

**REQUEST FOR COMMENTS ON TERMS OF REFERENCE,
PROCEDURES AND TIMETABLE FOR THE
WIPO INTERNET DOMAIN NAME PROCESS (WIPO RFC-1)**

1. This is a Request for Comments (RFC) on the draft terms of reference, proposed procedures and suggested timetable of an international process to be convened by the World Intellectual Property Organization (WIPO) for the development of recommendations regarding certain intellectual property issues associated with Internet domain names.

Introductory Remarks

2. WIPO has been requested to convene an international process to develop recommendations on certain intellectual property issues associated with Internet domain names, including dispute resolution. The recommendations resulting from this WIPO Internet Domain Name Process will be made available to the non-profit organization that will be formed to manage the technical and policy aspects of the Internet domain name system (the "New Organization"), and will be reported to WIPO's Member States. The background to this request and to the management of the Internet domain name system is contained in the Statement of Policy on "Management of Internet Names and Addresses" (Docket Number 980212036-8146-02) issued on June 5, 1998, by the Department of Commerce of the United States of America.

3. WIPO is aware that the international process that it is convening is part of intensive discussions that have taken place in various fora over the last two years in respect of the management of the Internet domain name system. It is intended that the WIPO process take full account of, and build on, the substantial contributions that all interested parties have made in the course of those discussions as they relate to intellectual property. WIPO will also cooperate closely with the New Organization to provide information about the WIPO process and to coordinate with the New Organization's plans.

Draft Terms of Reference

4. The following proposed terms of reference are intended to define the scope of the process, including the principal issues to be addressed therein. Comments are sought from interested parties on these terms of reference and, in particular, whether they encompass and properly define all issues that should be addressed. Interested parties are requested not to address the substance of the issues described in the terms of reference at this stage, but to address only whether issues mentioned are appropriate for the process, whether they are adequately described, and whether any further issues should be included. After the terms of reference have been finalized, a further RFC directed to the substance of the issues described in the finalized terms of reference will be issued.

A. Uniform Approach to Resolving Domain Name Disputes: recommendations will be formulated on methods to prevent and to resolve Internet domain name disputes involving intellectual property rights. In particular, this will include recommendations on the following issues:

Dispute Prevention

(a) The elements that should be contained in a domain name registration contract including: (i) contact details including email and regular mail addresses (e.g., for purposes of service of process), (ii) certification with respect to the use of the domain name, (iii) certification with respect to the domain name and any related intellectual property rights, (iv) agreement to submit a dispute relating to the status of a domain name to the jurisdiction of particular courts, (v) agreement to submit a dispute relating to the status of a domain name to particular alternative dispute resolution procedures, and (vi) other relevant information or certifications and the need to maintain such information in up-to-date form;

(b) the related requirements of any database(s) that may be developed to allow domain name applicants, holders of intellectual property rights, and other interested parties to obtain information for purposes of evaluating and protecting any potentially related intellectual property rights. In addition, the appropriate extent of access to any such data may be considered in light of privacy issues;

(c) the possible use of directory and listing services intended to permit identical names to co-exist on the Internet, and any such other solutions that may contribute to the prevention of disputes.

Dispute Resolution

(a) Possible approaches, other than court litigation, for the uniform resolution of domain name disputes involving intellectual property rights. Alternative dispute resolution procedures, including various forms of administrative procedures, mediation and arbitration have been developed to address disputes involving domain names. In relation to each of these procedures, some or all of the following issues may be considered:

(b) the suitability of each such approach for resolving disputes involving domain names;

(c) whether some or all of the above dispute resolution approaches should be restricted to cases involving cyberspiracy or be available also for conflicts between trademark holders with legitimate competing rights;

(d) how the above dispute resolution approaches should be adopted and implemented to ensure uniformity. This may include in particular that (i) domain name registrants agree to submit their domain names disputes thereto, and (ii) registries and registrars agree to abide by the determinations resulting therefrom;

(e) the appropriate extent of a registry's and/or registrar's involvement in the resolution of domain name disputes;

