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mfs

Re. New gTLDs – DAG 4

We refer to previous letters sent to you by Lego Juris A/S and co-signed by us regarding the Draft Applicant Guidebook and the IRT Report. In all the previous letters we have raised serious concerns regarding the release of the new gTLDs and unfortunately, it seems that none of our concerns have been dealt with by ICANN so far and DAG 4 makes it apparent that ICANN might not deal with the concerns of trademark owners as DAG 4 does not contain any proper rights protection mechanisms.

The Trademark Clearinghouse is NOT a rights protection mechanism but just a database. Such a database does not solve the overarching trademark issues that were intended to be addressed. Instead the Trademark Clearinghouse promotes the need for defensive registrations. It thus seems to go directly against the premises of the work on the overarching issues, namely to lessen the burden of trademark owners who do not want more defensive registrations.

DAG 4 proposes two so-called rights protections mechanisms that are, however, neither new nor sufficient. Sunrise and Trademark Claims services are in existence today. The Sunrise service exists in an identical form and the Trademark Claims service exists in a form where registrants have to declare that they do not infringe upon third party rights when registering a domain name. Neither of these mechanisms have proven sufficient to hinder or even reduce the number of domain names registered in bad faith. Furthermore, both mechanisms are pre-launch and need also to be post-launch to have any real value. Moreover, the "matching" taking place in connection with the Trademark Claims service is limited to exact matches which is clearly insufficient as most cyber-squatting is not an exact match.

DAG 4 provides for a difference as regards the trademarks which are recognized within the Trademark Claims and Sunrise services. The first service recognizes registered trademarks while the second service only recognizes trademarks that are registered in countries conducting a so-called substantive review or examination. There is no explanation for this difference which means that all CTMs and most national European trademarks are excluded from the Sunrise service.

The Uniform Rapid Suspension (URS) proposed in DAG 4 is also much weaker than the URS proposed in the IRT Report. It doesn't seem to be more rapid or cheaper than the ordinary UDRP and the domain name is only blocked for a short period of time with the possibility of perpetuating the cyber-squatting. There is no loser-pays mechanism which would be essential in a URS of any real value, or even a fee for filing a response to a complaint, and the burden of proof is on the trademark owner to prove that the registrant has no legitimate interest in the domain name. Furthermore, the URS is apparently only available to owners of trademarks registered in countries conducting a so-called substantive review or examination meaning that all CTMs and most national European trademarks are excluded from the URS.

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The proposed Globally Protected Marks List is not part of DAG 4 which is very disappointing as it would have been the rights protection mechanism that could have provided some relief for trademark owners of such marks.

ICANN still seems to ignore that cyber-squatting and all kinds of fraud on the internet is increasing in number and DAG 4 contains nothing that shows trademark owners that ICANN has taken our concerns seriously.

In our opinion, ICANN has not yet solved the overarching trademark issue. We urge ICANN to solve the trademark issue before any new gTLDs are released.

Yours sincerely,
Vestas Wind Systems A/S

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