

15 SEPTEMBER 2022 • *Brussels, Belgium*

CENTR Comment on the geographical indications reform in the EU

Summary of CENTR key points

- Many European ccTLDs explicitly prohibit the use of domain names that may infringe on Intellectual Property Rights.
- Domain name disputes over geographical indications (GIs) are rare in the EU domain name space, and can be resolved in appropriate judicial and/or alternative dispute resolution procedures (ADR) across the EU.
- It is essential to ensure that any GI protection extension to domain names does not contradict the existing protection of trademarks and established judicial and ADR procedures within European ccTLDs to resolve disputes over domain names.
- A fair balance between the enjoyment of IPR protection and other commercial or non-commercial activities online needs to be maintained.
- For increased legal clarity and where applicable, GIs should be recognised as a right that can be invoked within the alternative dispute resolution (ADR) processes already in place for resolving domain name disputes within European ccTLDs.
- For increased legal clarity, and in order to avoid creating diverging GI protection regimes for agricultural, craft and industrial products, it is important to ensure that legislative proposals establish coherent GI protection online.
- Any recognition of a GI as a protected right within European ccTLDs shall be limited to registered GIs. This should be done on the basis of the Union-wide registration of a GI that can be considered to be protected across the Union, publicly maintained in an official Union-wide register and where no ongoing national administrative or judicial proceedings may affect that GI registration.
- Any revocation or transfer of domain names on the basis of a GI protection infringement can only be requested after the appropriate decision of judicial authorities and/or within established ADR processes across European ccTLDs.
- Any existence of a legitimate interest in the use of a domain name containing a protected GI, or the conflicting use of a domain name with an existing GI, including in 'bad faith' must be assessed within an appropriate judicial and/or ADR procedure.

- In the absence of any compelling data that GIs are insufficiently protected within the European ccTLD domain name space and in order to support existing IPR protection services offered by European ccTLDs, any reference to a domain name information and alert system developed by EUIPO needs to be omitted from the legislative proposals.
- EUIPO could facilitate information sharing on the existing IPR protection services available across ccTLDs in the Union, for GI holders to be aware of how to effectively enforce their rights on the internet.
- Any data sharing agreements with EUIPO shall remain voluntary, respecting the limits of national legislation of Member States and the overarching data protection framework in the EU.

Introduction

CENTR is the association of European country code top-level domain registries (hereinafter ccTLDs). All EU Member State and EEA country ccTLDs (such as .cz, .no, and .it) are members of CENTR.

CENTR members are at the core of the public internet, safeguarding the stability and security of the internet. The majority of European ccTLDs are SMEs or non-profit organisations, providing an internet infrastructure service in the interest of and in close cooperation with their local internet communities (i.e., registrars, end-users, rightsholders but also in cooperation with CSIRTs and law enforcement authorities).

ccTLDs are responsible for operating and maintaining the technical Domain Name System (DNS) infrastructure for their top-level domain. The DNS is a well-established network protocol at the heart of the internet infrastructure – commonly thought of as the “phone book of the internet”. It provides a navigation function to map user-friendly domain names to numeric IP addresses.

ccTLD registries maintain a domain name registration database. This database contains contact information of domain name holders, technical, and administrative data necessary to provide DNS services.

Registration data can be queried by the general public using different protocols like the web, WHOIS and RDAP, each offering their own unique controls to comply with the EU General Data Protection Regulation (GDPR). These protocols allow a user to perform a search on a given domain (or IP address) and retrieve various information about its registration. For entities providing services in the EU, access to domain name registration data is governed by the EU GDPR, as the registration database contains personal information.

ccTLD registries are listed as “operators of essential services”, as enshrined in Annex II of Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union (the “NIS Directive”) and will be considered to be “essential entities” according to the upcoming Directive on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148 (the “NIS2 proposal”).

CENTR welcomes the overall goal of revising the geographical indications (GI) legal framework in the EU, to ensure the production of quality agricultural and craft products, forming the gastronomic and cultural heritage of Europe.

