

My name is Alex Gakuru. I am the Chairman, ICT Consumers Association of Kenya, an irrepressible individual Internet users' rights lobbyist, hereby making a personal view of the IRT proposal before ICANN.

1. Free expression:

The proposal will curtail online expression which will be counter-productive to our ongoing efforts on expanded IPv6 online expression space. We risk being asked “whose expression are we expanding? Ours or that of the IP industry?”

2. Fair use:

By over-protecting and advancing trademarks, IRT will further serve to criminalise innovation from re-mix of older works, for private and for fair use-as Prof. Lawrence Lessig in *Keeping Culture Free* clearly narrates the current conflict between “old” Copyright/Trademark regime when applied in the digital age.

3. Competition:

As corporations grow with acquisitions and mergers, competition may be stifled in the resultant oligopolistic markets which may be harmful to the interests of consumers. Flexing their financial muscle, private companies can potentially influence government directly and indirectly. Where there is less matured consumer protection legislation and regulation, there is a danger that basic human communication rights – the right to receive and share information, and to form or express opinions or culture – can become vulnerable to corporate priorities.(Kimani & Gakuru, 2009)

4. Equitable online participation:

In Kenya, and most of Africa, we lack adequate Intellectual Property legislation and 'famous marks' protection besides absent capacity and/or resources to record our own marks, locally. IRT proposal unfairly and inequitably exposes our Internet users to an unfair Internet domination by developed countries' advanced and well-endowed IP industry interests. Thus IRT proposes to deny our Internet users their fair and equitable online participation rights.

5. Cultural heritage marks and symbols, traditional knowledge

Traditional African marks, for example, the Kenyan traditional *kiondo* and *kikoy* both of which have generated heated debate both locally and internationally over what we regard as “theft” of our cultural heritage by developed countries.

[Kikoy](#) was in the news when a company in UK applied to register the word KIKOY as a trade mark - UK trade mark application number 2431257. However an opposition was filed to stop the intended registration by the [UK Patent Office](#).

The claim that Kiondo is patented by some unnamed Japanese is an emotive issue in Kenya. However no proof has been put forth to back the claim of any one having patented the kiondo in any country.

Unlike the KIKOY issue in which it is possible to identify the trade mark application number and the applicant, we have never heard of any Japanese individual or company claiming ownership of a Kiondo patent and the patent number has never been cited in any of the debates.¹

6. Conclusion:

If IRT proposal were to be adopted, how would ICANN protect all other Kenyan and African icons?

Would ICANN maintain a register and enforce the protection of every of African marks, cultural symbols, traditional rites marks - including African intellectual knowledge passed through generations though mostly spoken but unwritten. Is it a domain ICANN really wishes to enter?

7. Therefore, in view of my above concerns, I pray that ICANN rejects the IRT proposal.

Thank You.

1 See <http://ip-kenya.blogspot.com/2008/02/should-kenya-petition-unesco-for-kiondo.html> (viewed on 6 June, 2009), <http://en.wikipedia.org/wiki/Kiondo> (viewed on 6 June, 2009) <http://www.ipo.gov.uk/tm/t-find/t-find-number?detailsrequested=C&trademark=2431257> (viewed on 6 June, 2009)