- (f) the possible involvement of dispute resolution administering authorities, on which basis and by whom they should be selected, and the coordination reasonably necessary so that any dispute resolution procedures offered are made available to domain name registrants, registrars and registries;
- (g) the relationship between any such dispute resolution approaches and the jurisdiction of relevant national courts;
- (h) the role of applicable law in any such dispute resolution approaches, and how under choice of law principles that law will be chosen;
- (i) the desirability of developing special criteria to be used as a basis for decision in any such dispute resolution approaches as an alternative to relying on any applicable law;
- (j) the desirability of providing for suspension in the case of an objection to an existing domain name registration, and if so, whether the suspension should be implemented automatically or as a result of certain expedited procedures;
- (k) the extent to which appeal procedures should be incorporated in any such dispute resolution approaches;
- (l) the language in which the proceedings under any such dispute resolution approaches are to be conducted;
- (m) the desirable timeframe within which domain name disputes should be resolved under any such dispute resolution approaches, and whether the timeframe should vary in relation to the type of dispute;
- (n) the extent to which any costs associated with such dispute resolution approaches should be shared and by whom; and
- (o) the role of on-line dispute resolution systems for domain name disputes.

B. Process for the Protection of Famous Marks in the Generic Top-Level Domains: recommendations will be formulated regarding the appropriate extent of any protection of famous marks in respect of the registration of Internet domain names in the generic top level domains. In particular, this will include recommendations on the following issues:

- (a) whether it is desirable to provide such protection for famous marks, and, if so:
- (b) the process and any relevant criteria that may be developed for determining whether such protection should be accorded in any particular case;
- (c) the appropriate scope of such protection including its potential pro-active or retroactive effect;

(d) the desirability of providing any provisional protection during the pendency of any proceedings, and whether any such provisional protection should be made available prior to the introduction of any new gTLDs;

(e) the relationship between any such protection for marks determined to be famous for purposes of Internet domain names and the protection of “well-known” marks under the Paris Convention for the Protection of Industrial Property;

(f) the development, administration and content of any database(s) listing the status of any marks determined to be subject to such protection;

(g) the desirability of extending any such protection to any ccTLDs; and

(h) the availability of procedures to obtain the cancellation of such protection.

C. Addition of New Generic Top-Level Domains and Related Intellectual Property Rights: an investigation will be made of the nature and extent of problems resulting from the interface between the registration of Internet domain names and intellectual property rights, particularly trademarks and personality rights.

The investigation will take into account any studies that may have been conducted on the subject, and any relevant information (including empirical data) that may be provided by interested parties participating in the process, including relevant experiences in relation to gTLDs and ccTLDs.

In particular, the investigation will address:

(a) the demonstrated effects to date on intellectual property rights resulting from the existing TLDs, and in particular, the satisfaction or dissatisfaction with related dispute resolution approaches; and

(b) the anticipated and, where possible, actual effects of adding any new gTLDs on trademark and other intellectual property right holders. This aspect of the investigation might consider, from an intellectual property point of view, whether any new gTLDs should be introduced in relation to certain categories of registrants or activities (e.g., for individuals or in relation to existing systems such as the Nice Classification of Goods and Services for the Purposes of the Registration of Marks), and the extent to which compliance with any such categories should be verified at the registration stage.

5. While the above are the main topics to be addressed, the panel of experts will assist WIPO in developing, on the basis of comments received on the present WIPO RFC-1, a final list of all issues on which comments shall be solicited and recommendations formulated.

Proposed Procedures

6. The WIPO Internet Domain Name Process is to be conducted in a balanced and transparent manner and to that end WIPO invites all interested parties, including trademark holders and members of the Internet community who are not trademark holders, to participate. The objective will be to obtain consensus among all stakeholders of the Internet on the issues concerned.