Considering that some of the enforcement provisions as enshrined in the Proposal for a Regulation on European Union geographical indications for wine, spirit drinks and agricultural products¹ (hereinafter ‘Agricultural products proposal’), and in the Proposal on geographical indication protection for craft and industrial products² (hereinafter ‘Craft and industrial products proposal’) directly target ccTLDs established within the EU, CENTR members urge legislators to take into consideration and adequately assess the impact of the proposed GI reform on European ccTLD operators, who form the core of the public internet, together with other internet infrastructure actors.

CENTR members would like the co-legislators to address the following areas of concern in the proposals concerning the GI reform in the EU.

Extension of the GI protection to domain names

One of the aims of both proposals for the GI reform in the EU is to strengthen GI protection and to combat counterfeiting more effectively. For these purposes, the proposals have explicitly expanded the GI protection to domain names.³

First, such an explicit legislative protection of GIs within the domain name space is unprecedented, and no other legitimate right (e.g. trademark, copyright, company or personal name) enjoys such far-reaching recognition at EU or global level.

Both proposals also limit their scope to ccTLDs established in the EU, while the domain name market in the EU is much broader and encompasses actors that fall outside the scope of the proposed regulations. In 2022, the combined market share of ccTLDs across EU countries is estimated at 61%.⁴ As a result, the intended aim of strengthened GI protection within the domain name space in the EU is limited and will disproportionately burden providers of essential digital infrastructure.

While the protection of intellectual property rights (IPR) is recognised as a fundamental right in the EU⁵, it is not an absolute right and needs to be balanced against other interests.⁶ By expanding the territorial GI protection to the DNS, it is important to ensure that other interests, including those of domain name holders, are adequately taken into consideration. This will avoid precluding the enjoyment of other fundamental rights

¹ Proposal for a Regulation of the European Parliament and of the Council on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products.

² Proposal for a Regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products.

³ Recital 28 of the Craft and industrial products proposal; Recital 18 of the Agricultural products proposal.

⁴ CENTR, [Global TLD Report](#) Q1 2022.

⁵ Article 17 of the Charter of Fundamental Rights of the European Union.

⁶ Judgment of the Court (Third Chamber) of 24 November 2011, Scarlet Extended Case, C-70/10; Judgment of the Court (Grand Chamber) of 29 January 2008, Promusicae, C-275/06.

protected in the EU, including the right to property, the right to privacy, freedom of expression, and the right to conduct business.

It is essential to ensure that any GI protection extension to domain names does not contradict the existing protection of trademarks, other recognised rights, as well as established alternative dispute resolution (ADR) and judicial procedures to resolve disputes over domain names. A fair balance between the enjoyment of IPR protection and other commercial or non-commercial activities online needs to be maintained.

Notably, GIs are already recognised and protected as a valid IPR or a sui generis right by several European ccTLDs.⁷ Many European ccTLDs include relevant provisions in their terms and conditions which explicitly prohibit the use of domain names that may infringe IPR.⁸

It is therefore unclear which specific problems in the area of counterfeiting policymakers are trying to solve by imposing significant obligations on technical infrastructure actors whose primary role is to maintain an essential service for the functioning of the information society. The explanatory statements accompanying the proposals do not provide enough details nor evidence that counterfeiting is especially prevalent within the EU domain name space.

The number of domain name disputes in connection to GIs within the EU domain name space remains marginally low⁹, even within the ccTLDs that do recognise GIs as a valid legal right that can be invoked in their respective ADR procedures. In well-known cases where a GI owner was able to challenge the domain name registration, it was successfully resolved within the applicable ADR procedure¹⁰ or a judicial procedure.¹¹ It is also worth pointing out that the absence of an ADR procedure within a particular registry does not mean that IPR or other legitimate rights are not protected within that particular TLD, as ADR procedures are not designed to replace judicial proceedings.

