EXECUTIVE SUMMARY

The Second WIPO Internet Domain Name Process was initiated at the request of the Member States of WIPO. It follows the first such WIPO Process, which investigated the interface between trademarks and Internet domain names, and recommended the establishment of a uniform dispute-resolution procedure to deal with disputes concerning the bad faith registration and use of trademarks as domain names, or “cybersquatting.” The Uniform Domain Name Dispute Resolution Policy (UDRP), which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) as a consequence of the first WIPO Process, has proven to be an efficient and cost-effective international mechanism, responsive to the particular circumstances of the domain name system (DNS) as a global addressing system. The WIPO Arbitration and Mediation Center, as a leading provider of services under the UDRP, has received, at the date of publication of this Report, over 3000 complaints under it, of which well over 80% have been resolved.

The Second WIPO Process concerns a range of identifiers other than trademarks and is directed at examining the bad faith and misleading registration and use of those identifiers as domain names. These other identifiers, which form the basis of naming systems used in the real or physical world, are:

- International Nonproprietary Names (INNs) for pharmaceutical substances, a consensus-based naming system used in the health sector to establish generic names for pharmaceutical substances that are free from private rights of property or control;
- The names and acronyms of international intergovernmental organizations (IGOs);
- Personal names;
- Geographical identifiers, such as indications of geographical source used on goods, geographical indications, and other geographical terms;
- Trade names, which are the names used by enterprises to identify themselves.

The international legal framework for the protection of these other identifiers is not as developed as it is for the protection of trademarks. In some cases, for example, geographical indications and trade names, elements of international protection exist, but they do not constitute a complete system that is uniformly applied throughout the world. In other cases, for example, personal names and the names of geographical localities, such as cities, used outside the context of trade in goods, there are no clear elements of an international framework.

The Report finds that there is considerable evidence of the registration and use of the identifiers examined in the Report as domain names by persons who might be considered not to be properly entitled to use the identifiers in question. Moreover, it is clear from the comments received by WIPO in the process leading to the Report that the registration of these identifiers as domain names by such persons offends many sensitivities. For example, many commentators considered that the registration as domain names of the names of eminent political, scientific or religious persons, or the names of countries, cities or indigenous peoples, by parties without any association with the persons, places or peoples concerned, was unacceptable.

The possibility of registering these identifiers as domain names is a consequence of the first-come, first-served, highly automated and efficient nature of the system used for domain name registration, which does not involve any screening of domain name applications. That same system has also allowed the tremendous growth that has taken place in the use of the Internet, while acting as the means of preserving universal connectivity on the Internet.

While the sensitivities offended by the registration and use of the identifiers considered in this Report by unconnected parties must be acknowledged, the insufficiencies of the current international legal framework must also be recognized. It is for the international community to decide whether it wishes to address any of these insufficiencies in order to establish an adequate legal basis to deal with the practices that might be considered to be unacceptable. Chapter Two of the Report outlines the instruments at the disposal of international community for this purpose. These instruments include self-regulation, the deployment of the contractual system within the DNS that allows ICANN to ensure certain uniform rules with respect to domain name registries, registrars and registrants, and the more traditional instrument of the treaty. These instruments are not exclusive, but can be used in combination. Thus, the UDRP represents a deployment, through the contractual relations that make up the ICANN system, of established rules relating to trademark protection that have been developed in widely accepted treaties. It will be for the international community to choose not only whether it wishes to make new rules to deal with any

of the identifiers examined in this Report, but also how it may wish to develop such rules and implement them.

The specific findings and recommendations made with respect to the various identifiers examined in this Report are:

(i) For *INNs*, which are examined in Chapter Three of the Report, it is recommended that a simple mechanism be established which would protect INNs against identical domain name registrations. The mechanism would allow any interested party to notify WIPO that a domain name registration is identical to an INN, whereupon WIPO would, in conjunction with the World Health Organization (WHO), verify the exact similarity between the domain name and the INN and notify this to ICANN, which would, in turn, notify the registrar with which the registration was made that the domain name registration should be cancelled.

(ii) For the *names and acronyms of IGOs*, which are examined in Chapter Four of the Report, it is recommended that States, as the constituents of IGOs, should work towards the establishment of an administrative dispute-resolution procedure, akin to the UDRP, where an IGO could bring a complaint that a domain name was the same or confusingly similar to the name or acronym of the IGO, that it has been registered without legal justification and that it likely to create a misleading association between the holder of the domain name registration and the IGO in question.

(iii) For *personal names*, which are the subject of Chapter Five of the Report, it was found that there no existing international norms dealing with their protection and that national legal systems provide for a wide diversity of legal approaches to their protection. The sensitivities offended by the registration of personal names as domain names by parties unconnected with the persons in question is recognized, and it is suggested that the international community needs to decide whether it wishes to work towards some means of protection of personal names against abuse of domain name registrations.

(iv) For *geographical identifiers*, which are dealt with in Chapter Six, it is recognized that certain norms exist at the international level which prohibit false and deceptive indications of geographical source on goods and which protect geographical indications, or the names of geographical localities with which goods having particular characteristics derived from that locality are associated. However, these rules apply to trade in goods and may require some adaptation to deal with the perceived range of problems with the misuse of geographical

indications in the DNS. Furthermore, the lack of an international agreed list of geographical indications would pose significant problems for the application of the UDRP in this area because of the need to make difficult choices of applicable law. It is suggested that the international framework in this area needs to be further advanced before an adequate solution is available to the misuse of geographical indications in the DNS. As far as other geographical terms are concerned, the Report produces considerable evidence of the widespread registration of the names of countries, places within countries and indigenous peoples as domain names by persons unassociated with the countries, places or peoples. However, these areas are not covered by existing international laws and a decision needs to be taken as to whether such laws ought to be developed.

(v) For *trade names*, which are the subject of Chapter Seven, the situation is similar to that of geographical indications, insofar as certain international norms exist for the protection of trade names, but fundamental problems exist in identifying across differing national approaches what constitutes a protectable trade name, and consequently, in avoiding highly complex choices of applicable law on a global medium. It is recommended that no action be taken in this area.