7. WIPO intends to constitute an internationally and sectorally representative panel of experts to assist in the process. The composition of this panel will be made available under the **Experts** section of the special web site developed in support of the WIPO Internet Domain Name Process (the "Web Site").¹

8. The process will be undertaken through a combination of Internet-based discussions and in-person consultations. It will be conducted on the basis of a number of RFCs, including this WIPO RFC-1, that are to be made available to the public through publication on the Web Site or through transmittal by electronic or regular mail. All participating parties are invited to submit comments on the RFCs through a special form that is available under the **RFCs & Comments** section of the Web Site, or by electronic or regular mail.

9. After receiving a comment, WIPO will acknowledge its receipt, review the comment and make it publicly available by posting. WIPO, however, reserves the right not to post any comment that is obscene or otherwise clearly fails to constitute a contribution relevant to the discussion on the issues raised in the RFCs. WIPO will not issue any specific responses to the comments it receives. All comments, however, will be made available to the panel of experts and will form the basis for the formulation of the recommendations to be submitted to the New Organization.

10. In order to ensure that interested parties have the opportunity to present their views on the issues to be addressed by the process, WIPO will also hold a series of regional hearings and consultations, at which members of the panel of experts will be present. The location of these meetings will be determined with a view to ensuring full geographical representation. Any views presented at these meetings will, in addition to the comments on the RFCs, serve as the basis for the recommendations to the New Organization.

Timetable

11. There is a need for the WIPO process to move forward on an accelerated basis. The process is intended to consist of the following steps, culminating in a final report to be submitted to the New Organization and reported to WIPO's Member States:

(a) publication of the present WIPO RFC-1 on the draft terms of reference setting out the proposed scope of the project, including the issues to be addressed, the proposed procedures and a suggested timetable for completion of the work;

¹ This web site is located at <http://wipo2.wipo.int>.

(b) meeting of the panel of experts to assist WIPO in settling the terms of reference on the basis of the comments received on WIPO RFC-1 and preparation of WIPO RFC-2 soliciting comments on all issues on which recommendations are to be formulated;

(c) publication of WIPO RFC-2;

(d) regional hearings and consultations with the panel of experts on the issues raised in WIPO RFC-2;

(e) preparation of WIPO RFC-3 in the form of a draft interim report on the basis of all comments received on WIPO RFC-2;

(f) publication of WIPO RFC-3;

(g) regional hearings and consultations with the panel of experts WIPO RFC-3;

(h) preparation and publication of the final report on the basis of all comments received on WIPO RFC-3.

12. It is expected that the process will take under 8 months to be completed. As mentioned above, WIPO will seek to coordinate with the New Organization's plans. The following table proposes a draft implementation plan, reflecting the various stages in the process.

Date	Event/Activity
July 8, 1998	Publication RFC-1 (terms of reference)
August 17, 1998	Deadline for comments on RFC-1
Second half of August 1998	Meeting of Panel of Experts
September 14, 1998	Publication of RFC-2 (issues to be addressed)
September – October 1998	Regional Hearings and Consultations
October 30, 1998	Deadline for comments on RFC-2
December 1, 1998	Publication of RFC-3 (interim report)
December 1998 – January 1999	Regional Hearings and Consultations
January 29, 1999	Deadline for comments on RFC-3
March 1, 1999	Publication of final report

Request for Comments

13. This WIPO RFC-1 requests participating parties to submit comments on:
 - (a) the draft terms of reference, as specified in paragraphs 4 and 5 above;
 - (b) the proposed procedures, as specified in paragraphs 6 through 10 above;
 - (c) the proposed timetable, as specified in paragraphs 11 and 12 above.

14. Comments can be submitted by the following means:
 - (a) through the **Submit Comment** form that is available under the **RFCs & Comments** section of the Web Site. We recommend that you choose this method for the submission of your comments;

 - (b) by electronic mail to the following address: process@wipo2.wipo.int;

 - (c) by regular mail to the following address: WIPO Internet Domain Name Process, World Intellectual Property Organization, 34 chemin des Colombettes, P.O. Box 18, 1211 Geneva 20, Switzerland.

15. All comments must be received by August 17, 1998.

[End of Annex and of document]