Although both proposals are expected to pursue similar goals and establish a harmonised GI protection across the Union, some of the provisions concerning the protection of GIs within domain names have significant discrepancies. For the sake of increased legal clarity, and in order to avoid creating diverging GI protection regimes for agricultural, craft and industrial products, it is important to ensure that both proposals are fully aligned, including when it comes to GI protection enforcement online.

Revocation or transfer of domain names

When it comes to the specific provisions of the expanded GI protection to domain names, the Agricultural products proposal includes the possibility for “persons having a legitimate interest on a geographical indication

⁷ See for example Article 2(3), [Rules of Domain Names Registration](#) under the .cz ccTLD; Article 2(6) of .sk [Rules for Alternative Resolution](#) (ADR), Article 6(1)(c) of .pt [Terms and Conditions](#); .fr [recognises](#) GIs as protected right within “distinctive sign” that can be invoked within respective ADR procedures.

⁸ EUIPO, Domain Names - Discussion paper, “Challenges and good practices from registrars and registries to prevent the misuse of domain names for IP infringement activities”, 2021.

⁹ [Index](#) of WIPO UDRP Panel Decisions shows only one case involving EU ccTLD. The domain was transferred.

¹⁰ See Comité Interprofessionnel du Vin de Champagne (CIVC) v. Doyle, WIPO, Case No. DIE2007-0005.

¹¹ See CJEU, Comité Interprofessionnel du Vin de Champagne v. GB, C-783/19.

applied for registration before the registration of the domain name” to request the revocation or the transfer of the domain name in cases of conflict (Recital 25 of the Agricultural products)[emphasis added]. The Craft and industrial products proposal also includes a similar provision in its Recital 33, albeit with a slightly different basis for legitimate interest: the revocation or transfer of a domain name can be requested “in case the conflicting domain name has been registered by its holder without rights or legitimate interest” in the GI.

First it is worth mentioning that EU-level GI protection can only be offered to **registered** designations of origin and geographical indications. This is in line with the intention of the proposals themselves (Recital 18 of the Agricultural products, Recitals 14 and 28 of the Craft and industrial products proposal), as well as with the relevant case-law of the European Court of Justice (CJEU).¹² In the area of EU trademark protection, the publication date of a trademark registration is generally considered to be the start date from which rights against third parties prevail.¹³

In the absence of any evidence or meaningful impact assessment of why online GI protection should be different from offline, the provisions of both GI proposals need to reflect the intentions of the legislator and follow well-established CJEU case-law by revising the language in its recitals and **allowing persons with rights in a registered GI to request the revocation or transfer of a domain name in case the conflicting domain name has been registered by its holder without rights or legitimate interest in the GI**. Recital 25 of the Agricultural products proposal must therefore omit language that may suggest that non-registered GIs should be able to receive any unjustified preferential treatment.

In addition, a specific reference towards **duly registered GIs** needs to be made in both proposals concerning potential requests for the revocation or transfer of domain names. This is also in relation to the need to ensure the respect of the Union opposition procedure (Article 62 of the Agricultural products proposal; Article 21 of Crafts and industrial products proposal) where, upon the publication of the product specification in the Official Journal of the European Union, any natural or legal person having a legitimate interest and established in a third country may lodge an opposition with the Commission. In addition, the grounds for requesting the revocation or transfer of domain names for duly registered GIs is also needed to respect the legal use of designations that contradict the registered GIs during transitional periods as envisaged in both proposals (Article 64 of the Agricultural products; Article 23 of Crafts and industrial products proposals).

CENTR calls on legislators to take into account the fact that the revocation, as well as the transfer of domain names is a drastic measure which impacts the ownership of domain names. A revoking action cannot be easily undone, and its erroneous implementation may have a dramatic impact on a domain name holder in the form of serious financial and reputational damage. **Domain name holders need to be able to be protected against any potential abuse that may stem from any automated decisions without their involvement**, especially within the establishment of a legitimate interest for the use of a domain name.

