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### **Defensive Registrations in the new gTLD process**

MARQUES is the European Association of Trade Mark Owners. MARQUES represents trade mark owners across Europe who together own more than three million domain names (a conservative estimate). These domain names are relied upon by consumers across Europe as signposts of genuine goods and services. MARQUES brings together professional practitioners in trade marks and branding in the Member States of the European Community.

MARQUES welcomes the initiative of ICANN to re-consider the scope of rights protection mechanisms in the new gTLD programme. Many MARQUES members are concerned that 1,000 or more new registries launched over a short time will afford the unscrupulous many opportunities for abusive behaviour at the second level that will exploit and confuse internet users. Whilst we recognize that the rights protection measures included in the January 2012 version of the Applicant Guidebook are an improvement over what was there four years ago, our members do not think that they are as effective as initially recommended by the IRT and are concerned that registering defensively at the second level is currently the only certain way of protecting registered rights. However, comprehensive defensive registration at the second level will be prohibitively expensive.

Therefore MARQUES recommends that ICANN considers the following measures, all of which we have raised in comments submitted on the Guidebook before:

- 1 Loser Pays: if the registrant cannot be found, require the registrar to pay. We note that a number of registrars already charge registrants for the administrative costs of implementing a UDRP or ADR decision. We believe this single measure will drive cybersquatting down to a level where defensive registration is not necessary.
- 2 Allow any mark owner which has filed 10 or more successful UDRP, ADR or legal cases concerning cybersquatting on a trade mark to have a block put on the corresponding string at the second level in all registries. Only registrants who confirm non-infringing use should be allowed to proceed with a registration.
- 3 Allow the transfer of a domain to a winning complainant following a URS complaint and speed up the URS to a maximum of 10 working days.

In addition we believe that the operators of registries which support domain names at the second level which feature in more than 120 URS or UDRP cases in a year should be required by the ICANN compliance team to develop and implement stronger rights protection measures or face suspension of their registries or financial penalties.

Finally, to allow ICANN time to improve the protection of rights further, we suggest that ICANN implements a batching process so that IDN and Community applications are evaluated first followed by Geo. applications, Brand applications and finally Generic applications. This simple measure would mean

that applications for Generic registries where the infringement of rights is most likely to occur will be processed after ICANN has had the time to develop improved rights protection measures.

Thank you for the opportunity of submitting these comments.

Yours sincerely,

The MARQUES Cyberspace Team

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