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April 30, 2015

VIA E-MAIL

Prof. Christopher Gibson
Mr. Geert Glas
Prof. Siegfried H. Elsing

Re: Response to Vistaprint's 30 April 2015 Letter to the IRP Panel; ICDR Case No. 01-14-0000-6505

Dear Members of the Vistaprint IRP Panel:

On 30 April 2015, the day before ICANN's deadline to file its response to Vistaprint's second supplemental submission in support of its request for an independent review process ("IRP"), Vistaprint submitted a letter (the "30 April Letter") seeking to delay and disrupt these proceedings even further. Vistaprint filed its request for IRP on 11 June 2014, nearly a full year ago. Nothing in the 30 April Letter forms the basis for deviating from the schedule already ordered by this Panel, most recently in its Procedural Order No. 2. The 30 April Letter proposes two reasons why Vistaprint contends these proceedings should be delayed, neither of which withstand scrutiny.

First, Vistaprint contends that further delay and a third supplemental round of briefing is necessary because ICANN recently posted the Third Declaration of IRP Procedure issued by the IRP Panel in *DCA Trust v. ICANN* ("DCA Procedural Declaration"). The DCA Procedural Declaration merely relates to the reconsideration of prior procedural declarations in that matter stating that witnesses must appear for hearings related to that IRP.[1] Vistaprint has never raised the issue of whether and to what extent live witness testimony is necessary in the instant IRP, and ICANN's Bylaws specifically prohibit any such testimony. As such, the DCA Procedural Declaration is wholly irrelevant to this matter.

Second, and even more puzzling, Vistaprint argues that delay is warranted here to permit Vistaprint to comment on the ICANN Board's decision to ***accept*** the final declaration recently

[1] *See* Third Panel Declaration of IRP Procedure, 20 April 2015, *DCA Trust v. ICANN*, *available at* https://www.icann.org/en/system/files/files/irp-procedure-declaration-20apr15-en.pdf.

issued by the IRP Panel in *Booking.com v. ICANN*.[2] As part of the resolution accepting the *Booking.com* IRP declaration, the Board directed ICANN's President and CEO to "ensure that the ongoing reviews of the New gTLD Program take into consideration the . . . issues raised by the Panel in the Final Declaration regarding transparency and fairness[.]"[3] It further noted that "[t]he Board appreciates the IRP Panel comments with respect to ways in which the New gTLD Program processes might improve in future rounds. ICANN will take the lessons learned from this IRP and apply it towards its ongoing assessments of the ways in which it can improve upon its commitments to accountability and transparency." Vistaprint makes a conclusory assertion that "the decision of the ICANN Board following the Booking.com IRP Declaration is relevant in view of the issues being debated in the current Vistaprint case," but Vistaprint fails to link any issue relevant to this IRP with the Board's acceptance of the *Booking.com* Final Declaration.[4] Moreover, it is hard to see how Vistaprint could complain about the ICANN Board's action with respect to the *Booking.com* Final Declaration, given that the Board accepted it and indicated that it will take the concerns raised therein seriously.

As Vistaprint is well aware, the .WEB/.WEBS contention set has been placed "on hold," and any further delay in the conclusion of this IRP proceeding will cause further detriment to other applicants for those strings. ICANN respectfully requests that the Panel decline to order additional briefing, decline to suspend or stay this action and, instead, proceed with the schedule already set by this Panel. Just as a court does not stay each of its cases every time another court issues a decision, the fact that other IRP Panels have issued declarations over the last few weeks does not comprise a basis for any further delay to these proceedings.

Sincerely,

Eric P. Enson

cc: Counsel for Vistaprint; ICDR

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[2] *See* 26 April 2015 Resolution 2012.04.26.13, *available at* https://www.icann.org/resources/board-material/resolutions-2015-04-26-en#2.b

[3] *Id.*

[4] 30 April Letter at 1-2.