¹² Judgment of the Court (First Chamber) of 8 September 2009, Budějovický Budvar, C-478/07.

¹³ Article 11 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark.

As a domain name can be considered an intangible asset¹⁴ or a possession in the meaning of ‘right to property’¹⁵, **the reference towards invoking revocation or transfer procedures following an appropriate alternative dispute resolution procedure or judicial procedure is essential to ensure an appropriate right to remedy to affected domain name holders.**

Bad faith use

A domain name is crucial for establishing one’s identity online, as well as being the foundational piece of infrastructure on which to build a business or develop a product (e.g. peugeot.fr). However, the domain name itself cannot be considered an IPR. A domain name as a string of characters often fails to meet the requirements of being unique and distinctive, which is essential for example for a trademark registration.¹⁶ A domain name can also be considered merely descriptive or use generic terms that cannot be protected (e.g. hotels.eu).

Considering that a domain name itself cannot be considered as a protected IPR, the ‘bad faith’ use of a domain name as a basis for a potential revocation or transfer of a domain name in Article 34(1) of the Agricultural products proposal and Article 41(1) of the Crafts and industrial products proposal needs to be assessed within an appropriate alternative dispute resolution (ADR) process or a judicial procedure.

The role of a ccTLD registry is to maintain a part of essential internet infrastructure and not to assume a role of an arbitrator over any IPR disputes, which is primarily reserved to competent administrative or judicial authorities.¹⁷ Furthermore, many ccTLD registries in Europe already have established ADR procedures in place¹⁸ to allow IPR disputes to be resolved at a relatively low cost and within shortened timeframes, in comparison to judicial proceedings. It is worth mentioning that often registries make use of external IPR experts to act as arbiters in ADR, rather than having this type of expertise internally.

For these reasons, **any assessment of a ‘bad faith’ registration and use of domain names should be carried out by judicial authorities and/or within the existing ADR procedures across European ccTLDs.**

Prevention of domain name registration

Both proposals include a provision that obliges European ccTLDs to explicitly recognise GIs as “rights that may prevent a domain name from being registered or used in bad faith” (Article 34(2) of Agricultural products proposal and Article 41(2) of Crafts and industrial products proposal).

The wording of these provisions assumes that it is technically possible to filter out all protected names in order to prevent the registration of a domain name that may infringe on a GI. ccTLD registries cannot automatically

¹⁴ See ‘Ebay.fr’ judgment of 7 December 2016 ‘Conseil d’État, 9ème - 10ème chambres réunies, 369814.

¹⁵ Judgment of the Court (Grand Chamber) of 12 September 2006, *Laserdisken ApS v Kulturministeriet*, C-479/04; ECtHR judgment of 18 September 2007, *Paeffgen GmbH v. Germany*, 25379/04.

¹⁶ Judgment of the Court of 4 May 1999, *Windsurfing Chiemsee Produktions- und Vertriebs GmbH (WSC) v Boots- und Segelzubehör Walter Huber and Franz Attenberger*, Joined cases C-108/97 and C-109/97; Spanish Supreme Court, ruling 1032/2022 of 19 July 2022, appeal 2394/2021

¹⁷ Judgment of the Court (Fifth Chamber) of 12 September 2019, *Koton Mağazacılık Tekstil Sanayi ve Ticaret v EUIPO*, C-104/18

¹⁸ EUIPO, Comparative case study on alternative resolution systems for domain name disputes, September 2018.

block registrations based on detected matches with existing IPR. While some ccTLDs have developed tools that support IPR protection services, the ultimate decision as to whether a domain name is infringing or not should be left to the ADR arbitrators or national courts.

