

11<sup>th</sup> September 2007

Paul Twomey  
President & CEO  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601  
USA

Dear Mr Twomey and Members of the ICANN Board:

By way of introduction, I am the Chairman of MARQUES, the Association of European Trade Mark Owners.

MARQUES has over 750 trade mark owning professionals in membership and is very active in different fields of Intellectual Property Law and brand protection. The goal of the Association is to assist brand owners in the management of their trade marks and to provide an effective platform for the representation of their interests.

Although MARQUES is based in Europe, it has members from around the world. Our members include some of the best known brands in the world. For example, our Council of Directors alone features representatives from Nestle, Diageo, Coty, Syngenta, Hoffman La Roche, Red Bull, Sara Lee, Gucci, Velux, InBev, DSM, Cadbury, Tetra Pak etc. plus half a dozen leading European law firms. The representatives of these firms spend many hours dealing with domain name matters. Between them, all of our members certainly own upwards of 1.5 million domain names, many of them gTLDs.

For further information, you may wish to consult [www.marques.org](http://www.marques.org).

In the meantime, the purpose of this letter is to raise our concerns over Whois issues. We ask that you bring this to the attention of your full Board.

We are aware that the Whois Working Group, tasked to address certain issues relating to the OPOC (Operational Point of Contact) proposal, will issue a report sometime in the next few weeks. This report will presumably address the issue of placing strict limits on public access to information on the Whois database as suggested in OPOC.

Trade mark owners face a daily battle to protect their intellectual property rights online from those who utilise the Internet as a forum for commercial gain by infringing those rights. Cybersquatting, illegal counterfeiting operations and general infringement of intellectual property rights are increasingly common, a situation exacerbated by Domainers who may own as many as 20 million gTLDs. This increase in infringement confuses and exploits ordinary internet users, a situation that our members and the departments of national and international government agencies that MARQUES deals with are increasingly alarmed about.

In order to combat IP crime on the Internet and to provide internet users across the globe with peace of mind that online trading is safe, it is necessary for trade mark owners to have access to accurate, up-to-date contact information on domain registrants. Freely accessible Whois information is a vital resource. This is a position supported by all MARQUES members.

Any new limitations on access to information held in Whois databases would cause us great concern. Such limitations would not only impede trade mark owners' abilities to protect their brands, but may also encourage additional infringement. Infringers including those domainers who exploit IP rights are expert at concealing their identity.

Furthermore, if trade mark owners faced with infringement need to embark upon lengthy administrative processes to discover the identity of a person or business conducting illegal activity, the infringer will have time to disappear or to adopt a new identity. The effectiveness of the UDRP would thus be compromised and IP owners would be forced to look to new and expensive solutions including action against registrars or the lobbying of governments to influence ICANN.

In a world where IP crime poses not only an enormous financial problem for businesses but is increasingly becoming a public health and safety issue, MARQUES urges the ICANN Board to consider the negative implications of any proposals that will limit access to Whois information. It is vital that all gTLD owners freely provide accurate and up to date contact information.

MARQUES is aware that the Governmental Advisory Council amongst others has called for an objective study of the uses and abuses of Whois data. We support this idea and urge ICANN to implement a study that looks beyond the needs of the registrar and domainer communities whose voices have so far dominated the debate on Whois access. We also urge ICANN to address the issue of proxy registration services which have become so widespread. We know this is a concern of the Intellectual Property Constituency which we are founder members of.

MARQUES has several members who regularly attend ICANN Meetings including a Council Member who is the Managing Director of an ICANN Accredited Registrar who is happy to discuss this issue with you or members of the Board. He will be attending the next ICANN Board Meeting in Los Angeles.

Yours sincerely,



Jane Collins  
Chair of MARQUES