

December 27, 2000

Mr. Francis Gurry
WIPO Internet Domain Name Process
World Intellectual Property Organization,
34 chemin des Colombettes, P.O. Box 18, 1211
Geneva 20, Switzerland

Dear Mr. Gurry:

Verizon Communications is pleased to provide its comments to the World Intellectual Property Organization (WIPO) on the recently posted Terms of Reference, Procedures and Timetable for the Second WIPO Internet Domain Name Process (RFC-2). We incorporate by reference the comments we provided in response to RFC-1.

Verizon supports WIPO's role in developing and running the existing uniform dispute resolution system. The UDRP was intended to be narrow in scope to permit dispute resolution providers to apply a specific set of criteria for determining cases of abusive registration involving registered trademarks. Currently, dispute resolution providers can apply objective standards and avoid interpreting differing national laws and legal standards. In contrast, many of the issues raised in RFC-2 would greatly expand the role of the dispute resolution provider beyond deciding cases of abusive registration of registered trademarks. The UDRP could cover disputes in the murky areas of personal names, trade names, geographic indications and other unregistered common law indications. As indicated in these brief comments, Verizon does not believe that it would be prudent at this time to expand to scope of the UDRP to matters beyond those involving the abusive registration of a registered trademark.

As an initial matter, any decision to expand the scope of the UDRP should be considered in the context of ICANN's recent decision to establish seven new gTLDs, including designations intended for personal names. The new TLDs, including the chartered spaces, will have different registration criteria and degrees of actual enforcement. For example, it may be difficult for someone to register in .aero, but simple for a squatter to register in .nom. Cases of cybersquatting will likely increase as a result of the introduction of new TLDS. Trademark owners will need to rely upon the availability of a consistent, efficient and inexpensive UDRP process more than ever before. Cybersquatting also continues to be a problem in the country code domains. All TLDs and country code TLDs should first be encouraged to adopt the existing UDRP as a baseline for dispute resolution.

The existing UDRP system has recently been subject to many unjust criticisms. Some seek to dismantle the UDRP altogether. Some seek to change the UDRP to further their own financial or political interests. The system needs to time to develop and stabilize as a permanent process. It would be unfortunate if efforts to expand the role of the UDRP

in the near future unintentionally weakened its role at this critical time in the expansion of the domain name system.

With respect to personal names, trade names and geographic names, although all are certainly deserving of protection in cyberspace, the UDRP may not be the proper place to resolve these fact-intensive disputes. In contrast to the objective criteria that WIPO arbitrators use in deciding current domain name cases, arbitrators may be placed in the position of deciding difficult questions of national law. In the personal name area, for example, WIPO may be asked to determine facts involving cases where neither party is famous or well known or one party could be considered famous in a particular country, region or locality. Domain name owners in the personal name TLD may own rights in names which may or may not even correspond to the legal or known name of the domain name owner. These personal domain name owners could use that domain name registration to assert frivolous litigation against the prior owner of a registered trademark in another TLD. Similar concerns arise in the trade name area. The arbitrator would need to make determinations of secondary meaning for trade names and geographic indications in particular countries based on the differences in various national laws. On the other hand, personal names, trade names and geographical indications, are all potentially subject to trademark protection. By registering these names and indications as trademarks, common law owners can avail themselves of the current UDRP process and strengthen their rights in the process.

With respect to WIPO's inquiry regarding technical solutions for domain name collision control, we note our prior comments to RFC-1 concerning the need for a fully open, searchable and freely available WHOIS database. We support the comments of the USCIB, INTA and ICANN's IPC on ensuring that WHOIS is revamped to provide complete access to WHOIS data in the rapidly expanding domain name system.

We appreciate WIPO's leadership in this area and look forward to working with WIPO on future domain name issues.

Sincerely,

Sarah B. Deutsch
Vice President & Associate General Counsel