

Petillion

Exhibit 1

Our ref FPE/mne/.hotel

Flip Petillion
Contact information Redacted

Contact information Redacted

14 June 2017

By E-mail : reconsideration@icann.org

Members of the ICANN Board

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

USA

Dear Members of the ICANN Board of Directors,

Re: .hotel CPE

I refer to your Community Priority Evaluation Process Review Update of 3 June 2017. I understand from your update that you have selected FTI Consulting to perform the CPE review, and that FTI Consulting expects to complete the review within a matter of weeks. I appreciate the fact that you provided me with the update, and I understand that you are committed to keep the applicants concerned further informed.

In this respect, my clients who applied for .hotel request full transparency, and they would like to receive further information, which you may be able to provide already. Specifically, my clients wish to know, or be provided with, the following:

- 1) The way in which FTI Consulting has been selected to perform the review;
- 2) The names and *curricula vitae* of the FTI individuals involved in the review;
- 3) The documents which have been or will be shared with the reviewers;
- 4) A list of documents which have been, or will be, requested by the reviewers;
- 5) The criteria and standards which will be used to perform the review;
- 6) Any other means which ICANN and/or the reviewers are using, or will use, to ensure a consistent and predictable outcome and scoring.

My clients also expect that FTI Consulting has been mandated by ICANN to apply ICANN's obligations, commitments and core values, and that ICANN takes responsibility for ensuring compliance with these obligations, commitments and core values. I trust that you will agree that

my clients are entitled to ICANN and its contractors complying with these fundamental rules, and I am looking forward to you providing further transparency by addressing my clients' questions.

I thank you for your consideration of this matter.

Yours sincerely,


Flip Petillion

Petillion

Exhibit 2

Our ref FPE/mne/.hotel

Flip Petillion
Contact information Redacted

27 July 2017

By E-mail : reconsideration@icann.org

Members of the ICANN Board

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536, USA

Dear Members of the ICANN Board of Directors,

Re: Reconsideration Request 16-11 (.hotel CPE)

I refer to my letter of 14 June 2017 to which your organization responded on 20 June 2017 that it forwarded my request to ICANN's DIDP team. On 14 July 2017, ICANN informed me via the DIDP process that (1) part of the request was not appropriate for the DIDP process, (2) the CPE review work is still ongoing, (3) correspondence between the ICANN organization and the CPE provider is not appropriate for disclosure for the same reasons identified in ICANN's response to DIDP Request 20140804-1, and (4) ICANN determined that there are no circumstances for which the public interest in disclosing the information at this time outweighs the harm that may be caused by the requested disclosure.

1. You will appreciate that my letter of 14 June 2017 was not directed to ICANN in the framework of a DIDP process; it rather was a request to the ICANN Board in connection with the pending Reconsideration Request 16-11, in which Requesters asked for full transparency in the event that the challenged decision is not immediately reversed. While there may be internal organizational reasons to forward the request to your DIDP team, such organizational decision should not limit my clients' right to full transparency. In this respect, it is somewhat surprising to read that part of the request was considered not appropriate for the DIDP process, as it was ICANN's – and not my clients' – decision to forward the request to the DIDP team. I expect that the ICANN Board will deal separately with the part of the request that was considered inappropriate for the DIDP process.

2. The DIDP response refers to ICANN and its Board's communications of 26 April 2017 and of 2 June 2017 (received on 3 June 2017), and it mentions that the CPE review is still ongoing. Those communications and circumstances were already known to my clients. As a matter of fact, my letter of 14 June 2017 made explicit mention of the communication of 2 June 2017 and I asked to be kept further informed as the CPE review work progresses. The DIDP response seems to have missed the point, probably testimony of the fact that the DIDP process was indeed not best suited, or insufficient, for responding to my letter to the ICANN Board. I trust that the ICANN Board will remain committed to keep the applicants concerned further informed, and that you will address the outstanding issues of my letter of 14 June 2017.

3. In the meantime, my clients remain without information as to the selection process for the CPE process reviewer (FTI Consulting), and the names and curricula vitae of the FTI individuals involved in the review. I understand that FTI has signed an engagement letter on 13 January 2017. To my knowledge, this document has not yet been disclosed, not even in redacted form. My clients further have no information as to the criteria and standards that will be, or are being, used to perform the CPE review. I understand from the DIDP response that interviews have taken place until early March 2017. However, I am unaware of the content of these interviews being disclosed. Finally, the DIDP response denied the disclosure of correspondence between the ICANN organization and the CPE provider for the same reasons identified in ICANN's response to DIDP Request 20140804-1.

My clients respectfully disagree, and request the disclosure of (1) this correspondence, (2) the content of the interviews mentioned in the DIDP response, (3) FTI's engagement letter and (4) the information requested in my letter of 14 June 2017.

ICANN cannot rely on its response to DIDP Request 20140804-1 to deny the disclosure of correspondence between the ICANN organization and the CPE provider. With respect to the reasons given in the response to DIDP Request 20140804-1, the IRP Panel declared:

"Simply to say that 'to the extent' ICANN has documents which fall within the categories requested [...] such documents are not disclosable, for a variety of reasons, without making any attempt to link categories of document to particular Conditions for Nondisclosure, gives the impression of a process not properly conducted.

*Such an approach does not provide the confidence that those requesting disclosure of documents are entitled to have, namely that a collection of potentially responsive documents has taken place and a review has actually been conducted by the ICANN staff as to whether any of the documents identified as responsive to the request are subject to any of the Conditions of Nondisclosure, as is required by ICANN's published policy for responding to DIDP requests. If the ICANN staff had made this clear in the response it could well have provided the Claimants with the reassurance that both procedure and policy had been followed and applied."*¹

¹ ICDR Case No. 01-15-0002-8061, *Despegar Online SRL et al. v. ICANN*, Final Declaration, paras. 100-101.

In relying on the reasoning of the response to DIDP Request 20140804-1 ICANN does not provide the confidence that a review has actually been conducted. The point is all the stronger as, after its response to DIDP Request 20140804-1, ICANN has disclosed correspondence between the ICANN organization and the CPE provider regarding some evaluations relating to other applicants. The fact that, given these circumstances, ICANN now simply refers to its response to DIDP Request 20140804-1 clearly shows that the process was not properly conducted.

However, my clients trust that the ICANN Board will correct those errors.

4. In doing so, my clients expect that you will agree with them that the requested disclosure is not likely to cause any harm that would outweigh the public interest in having full transparency on the CPE review process. It is precisely the lack of transparency which has caused harm to date. In any event, ICANN cannot take the contrary position without performing a balancing exercise showing concrete and serious harm that would be caused by the requested disclosure.

This letter is sent without prejudice and reserving all rights.

Yours sincerely,


Flip Petillion