

ANALYSIS OF RESPONSE FROM RITA FORSI (DIRECTOR GENERAL OF THE MINISTRY OF ECONOMIC DEVELOPMENT OF ITALY AND ITALIAN GAC REPRESENTATIVE)
Reviewer: David McAuley

As a member of the WS2 Jurisdiction subgroup’s Questionnaire-Response Review and Evaluation team, I submit this analysis of the response from Rita Forsi, Director General of the Ministry of Economic Development of Italy, and Italian GAC Representative (the “Forsi Response”).

The questionnaire can be seen [here](#).

The Forsi Response can be seen [here](#).

The Forsi Response provided commentary in reply to questions 1, 2, and 4.b. Those questions and the Forsi Response answers are also pasted in at the bottom of this email.

Reviewer’s Note:

Consistent with my input in other workgroups, this analysis is my personal assessment and does not represent the views of my employer, Verisign, Inc., in any way.

The Forsi Response

With respect to Question 1., the Forsi Response states that Italy was directly involved in the so-called “dot wine” issue. It says that domain names which consist, contain or unduly evoke Geographical Indications (GI’s) can easily be registered and used in a deceptive manner. And it says that this is because, in line with the American approach to GIs, they have not been accorded consistent protection as they would be if they fell under international treaties such as TRIPS and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The handling of the “dot wine” issue provides a good example of how U.S. jurisdiction of ICANN affected Italian business, the Forsi Response concludes. It posits this link between U.S. jurisdiction and ICANN’s conduct:

“The *de facto* non-recognition of GIs by US, and consequently by ICANN for example in its Registry Agreement and Uniform Domain Name Dispute Resolution Policy (UDRP), caused almost two years of intense debate ...”

With respect to Question 2., the Forsi Response notes that Italy filed two Reconsideration Requests over the “dot wine” issue and both were rejected. [One RR is dated April 9, 2014, and can be seen [here](#) – ICANN’s summary page of that RR is [here](#); the other RR is dated April 18, 2014, and can be seen [here](#) – ICANN’s summary page of that RR is [here](#).]

With respect to Question 4b., the Forsi Response says that conflicts of jurisdiction on the Internet could have implications with respect to the “EU *acquis*” – for example as regards data protection and GIs. (I am unsure of the precise meaning of “EU *acquis*” and considered this [glossary term](#) as I prepared this analysis.)

The Forsi Response concludes:

“For that reason it is necessary that an Independent third party studies possible conflicts of laws and jurisdictions in relation to the Internet and, on that basis and if warranted, consider options for action in order to prevent these conflicts and to solve them should they occur.”

Analysis

I recommend that each member of the subgroup read the Forsi Response to draw your own conclusions. It is brief and to the point.

The Forsi Response discusses an important issue in the ICANN community – the treatment of GIs within domain names. It is an issue that has challenged the community for some time and remains under debate in various WGs and other community fora.

My personal view is that the “dot wine” issue, while important, is a matter of differing points of view within the community rather than an issue implicating jurisdictional considerations. It seems a policy issue, not a legal one.

As I understand it, the issue in this debate concerns the treatment of a generic term as a TLD – in this case, “wine.” The perceived harm to be guarded against would, presumably, be registration of certain domain names at the second or lower levels. Whether a case can be made to bar or limit the delegation of the TLD to prevent problematic lower-level registrations (e.g., Champagne.wine or Toscana.wine), or not to bar nor limit delegation of the TLD because legitimate lower-level registrations might be available (e.g., table.wine or red.wine), neither seems to me to be a case premised on jurisdiction.

Is it likely that ICANN's U.S. HQ-jurisdiction led to the complained of treatment of GIs? Or was that outcome attributable instead to the community debate/deliberation/decision process as that process unfolded with respect to new gTLDs and the Applicant Guidebook? Reasonable people may differ on that but in so doing it seems the debate enters the realm of opinion rather than fact. And as important as opinion is in the policy formation process, our jurisdiction inquiry is a fact-based effort.

[Of possible note, if disputes should arise over registration of domain names in this regard, ICANN appears to be subject not only to U.S. jurisdiction but also to EU jurisdiction given that it maintains a physical presence in the EU in an engagement office in Brussels.]

Finally, the Forsi Response appears to make a link that is debatable: “The *de facto* non-recognition of GIs by US, and consequently by ICANN ...” (underline emphasis added). I am unaware of any U.S.-based requirement or inducement that would seek to prevent (or even dissuade) a private organization from adopting a policy of protection toward GIs.

To be fair, #1 of our questionnaire just asked about being affected by ICANN's jurisdiction “in any way.” Even so, any effect here, if such exists, seems remote.

In sum, then, and with respect, I think the Forsi Response makes an important contribution to the debate around geo-indications and domain names but is of limited impact in the discussions within our subgroup over jurisdiction.

Best regards,
David (in personal capacity)

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Pasted questions (asterisk directing to explanation of “jurisdiction” omitted – available online) and Forsi Response answers (footnotes omitted – available online):

1. Has your business, your privacy or your ability to use or purchase domain name-related services been affected by ICANN's jurisdiction in any way? If the answer is Yes, please describe specific cases, situations or incidents, including the date, the parties involved, and links to any relevant documents. Please note that “affected” may refer to positive and/or negative effects.

Answer:

Yes. In 2013-2014 Italy was directly involved in the so-called “.wine issue”.

Italy and European Union recognize the protection of Geographical Indications (GIs) through a very detailed regulation.

The de facto non-recognition of GIs by US, and consequently by ICANN for example in its Registry Agreement and Uniform Domain Name Dispute Resolution Policy (UDRP), caused almost two years of intense debate among GAC members (US, Australia and New Zealand against the rest of the GAC), between GAC and the ICANN Board, between Governments and ICANN.

In line with the American approach to the GIs, domain names which consist, contains or unduly evoke GIs, have not been accorded consistent protection as those defined in the International Treaty or the European Regulation.

For that reason, such domain names can be easily registered and used in a deceptive manner. Italy asked for protecting GIs by reserving the registration of their respective domain names to the rightholders, according to the TRIPS provisions, but ICANN was reluctant to impose such safeguards to the candidate Registries.

In the end .wine issue was closed not in a satisfactory but at least acceptable manner for Italian rightholders, but this could serve as a good example to show how the US jurisdiction of ICANN affected the Italian business.

2. Has ICANN's jurisdiction affected any dispute resolution process or litigation related to domain names you have been involved in?

If the answer is Yes, please describe specific cases, situations or incidents, including the date, the parties involved, and links to any relevant documents. Please note that “affected” may refer to positive and/or negative effects.

Answer:

Yes, for the .wine issue, Italy filed two Reconsideration Requests, one of which was signed by the then Minister of Economic Development, Ms. Federica Guidi. Both the Reconsideration Request were rejected

4b. Are you aware of and able to document the existence of an alternative jurisdiction where ICANN would not be so prevented from pursuing its Mission? If so, please provide documentation.

Answer:

In general, conflicts of jurisdiction on the Internet might have implications with respect to the “EU acquis”, e.g. as regards data protection and geographical indications;

For that reason it is necessary that an Independent third party studies possible conflicts of laws and jurisdictions in relation to the Internet and, on that basis and if warranted, consider options for action in order to prevent these conflicts and to solve them should they occur.