

The Management of Internet Names and Addresses:
Intellectual Property Issues

ANNEX VI

<p style="text-align: center;">Policy For Domain Name Exclusions</p>
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1. This document establishes a policy for the grant of exclusions in the generic top-level domains (gTLDs) in favor of famous or well-known trademarks or service marks (collectively “marks”). The grant of an exclusion prohibits any person other than the beneficiary of the exclusion from registering the mark that is the subject of the exclusion as a domain name.
2. The Policy is subject to review and appropriate modification from time to time.

TOP-LEVEL DOMAINS

3. This Policy applies to:
 - (i) such generic top-level domains (gTLDs) as may be designated from time to time by the Internet Corporation for Assigned Names and Numbers (ICANN); and
 - (ii) any country code top-level domain (ccTLD) where the competent authority has declared this Policy to be applicable.
4. Registration authorities operating in the TLDs to which this Policy applies are required to abide by and adhere to this Policy.

RELATIONSHIP OF DETERMINATIONS TO THE STATUS OF MARKS

5. The determinations made by a panel constituted in accordance with this Policy (granting or denying applications for exclusion, or for the complete or partial cancellation of an existing exclusion) are made only for purposes of the administration of the domain name system (DNS). It is recognized that such determinations do not, as such, have any binding effect on national or regional industrial property offices or national courts in their implementation of international norms for the protection of famous or well-known marks.

ADMINISTRATIVE PANEL

6. The exclusion procedures established by this Policy shall be administered by the World Intellectual Property Organization (WIPO).
7. WIPO shall, as required, appoint administrative panels, each consisting of three impartial and independent members, to review and to reach determinations on applications for exclusions, or for the complete or partial cancellation of existing exclusions.

8. WIPO shall maintain a list of qualified and internationally representative persons from which panels may be appointed on an *ad hoc* basis to hear applications. The list shall be published on a publicly accessible web site maintained by WIPO and shall include details of the qualifications and experience of the persons included on the list.

PROCEDURAL RULES

9. WIPO shall administer procedures under this Policy in accordance with the Rules for Panel Procedures Concerning Domain Name Exclusions, annexed hereto.

APPLICATIONS

10. *Exclusions.* Applications may be submitted by the owner of a mark requesting the grant of an exclusion for the mark on the basis that it is famous or well-known across a widespread geographical area and across different classes of goods or services. The application may seek the exclusion in all or some of the TLDs to which this Policy applies.

11. *Cancellations.* Any person may submit an application requesting that an existing exclusion be canceled in respect of any TLD.

CRITERIA FOR MAKING DETERMINATIONS

12. A panel shall decide whether an exclusion should be granted for a mark on the following basis:

(a) In determining whether a mark is a well-known mark, the panel shall take into account any circumstances from which it may be inferred that the mark is well known.

(b) In particular, the panel shall consider information submitted to it with respect to factors from which it may be inferred that the mark is, or is not, well known, including, but not limited to, information concerning the following:

1. the degree of knowledge or recognition of the mark in the relevant sector of the public;
2. the duration, extent and geographical area of any use of the mark;ⁱ
3. the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;ⁱⁱ
4. the duration and geographical area of any registrations, and/or any applications for registration, of the mark, to the extent that they reflect use or recognition of the mark;

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5. the record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well known by courts or other competent authorities;
6. the value associated with the mark; and
7. evidence of the mark being the subject of attempts by non-authorized third parties to register the same or misleadingly similar names as domain names.

INTERESTED THIRD PARTIES

13. Any interested third party may file a request to participate in the proceedings of an application for exclusion, or for the complete or partial cancellation of an existing exclusion. The panel shall consider the request to participate and determine whether the third party has demonstrated that it has a legitimate interest, such as a competing interest in the name, for participating in the proceedings. If the request is accepted, the third party shall be allowed to file a submission concerning the application for exclusion, or for the complete or partial cancellation of an existing exclusion.

TIME FRAME

14. Determinations on an application for exclusion, or for the complete or partial cancellation of an exclusion, shall, as far as possible, be made within 90 days of the submission of the application.

ENFORCEMENT AND PUBLICATION

15. Determinations under this Policy shall be notified by WIPO to the relevant registration authorities for implementation.

16. Registration authorities in the TLDs to which this Policy applies shall be required to abide by any determinations made under the authority of this Policy.

17. WIPO shall publish on a publicly accessible website each application requesting the grant of an exclusion, or the complete or partial cancellation of an exclusion, each request to participate in the proceedings submitted by an interested third party, and all determinations made in respect of such applications, as well as a list of names for which exclusions have been granted.

COSTS

18. WIPO shall determine the amount of the administration fee for an application for exclusion and for an application for complete or partial cancellation of an existing exclusion. Such fee shall include an amount necessary to meet the fees and expenses of the Panel appointed to make a determination on such an application for exclusion. WIPO shall also

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determine the amount of the administration fee for an application to participate in the proceedings.

19. The applicant shall be required to pay all fees for an application on submission of an application.

[Annex VII follows]

ⁱ According to the WIPO SCT, the term “use” should cover use of a mark on the Internet; see Note 2.6 of SCT/2/3 (February 12, 1999).

ⁱⁱ According to the WIPO SCT, this includes advertising on the Internet; see Note 2.7 of SCT/2/3 (February 12, 1999).