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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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**STANDING COMMITTEE ON THE LAW OF TRADE MARKS,
INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS**

**First Special Session
on the Report of the Second WIPO Internet Domain Name
Process**

Geneva, November 29 to December 4, 2001

REPORT

adopted by the Special Session of the Standing Committee

Introduction

1. In accordance with the decision of the WIPO General Assembly at its meeting in September 2001 (document WO/GA/27/8) that the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) hold two special sessions on the Report of the Second WIPO Internet Domain Name Process (the "Special Sessions"), the first such Special Session was held in Geneva from November 29, 2001, to December 4, 2001.

2. The following 69 States participated: Albania, Algeria, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Burundi, Cambodia, Canada, Central African Republic, Chad, Chile, China, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Estonia, France, Germany, Ghana, Guatemala, Honduras, Hungary, India, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lithuania, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Panama, Paraguay, Philippines, Portugal,

Republic of Korea, Romania, Russian Federation, Senegal, Singapore, Slovakia, Spain, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia, Zimbabwe. The European Community was also represented in the capacity of a member of the SCT.

3. The list of participants is contained in the Annex to this report.
4. The Session was opened by Mr. Francis Gurry, Assistant Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.

Election of a Chair and two Vice-Chairs

5. Mr. S. Tiwari (Singapore) was elected as Chair, and Mrs. Valentina Orlova (Russian Federation) and Ms. Ana Paredes Prieto (Spain) as Vice-Chairs. Mr. David Muls (WIPO) acted as Secretary.

Adoption of the Draft Agenda

6. The Draft Agenda (SCT/SI/1) was adopted without modification.

Accreditation of Certain Organizations

7. As set out in document SCT/SI/5, three organizations had expressed to the Secretariat their wish to obtain ad hoc observer status for the Special Sessions: the *Agence pour la protection des programmes*, the Internet Society and the International Federation of Red Cross and Red Crescent Societies. The accreditation of the organizations in question as ad hoc observers for the Special Sessions was approved unanimously.
8. The Representative of the International Federation of Red Cross and Red Crescent Societies informed the Secretariat that his organization was incorrectly referred to in document SCT/SI/5 as a non-governmental organization, and requested that it be referred to as an intergovernmental organization in further documents.
9. The Secretariat noted the statement and confirmed that the necessary correction would be made in future documents.

Report of the Second WIPO Internet Domain Name Process and its Context

10. In terms of the structure for the discussions on this agenda item, the Chair proposed that the Secretariat first provide a general overview of the Report of the Second WIPO Internet Domain Name Process and its recommendations (the Report), after which delegations would be invited to make opening statements. After such opening statements, it was suggested to deal successively with each of the topics covered by the Report, namely: (1) international non-proprietary names (INNs) for pharmaceutical substances, (2) names of international intergovernmental organizations (IGOs), (3) personal names, (4) geographical identifiers and

(5) tradenames. For the debate on each separate topic, the Chair proposed first to discuss the extent of problems encountered in the domain names system (DNS) and, only if the extent of problems was deemed significant, to proceed with a debate on possible methods for rectifying those problems and what the nature of those methods might be.

11. On the basis of document SCT/SI/2, the Secretariat provided a brief historical overview of the main developments affecting the domain names system (DNS) since the middle of the last decade, including the creation of the Internet Corporation for Assigned Names and Numbers (ICANN), the entity responsible for the technical management of the DNS, and the adoption by the latter, in December 1999, of the Uniform Domain Name Dispute Resolution Policy (UDRP), based on the recommendations formulated in the Report of the first WIPO Internet Domain Name Process. The Secretariat observed that the UDRP, which offers protection for trade and service marks only, was now widely used to combat cybersquatting in the DNS. More than 3400 UDRP disputes had been filed with the WIPO Arbitration and Mediation Center (one of four ICANN-accredited dispute resolution service providers), representing approximately 70% of the total number of cases filed under the procedure. The Secretariat remarked, however, that, already at the stage of the first WIPO Internet Domain Name Process, it had become apparent that a number of identifiers other than trademarks, some of which were recognized in the intellectual property system, also are the subject of abusive domain name registrations. It was those other identifiers that WIPO had been requested by its member States to address in the Second WIPO Internet Domain Name Process, which culminated in the publication of the Report on September 3, 2001. Essentially the Report reached three general conclusions: (1) there was wide spread evidence, as reflected in the Annex to the Report, that many of the identifiers in question are registered by persons or entities who have no connection with them; (2) the existing international intellectual property framework was not sufficiently comprehensive to deal with all the problems encountered; (3) whereas the protection that was created for trade and service marks through the UDRP was an exercise which consisted of reflecting existing law in a new medium (the Internet), the establishment of protection in the DNS for the identifiers covered by the Report would amount to the creation of new law. That being the case, the Report recommended that the Member States should decide whether to complete the legal framework and, if so, how to do so.

