



March 24, 2014

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Via e-mail: fadi.chehade@icann.org and steve.crocker@icann.org

Fadi Chehadé
CEO, ICANN

and

Dr. Stephen D. Crocker
Board Chair, ICANN
12025 Waterfront Drive
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Los Angeles, California 90094-2536

RE: Community objections filed by Hotel Consumer Protection Coalition

Dear Mr. Chehadé and Dr. Crocker:

I am writing in my capacity as chair of the Hotel Consumer Protection Coalition (HCPC), whose members include the world's largest hotel companies, namely, Accor; Choice Hotels; Hilton Worldwide; Hyatt; InterContinental Hotels Group (IHG); Marriott; Starwood Hotels and Resorts; and Wyndham Hotel Group. HCPC was founded in 2006 to address problems arising from unfair, false, misleading, or deceptive practices that harm consumers and, in turn, HCPC's members and their respective brands. Our mission statement provides:

The Hotel Consumer Protection Coalition 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 educates consumers on such practices and how to protect themselves and works with government authorities and other appropriate entities to reduce harmful e-commerce-related activities.

On March 12, 2013, HCPC filed four community objections at the International Chamber of Commerce (ICC) against the following gTLD applications:



Six Continents Hotels, Inc.
A Member of the InterContinental Hotels Group

ICANN App. ID No.	Applicant	Proposed gTLD	ICC Case No.
1-1249-36568	Despegar Online SRL	.hotel	EXP/386/ICANN/3
1-1016-75482	Booking.com B.V.	.hotels	EXP/385/ICANN/2
1-1249-1940	Despegar Online SRL	.hoteles (Spanish for "hotels")	EXP/387/ICANN/4
1-1249-87712	Despegar Online SRL	.hoteis (Portuguese for "hotels")	EXP/388/ICANN/5

Our objections were supported by the American Hotel & Lodging Association (AH&LA), the only national association representing all sectors and stakeholders in the U.S. lodging industry; and HOTREC, the umbrella association of the hospitality sector in Europe.

As stated in our objections, the above-referenced applications – each of which was filed as a “closed generic” gTLD – would not provide appropriate protections for the hotel community. Specifically, the applications would create registries that would make the respective gTLDs unavailable for the community it should serve, to the community’s detriment, preventing HCPC and its members from conducting business in the one gTLD that is most directly related and beneficial to its business, that is, the hotel community.

Unfortunately, and despite the detailed factual and legal arguments set forth in our objections, ICC informed us on November 19, 2013, that the appointed expert had dismissed our objection in Case No. EXP/385/ICANN/2 (.hotels). The expert agreed that HCPC had standing to object and that we satisfied three of the four tests for determining whether there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD may be targeted. Specifically, the expert found that the hotel community is a “clearly delineated community” and that there is a “strong association” between the hotel community and the gTLD “.hotels”; that the hotel community’s opposition to the application was “substantial”; and that there is a “strong association” between the hotel community and the gTLD “.hotels”. However, the expert found that HCPC failed to prove that the application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the hotel community.

In her decision, the expert wrote:

[S]ince the Objector filed its Objection, Specification 11 of the draft New gTLD Registry Agreement has been revised. Specifically, paragraphs 3(c) and 3(d) of that Specification now provide in pertinent part as follows:

(c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.

(d) Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” [. . .]. “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those others.

Draft New gTLD Registry Agreement dated 2 July 2013. **These provisions cast considerable doubt on whether the Applicant would be able to operate “.HOTELS” as a closed gTLD, as it has proposed. It is accordingly far from certain that the Applicant would be able to exclude members of the hotel community from registering domain names in “.HOTELS” and cause them the alleged detriment the Objector foresees.**

(Emphasis added.)

As a result of the above decision in ICC Case No. EXP/385/ICANN/2, and in light of the fact that the same expert had been appointed to the HCPC’s other three objections and that those objections raised similar arguments with respect to a “likelihood of material detriment,” HCPC withdrew the other three objections on January 22, 2014, as it appeared inevitable that a decision would dismiss the remaining objections as well. By withdrawing its objections, HCPC was able to receive from ICC a partial refund of the relevant fees. The withdrawal of these objections was therefore made purely as a practical and financial matter and did not reflect any elimination or lessening of the concerns that HCPC had expressed in its objections.