IPR protection is not an area where it is possible to identify infringement easily without specialised knowledge. Many factors need to be taken into consideration before making an appropriate judgment over IPR infringement, such as the subsequent use of a domain name for illegal purposes, and whether there is a risk for consumer confusion if a domain name is similar to a protected IPR, such as a trademark. Furthermore, a domain name registration may violate existing GIs if it is associated with any conduct relating to the offering of goods and if the origin of those goods is misleading for consumers. As domain names are not websites, it is often impossible to make any meaningful judgment over the subsequent use of a domain name at the time of its registration. Hence, any preventive measures at domain name registration level can result in the overzealous blocking of registrations without any meaningful impact on preventing counterfeiting.

For the aforementioned reasons that a domain name cannot be considered a protected IPR on its own merit and considering that the purpose of the DNS and domain names is to ensure the stable functioning of the internet, any provision that requires technical infrastructure actors to implement technically impossible filtering mechanisms or act as an extra-judicial arbitrator of a potential IPR dispute is disproportionate. Furthermore, it is well established in CJEU case-law that judicial and law enforcement authorities are responsible for assessing the illegality of a particular activity and for investigating IPR infringements respectively.¹⁹

On the other hand, it is important to recognise GIs as a right that can be invoked within the ADR processes put in place for resolving any domain name disputes within European ccTLDs, as already evident from the existing practices of European ccTLDs.²⁰ In order to respect the territoriality of GIs, any recognition of a GI as a protected right within a domain name zone shall be limited to registered GIs. This should be done on the basis of the Union-wide registration of a GI that can be considered to be protected across the Union, publicly maintained in an official Union-wide register and where no ongoing national administrative or judicial proceedings may affect that GI registration. This recognition should effectively manifest itself in a right to invoke GI infringement within established ADR processes, respecting the limits of a national jurisdiction and providing necessary legal clarity for all parties involved: national competent authorities, ccTLD registries, rightsholders and any other third parties with potential legitimate interest regarding both the GI, as well as a domain name.

Domain Name Information and Alert System

Both proposals include provisions on the establishment of a “domain name information and alert system” to provide GI applicants with an additional digital tool as part of the application process to better protect and enforce their GI rights (Article 34 of the Agricultural products proposal; and Article 31 of the Craft and industrial products proposal). According to these provisions, a domain name information and alert system shall be developed by the European Union Intellectual Property Office (EUIPO) and shall 1) provide the applicant, upon

¹⁹ Judgment of the Court (Fifth Chamber) of 12 September 2019, *Koton Mağazacılık Tekstil Sanayi ve Ticaret v EUIPO*, C-104/18.

²⁰ See for example .sk’s [Rules for Alternative Resolution](#), DNS Belgium’s [Terms and Conditions for .be domain name registration](#); GIs [recognised](#) as a protected right within the .fr ADR procedure.

the submission of an application, with information about the availability of the GI as a domain name; 2) on an optional basis, alert the applicant about the registration of a domain name that is identical (or similar) to their GI; 3) provide an obligation for ccTLDs to provide EUIPO with relevant information and data. In addition, there has been a suggestion to expand a similar information and alert system for all other trademarks under Regulation 2017/1001 (Article 61 of the Craft and industrial products proposal).

First of all it is worth pointing out that the relevant provisions concerning the development of the domain name information and alert system within the Agricultural products proposal and the Craft and industrial products proposal are inconsistent with each other and include a considerable level of discrepancies, which is not in line with the aim of harmonising GI protection across the Union. Furthermore, these discrepancies may lead to the establishment of diverging enforcement regimes for existing GIs in the area of agriculture, wine and spirits on the one hand, and the upcoming protection of craft and industrial products under GI protection on the other, without any apparent or justifiable reason why such diverging regimes should exist.

CENTR calls for the full alignment of the text of these provisions in order to avoid any unnecessary burden for the GI applicants and ccTLD registries. In order to fully align these provisions, but also considering the Union and international legal framework, existing IPR protection practices in place across ccTLDs, and the technical limitations of ccTLDs, CENTR calls for further amendments to these provisions.

Competence of the European Commission

The legal basis for the establishment of the domain name information and alert system according to both proposals is significantly inconsistent. According to the Agricultural products proposal, the establishment of the system is subject to a delegated act by the European Commission, while the Craft and industrial products proposal does not include any reference towards delegated acts by the Commission.

