

MARQUES, the Association of European Trade Mark Owners, has the following comments in response to WIPO's RFC-2 on the issues addressed on the Second WIPO Internet Domain Name Process.

Personal Names

As an organisation of trade mark owners, we are concerned principally with personal names which are used in the course of trade in relation to

goods or services. If such a name is, or has become, distinctive then its use as a domain name can be protected against bad faith, abusive, misleading or unfair registration and use as domain names in the DNS in the same way as a registered or unregistered trade mark can be protected.

As to those people who are extremely famous, but do not use their name as a trade or service mark, there should be some form of protection to prevent third parties making bad faith or abusive use of the names but not necessarily misleading use. Bad faith or abusive use would include the deliberate choice of the personality's name either to profit from their notoriety (such as warehousing), or in order to damage their reputation. However, many "personalities" have very common names - Julia Roberts, for example, is not unusual in English speaking countries - and we do not believe that persons who share the same name as a personality should be prevented from registering their name as a domain name. Confusion does not necessarily mean damage. Personal names should be protected only against real damage - not mere confusion. If the domain name is used fairly, should be reasonably clear to most users whether they have reached the site of the well known personality of that name, or not.

International Nonproprietary Names (INNs) for Pharmaceutical Substances

In contrast to personal names, these are names which should be protected to the greatest extent possible, since confusion could cause immense damage. These names should therefore be incorporated into a register and completely excluded from all TLDs and ccTLDs.

Names Of International Intergovernmental Organisations

We agree with the comments from others that the level of protection on the Internet should be no less than the Paris Convention/TRIPS protection today. These are also names which should be incorporated into a register and completely excluded from all TLDs and ccTLDs save to access the organisation concerned.

Geographical Indications of Source or Geographical Terms

GI^s receive protection in order to prevent misleading indications as to source or origin. They should be protected against bad faith, abusive, misleading, or confusing registration. However, there are numerous examples of how Geographical terms can be used by a number of registrants in good faith. The threshold for establishing bad faith should be high. It should be quite apparent to an ICANN dispute panel whether legitimate use is being made of a GI or GT and these terms should therefore be dealt with under the UDRP.

Tradenames

These should be (and generally are) protected as (unregistered) trade marks, provided there is sufficient reputation to be damaged by bad faith registration as a domain name. Tradenames should therefore be specifically incorporated into the UDRP.

MARQUES Internet Committee

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