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### **Comments on DAG 4 from Com Laude**

Com Laude is an ICANN accredited registrar that works exclusively with brand owners and the attorneys that represent them. We have co-ordinated literally tens of thousands of applications under the Rights Protection Measures offered by gTLD and ccTLD operators on behalf of these clients since ICANN was created.

We do not believe that the package of measures to protect IP in the New gTLD process as proposed in Draft Applicant Guidebook vs4 is adequate. As explained above our perspective is not that of a bystander with an academic interest in this area but of a company that has actively co-ordinated applications across the last decade in all pre-launch Rights Protection schemes. It is this experience that leads us to believe that ICANN's efforts to make the measures outlined by the Implementation Recommendation Team (IRT) in 2009 acceptable to the broader ICANN community have managed to reduce their scope and effectiveness to the point where they are no longer fit for purpose.

In particular we are concerned that:

### **The URS**

The URS is no longer the rapid tool to combat "slam dunk" cases of cybersquatting that it was designed to be. eUDRP decisions have been delivered in 35 days! Table One below sets compares the original URS as proposed by the IRT to the DAG4 version. (This table is also included in the comments by MARQUES & ECTA).

	<b>Original under IRT</b>	<b>In Dag 4</b>	<b>Issues with Dag 4 Version</b>
<b>Format</b>	Pro-forma complaint with copy of whois and webpage	5,000 word limit on complaint	<i>Lengthy: who will afford to be a panellist? Will ICANN subsidise the</i>

			<i>URS?</i>
<b>Cost</b>	From \$200	From \$300	<i>More expensive</i>
<b>Timing</b>	Site down and domain locked in 21 days	Up to 47 days with possibility of De Novo review for two years	<i>An eUDRP can take 35 days – 12 days quicker. URS is no longer rapid</i>
<b>Panelists</b>	Expert panelists experienced in IP; case allocation left to panel provider	Legal background; must be rotated	<i>May have no experience of IP or trade marks; rotation may lead to shortage of examiners in some jurisdictions</i>
<b>Standard for decisions</b>	Based on a preponderance of the evidence, i.e., is it more likely than not that the required element has been proven?	Based on clear and convincing evidence that there is no genuine contestable issue	<i>Where there is any open question of fact, defendant wins (“My dog is named KODAK”)</i>
<b>Default decision</b>	Name locked and repointed to website with standard wording	Dismissal of case if examiner thinks a defence would have been possible	<i>Some type of defence can always be imagined.</i>
<b>Appeal</b>	Reconsideration by Ombudsman or appeal to relevant court	Defaulting respondent can apply for de novo panel review for up to two years	<i>Uncertainty for brand owner during two years. If domain expires and is bought by third party in this year, could new owner be enjoined in a dispute?</i>

We hope that ICANN will revert to the URS as proposed by the IRT.

### The Trademark Clearinghouse

We believe that the Trademark Clearinghouse can assist IP owners by taking cost out of the new gTLD process. However, we are concerned that the absence of a definition of “Substantive Review” means that mark owners in some parts of the world, including the European Union, may be discriminated against. We think that any Trademark Clearinghouse must be non-discriminatory. Furthermore, the operators of the Trademark Clearinghouse must not be the arbiter of the validity of trade marks. We also think that during discussions with potential operators, best practice as used in recent

RPM should be explored. For example, the scope of the Clearinghouse should be widened to include device marks and plurals.

**PDDRP**

We are concerned that the scope of the Post-Delegation Dispute Resolution Procedure (PDDRP) – as limited to affirmative conduct – undermines the intended effect of encouraging responsible TLD management and DNS credibility.

**Conclusion**

We value the opportunity of presenting these comments to ICANN and reiterate that we believe the answer is to return to the recommendations of the IRT which were designed to be fair and practical.

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