It is for the lawmakers to decide on the appropriate level of legislative intervention into EUIPO competences, but for national ccTLD registries that are considered essential for the functioning of information society, the law needs to be foreseeable and clear. Furthermore, with regard to the considerable new obligations to be imposed on ccTLD registries in connection with the establishment of such a system, which could have far-reaching consequences on domain name holders and their enjoyment of fundamental rights (such as right to property and freedom to conduct business), the legislative part concerning the establishment of such a system needs to include appropriate safeguards that cannot be left for the delegated acts. This is simply because delegated acts cannot change the essential elements of the legislative act they are based on.

For these reasons, the provisions regarding the establishment of the domain name information and alert system in both proposals need to include an appropriate level of safeguards for domain name holders and ccTLD registries, while being consistent with the existing EU legal framework on IPR protection and data protection. Only the non-essential elements of this potential system can be further substantiated in a delegated act.

Information system for GI applicants

The first element of the domain name information and alert system requires EUIPO to either “establish and manage” (Agricultural products proposal), or “provide” (Crafts and industrial products proposal) a system that

informs GI applicants, upon the submission of a GI application, with information about the availability of the GI as a domain name.

ccTLD registries already maintain registration databases of all the domain names registered within their managed TLD. Registration data, including potentially personally identifiable information can be queried by the general public using different protocols like the web, WHOIS and RDAP. The information about registered domain names is already easily available for all people wishing to register a domain name, via the existing search tools developed and maintained by ccTLD registries and other actors within the domain name industry. Furthermore, persons with a legitimate interest who believe that their legitimate rights might be infringed by registered domain names, can query non-publicly available registration information by requesting such information via standard WHOIS disclosure procedures.²¹ It is not clear what the added value of the separate information system developed by EUIPO would be for GI applicants, and most importantly why significant efforts to duplicate existing access and disclosure protocols within the DNS need to be made, without any meaningful impact assessment or evidence that there is a wide-spread GI counterfeiting issue within the ccTLD zones across the Union. Furthermore, potential GI applicants are free to register a corresponding domain name before their application for a GI, as eligibility for a domain name is not connected to their corresponding GI application process.

In addition, the creation of such a centralised and potentially duplicate system will most likely incur significant costs both for EUIPO and European ccTLDs.

Consequently, the creation of a potentially duplicate system to inform GI applicants about the availability of the GI as a domain name is redundant and should therefore be omitted from the proposals.

Alerts on identical or similar domain names

The second element of the envisaged domain name alert system is to alert GI applicants on an optional basis about the registration of a domain name that is identical (both proposals) or similar (Crafts and industrial products proposal) to their GI.

This is another significant inconsistency between the two proposals that needs to be addressed and more importantly aligned with the existing IPR protection in the Union.

There is no exclusive IPR that can by default be extended to names that are simply “similar” to a protected GI or a trademark. Furthermore, there is no filtering technology that could effectively determine and predict a potential IPR infringement at the point of domain name registration, even more so for “similar” domain names with too many potential variables. Creating and maintaining blocking lists of *potentially* infringing domain names cannot be considered a proportionate measure that can be justified in this context.

For the aforementioned reasons of the nature of domain names that are not considered a distinctive IPR on their own, and the fact that a confusing or actively deceptive activity cannot be evident from a mere registration, GI applicants have no legal basis for being eligible for such a notification. Even for identical domain

²¹ See for example Article 2(6), EURid’s [Domain Name WHOIS Policy](#).

names, there are no international rules that would effectively grant GI applicants with such an exclusive right²². Therefore, **any such alert system can only remain optional at the discretion of each national ccTLD and cannot preclude ccTLD registries from offering such an additional protection service for a fee.**²³

EUIPO could facilitate information sharing on the existing IPR protection services available across ccTLDs in the Union, for GI holders to be aware of how to effectively enforce their rights on the internet, without trying to build an alternative WHOIS, nor imposing far-reaching obligations on technical infrastructure actors.

