectual Property Constituency to the task force on September 25, 2006. This proposal calls for a procedure to accommodate the needs of certain individual non-commercial registrants for special treatment with regard to restricting public access to some of their contact data. It draws upon the system that has been in place for some time in the Dutch country code top-level domain, .nl, with adaptations necessary for translating that system to the gTLD environment. Specifically, the "special circumstances" option would be open only to individual registrants who are using or will use a domain name for non-commercial purposes, and who can demonstrate that they have a reasonable basis for concern that public access to specific data about themselves (e.g., name, address, e-mail address, telephone number) that would otherwise be publicly displayed in Whois would jeopardize a concrete and real interest in their personal safety or security that cannot be protected other than by suppressing that public access.

Under the “special circumstances” proposal, nearly all Whois data would remain publicly available – which is essential for members of the HCPC to protect hotel consumers on the Internet – while providing a way to meet the privacy concerns of individual, non-commercial registrants who can meet criteria showing their need to hide Whois data.

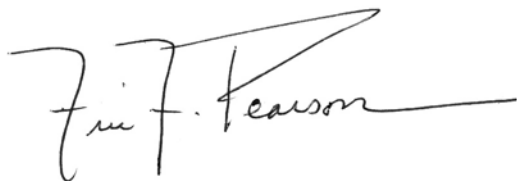
By contrast, the “Operational Point of Contact” proposal set forth in the Preliminary Task Force Report on Whois Services simply inserts another layer of delay and frustration in the effort to find out who is responsible for a domain name. In effect, nearly all the contact information for nearly every registrant would be hidden, without any clear rules on how and when the information could be obtained – thereby creating even more problems for members of the HCPC and hotel consumers on the Internet.

In sum, the HCPC believes that the “Special Circumstances” proposal provides a way to meet the privacy concerns of individual, non-commercial registrants who can meet criteria showing their need to hide Whois data. The “Operational Point of Contact” proposal, on the other hand, would suppress public access to the data of every registrant, including corporations, businesses, and others who are holding themselves out to the public via their websites; this goes far beyond what any legitimate privacy concern would require.

We greatly appreciate your consideration of our views, and we would welcome the opportunity to discuss this issue further with you in any appropriate forum.

Sincerely,

FOR THE HOTEL CONSUMER PROTECTION COALITION



Eric Pearson
Senior Vice President, Global Distribution Marketing, InterContinental Hotels Group
Chair, Hotel Consumer Protection Coalition