

5.2/14/1

5 September 2002

Commissioner Frits BOLKESTEIN
Member of the
European Commission
Internal Market Directorate
200 Rue de la Loi,
C-107 - 6/25

1040 Bruxelles

Dear Commissioner,

RE: COMMISSION SURVEY ON INTELLECTUAL PROPERTY RIGHTS IN NEW .EU DOMAIN

UNICE would like to take the opportunity provided by the Commission "*Survey on intellectual property rights in the new .eu domain*" to call upon the European Instructions to increase efforts to addressing these aspects of the future European domain name, .eu.

Rapid changes in the Internet pose challenges; in particular the recent e-commerce boom has created fertile ground for fraud. These new situations require quick identification of the perpetrators as well as the development of means to restrict their activities by tracking down cybersquatters and developing domain names inventories as supportive elements to such investigations.

Intellectual property right holders are highly concerned by this new environment, which prevents them from carrying on fair trade and harms consumer confidence. In this context, it is of utmost importance for intellectual property rightholders, and companies in general, to benefit from a reliable WHOIS database, based on uniform procedures and mechanisms for third parties to follow when they have an inquiry about ownership of a domain name. In industry's view, the need for creation of a WHOIS is linked not only to the risks inherent to the establishment of a top-level domain but also to the stability of the Internet in general.

Such discussions necessarily take place against the backdrop of discussions about ICANN reform. You will find at annex a copy of UNICE's position paper on the importance of having a harmonised and accurate WHOIS as debated at ICANN level.

In UNICE's view, the WHOIS database must bring together the following elements: accuracy, uniformity, searchability, and conditioned marketing rules. With respect to the applicability of the ICANN WHOIS debate to the .eu context, UNICE would particularly like to draw the Commission's attention to the following:

- **ACCURACY OF THE DATA CONTAINED IN THE WHOIS DATABASE:**
Inaccurate data (either wilful or unintentional) inevitably creates a series of problems, therefore impeding intellectual property owners from developing tools capable of preventing a wide range of dangers, including: infringements of intellectual property rights such as copyright trademarks, and online theft and e-commerce fraud.

For instance, it is already being seen not only through the ICANN Uniform Dispute Resolution Policy but also in individual country code dispute resolution policies in Europe that companies, be they small, medium or large, have had to invest considerable

resources in investigating and challenging domain name registrations which have clearly been obtained and used in bad faith. Whilst the ability to challenge through arbitration assists in keeping costs down compared with the cost and time spent in courts, the lack of availability of accurate and searchable data allows those intent on fraud to hide behind this lack of information.

▪ **BETTER SEARCHABILITY:**

In UNICE's view, the WHOIS database should be searchable. If free of charge for the users, it would allow parties to save time and money in case of infringement. This is a benefit not only to the intellectual property rightholders but also to the domain name owner whose details may reveal or support his legitimate interest such as in the case of a fan or comment site.

For instance, in a recent administrative panel decision of WIPO Arbitration and Mediation Center, the complainant took action for the second time against the respondent, but this time in connection with different domain names from the ones subject to the first action: the complainant claimed that they had been unable to find out that the respondent owned these other domain names (*Nike, Inc. v. Crystal International*; Case No. D2002-0352; 5 August 2002). In this case, the current system made it impossible to search on WHOIS by registrant, therefore the complainant was compelled to take separate actions each time a problem appeared. Importantly, this meant that they had to pay twice to challenge the same company, and unfortunately the panel in the second decision came to a different conclusion and refused to return the names, leaving the complainant with an inconsistent position regarding these names.

UNICE trusts that, in the framework of the .eu domain, the Commission will anticipate the appropriate supportive measures to implement a reliable Community domain name system by equipping it with a Community WHOIS database along the lines of the WHOIS database developed within ICANN and further enhanced by the recommendations outlined in the UNICE position paper. In that respect, UNICE's members would be interested in having more information on the Commission's view on this matter.

In the meantime, we remain at your disposal to answer any clarification about our position you might require and meet you and your colleagues to discuss certain elements of this letter further.

Yours sincerely,

Philippe de Buck
Secretary General

CC: Commissioner LIIKANEN