Obligation to share data with EUIPO

The proposal on Craft and industrial products stresses that ccTLDs established in the European union will have to provide EUIPO with “all information and data in their possession necessary to run the system”, such as information on the availability of a GI as a domain name, the particulars of conflicting domain names, as well as their dates of application and registration (Recital 26). It is unclear from the proposal whether the “particulars of conflicting domain names” include any obligation of sharing non-publicly available personal information of domain name holders.

The Craft and industrial products proposal attempts to justify the obligation of sharing data with EUIPO by stating that it will serve the legitimate purpose of “ensuring better protection and enforcement of geographical indications as intellectual property in the online environment”. Considering that the purpose of this increased data sharing with EUIPO is to enforce GI protection online, it can be assumed that the data sharing obligation with EUIPO can include the personal data of domain name holders.

Hereby it is worth recalling the well-established principle in CJEU case-law that requires any derogations and limitations to the protection of personal data to be strictly necessary to achieve a desired legitimate purpose.²⁴ In addition, any repurposing of data collection and processing cannot contradict its original purpose²⁵ which, in the case of many registries, is fulfilling its contractual obligations in the context of the registration of a domain name.

In the absence of any compelling evidence of an issue regarding GI protection within European ccTLD domain name zones, the assessment of the necessity of potential personal data sharing with EUIPO cannot be adequately conducted.²⁶

The proposal and accompanying documents do not provide any relevant information based on facts or statistical data regarding the insufficiency of current measures in place across European ccTLDs to ensure IPR

²² WIPO, The Recognition of Rights and the Use of Names in the Internet Domain Name System: Report of the Second WIPO Internet Domain Name Process (2001).

²³ Several European ccTLDs already provide similar IPR protection services in the form of ‘alert’ systems. For further information, see for example [SIDN Brandguard](#), DNS Belgium ‘[Requesting variants of your domain names](#)’, Afnic’s [FRWATCH](#).

²⁴ Judgment of the Court (Grand Chamber) of 16 December 2008, Satakunnan Markkinapörssi and Satamedia, C-73/07.

²⁵ Article 5(1)(b) of the GDPR (‘purpose limitation’).

²⁶ European Data Protection Supervisor, Assessing the necessity of measures that limit the fundamental right to the protection of personal data, 11 April 2017.

enforcement online, nor do they stress why the registration data sharing obligation with EUIPO would address IPR enforcement more efficiently than existing registration data disclosure procedures in place across European ccTLDs.

Furthermore, as stated above, it is well established in CJEU case-law that judicial or law enforcement authorities are responsible for assessing the illegality of a particular activity and for investigating IPR infringements. If the intention of the proposals is to justify data sharing with EUIPO by providing it with investigatory powers, it should be recalled that the role of EUIPO is to take care of the registration of trademarks and designs in the EU.²⁷ It can therefore not be considered an appropriate agency which could receive and retain significant amounts of personally identifiable information of domain name holders for investigatory purposes.

In the absence of any compelling evidence of GI enforcement issues in the European ccTLD domain name space, the provisions requiring EU ccTLDs to share unspecified data on “particulars of domain names” with EUIPO are not necessary and provide no legitimate interest for EUIPO to receive the personal data of domain holders.

Any data sharing agreements with EUIPO should remain voluntary in nature, respecting the limits of the national legislation of Member States and the overarching data protection framework in the EU, including purpose limitation and data minimisation principles.

To conclude, it is not clear from the proposals why any duplicating or conflicting “information and alert” system is merited, and why existing IPR protection practices established within EU ccTLDs are not sufficient for GI holders to protect their rights online. Consequently, there is no need for legislative intervention in this area, and therefore, any reference towards domain name information and an alert system needs to be omitted from the proposals.

²⁷ EUIPO General Information and Conditions.