



## **Comments of ECTA, the European Community Trade Marks Association and MARQUES, the Association of European Trade Mark Owners on Uniform Rapid Suspension (URS).**

**1 April 2010**

### **Introduction**

MARQUES and ECTA appreciate this opportunity to comment on Draft Uniform Rapid Suspension System ("URS") Revised – February 2010.

This draft builds upon the proposals of the Implementation Recommendation Team's ("IRT") report<sup>1</sup> and the Special Trademark Issues report<sup>2</sup>.

### **About ECTA and MARQUES**

MARQUES represents trade mark owners across Europe who together own more than two million domain names (a conservative estimate). These domain names are relied upon by consumers across Europe as signposts of genuine goods and services.

ECTA is the European Communities Trade Mark Association. ECTA numbers approximately 1500 members, coming from the Member States of the European Union, with associate members from all over the world. It brings together all those persons practising professionally in the Member States of the European Community in the field of trade marks, designs and related IP matters.

### **URS is vital**

We regard the creation of a rapid, affordable alternative to the UDRP as essential. Without it, we do not think that the new gTLD programme will adequately protect trademark rights.

As the URS is the only rights protection mechanism directed at abusive registration, we urge ICANN to strengthen its provisions in the ways that we set out below.

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<sup>1</sup> <http://www.icann.org/en/announcements/announcement-4-29may09-en.htm>

<sup>2</sup> <http://www.icann.org/en/announcements/announcement-2-17dec09-en.htm>

## **Remedy**

We recommend that successful complainants should be afforded a priority period in which to register a domain that has been locked before it is made available on expiration date. We commend ICANN to review the .DE “Dispute Entry” process<sup>3</sup> that has operated successfully for over a decade.

## **Appeals/Review**

We do not think that an Appeals process sits well with a rapid rights protection mechanism. An aggrieved complainant or respondent can go to a court of competent authority for a *de novo* consideration of the facts. An appeal process goes against the philosophy of a rapid, cost-effective process to counter “slam dunk cases of bad faith registration”, as originally designed by the IRT<sup>4</sup>.

## **Consolidated proceedings**

We recommend that any URS should allow consolidated proceedings, with multiple unrelated complainants having the ability to join a single complaint against a single domain name registrant (or related registrants).

## **Clearinghouse data**

While we believe that data from the trademark clearinghouse should be an essential factor, we do not believe that URS eligibility should be limited to trademarks included in the trademark clearinghouse.

## **Complaints featuring over 26 domains**

We recommend that when more than 26 domain names are at issue, the domain name registrant should be required to pay a significant fee to file its response. The purpose of such a fee increase would be to help deter cyber squatters who register large numbers of abusive domain names.

## **Response period**

We recommend that the period to file a response be set at 14 calendar days to ensure that the URS actually is “rapid”.

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<sup>3</sup> See <http://www.denic.de/en/domains/dispute.html>

<sup>4</sup> See footnote 1

### **Abuse of the URS**

Any party abusing the URS, such a serial infringer who falsifies a response, should face appropriate sanctions.

### **Annual review**

Finally, we recommend, as strongly as possible, that ICANN review the efficiency of the URS on an annual basis, so that it can implement recommended changes smoothly and effectively without the need for a lengthy policy development process.

### **Conclusion**

An effective URS is vital to protect trademark interests and, ultimately, the protection of consumers. We urge the adoption of a URS process with the modifications that we have suggested.

Submitted by:

Andrew Mills  
Chair  
ECTA Internet Committee  
[ecta@ecta.org](mailto:ecta@ecta.org)  
[www.ecta.eu](http://www.ecta.eu)

Nick Wood  
Chair  
MARQUES CyberSpace Team  
[info@marques.org](mailto:info@marques.org)  
[www.marques.org](http://www.marques.org)