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## European Union - Users cannot provide a united front against European challenges

By Adam Smith

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"The books are open again," I was recently told by Alexander von Mühlendahl, co-founder of the Community trademark (CTM). He was referring to the comprehensiveness of the study into the European trademark system, adding: "It's an exciting time." The study is certainly provoking a great deal of discussion among users, especially those who last week met with the researchers from the Max Planck Institute (MPI) in Munich.

One of the hottest topics debated last week was the issue of genuine use - [covered extensively on this blog](#) and in other *WTR* articles. European mark owners association MARQUES has argued that there are no countries in the internal market and therefore use of a CTM is genuine anywhere within the Community. In its *amicus curiae* submission in the *Onel* case, MARQUES stated: "For a CTM, geographical or political boundaries and national frontiers do not exist. This requires that the examination of use must not refer to member states of the European Union at all, be it to find use in one state sufficient, be it to request use in more than one member state."

Some users argue that this positions the CTM in competition with national systems. MARQUES sees no problem with this. To assist the Max Planck researchers last week, MARQUES representative Tove Graulund outlined how freedom of choice in the system was crucial. "The CTM is independent of the national systems," she said. "We tend to think that if the systems are competitive, so what?"

However, what is fascinating about this entire process is that there are radically different opinions. The European Communities Trade Mark Association (ECTA), in many ways MARQUES' friend and rival, told the researchers that it disagrees completely with MARQUES on this issue.

ECTA is known for its more far-sighted approach to such matters: last week in Munich, its representatives pointed out that the European Union was a much smaller and arguably less diverse bloc when the Community Trade Mark Regulation (CTMR) was written. For ECTA, the question of whether the use in one member state constitutes genuine use must therefore be answered in the negative as the CTMR is based on a union of only 10 member states. "The CTM was created to give to companies the possibilities to avail themselves of the EU common market," says Fabio Angelini, chair of ECTA's law committee and an attorney at De Simone & Partners. "If you're not using the CTM in more than one, then you're not using the common market."

Graulund admits that users are unable to come to an agreement on this question. "Everyone is looking for clarity, certainty and predictability in the system," she says. "But we also agree that this question has to be answered on a case-by-case basis, which will take years."

Of course, the MPI researchers do not have to recommend how this problem should be solved, but

they do have to produce a comprehensive report for the Commission to consider. I will be interested to see whether the researchers take a bird's eye view or a more specific approach.

At least the MPI's meetings with users last week cleared up one issue on which the associations are unified: moving the Observatory on Counterfeiting and Piracy under the auspices of the Office for Harmonization in the Internal Market would negatively impact the focus of that agency and, although it looks likely to happen, is a very bad idea indeed.

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