In light of the above, and given the absence of any appeals process for objections in the new gTLD program, I am writing to express HCPC’s ongoing concerns and would greatly appreciate your perspective. In particular:

- HCPC found the objection process to be unnecessarily and excessively expensive. Indeed, unlike some of the new gTLD objection proceedings that had fixed fees, the community objection process was based on expensive hourly fees set by the experts, which fees were unable to be ascertained prior to the filing of an objection.
- The community objection process was moving forward even while ICANN’s work on a key issue in the HCPC’s objections – that is, the impact of “closed generic” gTLDs – was evolving. While the HCPC’s objections were filed on **March 12, 2013**, all of the following actions occurred thereafter:
 - ICANN’s New gTLD Program Committee (NGPC) issued a resolution on **June 25, 2013** “direct[ing] [ICANN] staff to defer moving forward with the contracting process for applicants seeking to impose exclusive registry access for ‘generic strings’ to a single person or entity and/or that person’s or entity’s Affiliates (as defined in Section 2.9(c) of the Registry Agreement), pending a dialogue with the GAC [Governmental Advisory Committee]”

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-25jun13-en.htm>).

- As stated by the expert in ICC Case No. EXP/385/ICANN/2, the draft New gTLD Registry Agreement was published on **July 2, 2013**, and addressed the issue of “closed generic” gTLDs.
- The NGPC on **October 1, 2013**, said that it had “direct[ed] staff to prepare an analysis and proposal for how to implement the Category 2 Safeguard Advice for applicants who do intend to impose exclusive registry access for generic strings” (<http://www.icann.org/en/news/announcements/announcement-2-01oct13-en.htm>).
- ICANN on **October 9, 2013**, published applicants’ responses to questions regarding the operation of an “exclusive access registry” (<http://newgtlds.icann.org/en/applicants/gac-advice/cat2-safeguards>).

It is HCPC’s understanding that this issue remains unresolved; accordingly, all relevant objections should have been stayed indefinitely – something that HCPC sought and failed to obtain from ICC.

- The decisions in community objection proceedings have been inconsistent. For example, in a case involving arguments similar to those raised by HCPC, a different expert upheld an objection against an application for the string .polo. *United States Polo Association, Inc. v. Ralph Lauren Corporation*, ICC Case No. EXP/452/ICANN/69. In finding a likelihood of material detriment, the panel in that case wrote:

As the registration of the “.polo” domain names would only be available to [Applicant] and its affiliate entities and as [Applicant] would be allowed unlimited automatic renewals of “.polo”, [Applicant] would have the ability to own and operate the “.polo” domain to the exclusion of all others, including members of the polo sports community. This barrier to entry cannot be counterbalanced by the Applicant’s statement that it will not allow any secondary domains in its gTLD to infringe trademark rights of others. In fact, this statement does not protect the interests of the polo sports community, whose members would in any event see the obtainability of second-level domains being predicated upon [Applicant’s] consent. On the contrary, [Applicant] fails to provide effective security protection for internet users wishing to access the webpages of members of the polo sports community. As stated by the Objector, the Application for the registration of the “.polo” gTLD would interfere with the polo sports community’s ability to promote polo and attract polo participants and fans.

- The absence of an appeals process is a significant failure to ensure fairness in the new gTLD program. Perplexingly, one of the other new dispute procedures created by ICANN, the Uniform Rapid Suspension System (URS), includes an appeals mechanism even though the filing fee for a URS complaint is only \$375 at the National Arbitration

Forum (as opposed to the tens of thousands of dollars incurred by HCPC for each of its community objections) and the consequences are much less (that is, a URS complaint may relate to only a single second-level domain whereas the community objection proceedings relate to an entirely new gTLD in which thousands or perhaps millions of second-level domains eventually may be registered).

Obviously, the community objection process was expensive, unfair and arbitrary. Not only did it fail to serve HCPC's needs, but it also failed the needs of the larger ICANN community. While HCPC assumes that it must accept this outcome, **I ask that you address our concerns and, specifically, that ICANN take all necessary steps to ensure that none of the applications to which HCPC objected will be operated as a "closed generic" or "exclusive access registry" if and when ICANN should enter into a registry agreement with the respective applicants.** This assurance is necessary to render the decision in ICC Case No. EXP/385/ICANN/2 legitimate and is also consistent with the responses provided to ICANN by applicants Booking.com B.V. and Despegar Online SRL that they would not operate as an exclusive access registry.

I look forward to your response to our concerns as well as the assurance that HCPC has requested.



Michael Menis
SVP, Digital & Voice Web Channels

cc: Chris LaHatte, ICANN ombudsman (via e-mail: chris.lahatte@icann.org)