

Mr. Rod Beckstrom, CEO and President  
Mr. Peter Dengate-Thrush  
Chairman, Board of Directors  
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Re: WIPO Center Post-ICANN Brussels Meeting Observations

July 21, 2010

Dear Mr. Beckstrom,  
Dear Mr. Dengate-Thrush,

Following the ICANN Meeting held in Brussels from June 20-25, 2010, the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center herewith respectfully shares observations complementing the WIPO Center's more specific [comments submitted to ICANN on June 16, 2010](#) in relation to version 4 of the Draft Applicant Guidebook (DAG).

The WIPO Center remains hopeful that ICANN welcomes constructive dialogue on trademark protection, even if we have found the overall experience so far to be marked by rather inward-looking processes.

Having also participated in numerous ICANN fora before the Brussels Meeting, we observe that ICANN's determinations rely principally on an institutionalized framework of committees and processes stated to cover the views of broader "communities" while seemingly synchronized with registration purposes. Some participants in this structure seem more or less self-appointed and may have individual conflicts of interest or merely partial allegiances with the formal causes invoked.

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Such a structure can come at the expense of relevant expertise in favor of more incidental or subjective input. For example, the DAG 4 Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) fails to reflect, without explanation, a widely held position among the [submitted comments](#) concerning willful blindness on the DAG 3 PDDRP. Such a position has been expressed not only by WIPO and the IPC, but also by INTA and MARQUES/ECTA which, in addition to practitioners, collectively represent a significant global share of trademarks – the use or abuse of which contribute a substantial part of the financial foundation of the existing (and likely future) registration system and its stakeholders.

Indeed, a succession of processes notwithstanding, we have observed little truly substantive dialogue on trademark considerations. Exchanges are subject to palpable registration-driven pressures, and can be marked by varying degrees of understanding. As one manifestation of this discomfort, attempts to engage on the subject are routinely met with encouragement to “continue to engage in the process.” Another symptom is how debates can be expediently routed to further committees in the same nominal cause.

As challenging as ICANN and its stakeholders may find this from an economic and institutional standpoint, we believe that an open and informed dialogue is key to a stable DNS framework for the longer term which all stakeholders can support. The credibility of such dialogue will depend on participants’ substantive relevance, broader vision, and institutional integrity – regardless of whether they are part of formal ICANN structures. The fact that, when it comes to trademark protection, the various processes unfortunately have not yet lived up to this standard is illustrated by the heavily compromised state of the envisaged mechanisms: the PDDRP ignoring willful blindness; the URS having become overburdened; and the Trademark Clearinghouse not providing a level playing field.

Together, these circumstances in our view support the recommendation expressed in the recent ICANN-sponsored “An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names” to proceed in a controlled manner, *i.e.*, in discrete, limited rounds.

Instead of representing a setback in international cooperation, the envisaged DNS expansion plans offer a unique opportunity for responsible partnership on positive norms and safe harbors. WIPO staff will continue to monitor developments and remains available to contribute to rights protection systems that work for durable DNS expansion.

We are posting a copy of this letter on the [WIPO website](#) for public information.

Yours sincerely,



Erik Wilbers  
Director  
WIPO Arbitration and Mediation Center