12. On behalf of the Group of Central European and Baltic States, the Delegation of Latvia shared the view that the existing legal framework was insufficiently comprehensive to deal with all problems encountered in relation to the topics covered by the Report and observed that such framework should be updated. With regard to the methods by which this could occur, the Delegation proposed a combination of the three policy options described in Chapter 2 of the Report: self-regulation, the ICANN contractual model and the treaty. The Delegation expressed the view that, for each topic of the Report, these three approaches might be combined differently in order to reach the desired result. The Delegation expressed general support for the recommendations in the Report concerning INNs, the names of international intergovernmental organizations, personal names, geographical identifiers and tradenames. With regard to geographical identifiers, the Delegation proposed that a distinction be made between those that were recognized by the intellectual property system and those that were not.

13. The Delegation of the United States of America observed that the Report was extensive and that some time should be devoted at this meeting to the study of its recommendations, in

order to determine areas of the Report that might benefit from clarification. However, given the deadline mandated by the General Assembly of WIPO, the Delegations suggested that primary attention at this Special Session be given to the areas in which the Report recommends specific action: namely, on INNs and IGOs. The Delegation noted that there were many layers of analysis and many far-reaching implications in the Report for the future of intellectual property and the future of the domain names system. While debate on these issues had already occurred through the regional consultations, the Delegation remarked that the governments represented at the meeting were obligated to consider those matters that were unique to governments. For example, the Delegation noted that the recommendations on INNs and IGOs might create new government obligations and thus must be considered carefully. It was possible that a complete understanding of such obligations and their impact might require delegation to undertake consultations with their own government experts in such areas as information technology and telecommunications, constitutional law, and public health. Once that review had taken place, the Delegation expressed interest in exploring the Report's specific recommendations in the areas discussed and hoped to help move the debate regarding the internet domain names system towards an acceptable international consensus which took into account both the principles of intellectual property and the concerns of all IP constituents.

14. The Representative of the International Federation of the Red Cross (IFRC) thanked the Committee for having accredited the IFRC as an observer to the meeting. The Representative noted that the IFRC was attending the meeting in order to express its concern about the character of the Red Cross and the Red Crescent and the nature of the obligations that States had undertaken through their ratification of and accession to the first Geneva Convention of 1864 to protect the name and the emblem of the Red Cross and the Red Crescent. The Representative referred to Article 53 of the Geneva Convention, to which 199 States were party, which required States to prohibit the unauthorized use of the name "Red Cross" or "Red Crescent" or their emblems. The Representative also stated that the Geneva Convention created a process under which States, commonly through legislation, create their own national Red Cross or Red Crescent societies. The Representative stressed that those societies were founded by legislation and stood as auxiliary to their Government in support of the work enforced by medical units and in dialogue with their Government as partners in a range of humanitarian activities within each country. The Representative raised the point that, as those societies were not NGOs, their names were protected by national legislation. He also noted a significant degree of abuse of such names at the level of country code top-level domains (ccTLDs), but that most abuse occurred at a global level (in the gTLDs). The Representative gave examples of abuse by third parties purporting to be Red Cross Organizations and defrauding the public by seeking donations for causes. The Representative requested the Special Session take into consideration this concern, which might relate to a treaty-protected name, or that of an IGO. The Representative finally stressed that the IFRC would be ready to work further with the other Delegations and noted that a report on the meeting as well as a communication would be addressed respectively to the ICRC and to all National Red Cross Societies. The Representative also proposed that the IFRC could request all National Red Cross Societies to link with Delegationsto consider the issue.

15. The Delegation of Japan commented that careful considerations should be given to issues not only by governments, but also by the private sector, international organizations, and non-governmental organizations related to the Internet society. The Delegation expressed doubt as to the possibility of the creation of a new law in the field of intellectual property,

which would enable documents to be modified year by year by international agreement, as through the annual report of the Organization. The Delegation also stressed that two sessions might not be sufficient to examine the issues raised by the Report. The Delegation added that at the same time as solutions should be reached as soon as possible, without prejudging that a joint recommendation would be adopted at the next Assemblies of the Member States, and that sufficient time for discussions should be given.

16. The Representative of the International Association for the Protection of Industrial Property (AIPPI) stated that the problems which would arise from extending the UDRP to tradenames, as described by the Report and expressed by certain delegations, were exaggerated. This was so, in the view of the Representative, because panelists appointed to resolve disputes under the UDRP frequently were required to decide whether a complainant has succeeded in demonstrating that it is the holder of an unregistered mark. In the view of the Representative, reaching similar conclusions regarding the existence of a tradename would not be significantly more complicated for panelists in most cases.

17. The Representative of the International Trademark Association (INTA) expressed broad satisfaction with the UDRP, as it currently exists. That being the case, the Representative stated that, at least in the short-term, adjustments to the UDRP to broaden its scope would not be desirable, although he welcomed further study of the matter in the longer term.

International Non-proprietary Names for Pharmaceutical Substances (INNs)

18. The Delegation of the United Kingdom remarked that, to date, no problems had been encountered in relation to INNs in the UK top-level domain. If it were found, however, that a significant level of problems did exist, the Delegation proposed to deal with them through alternative dispute resolution procedures, such as an extension of the UDRP, rather than exclusion mechanisms.

19. The Delegation of the European Commission expressed support for the recommendations formulated on this topic in the Report, in particular with a view to preventing abuse in the future.

20. The Delegation of the United States of America stated that, notwithstanding the instances of the registration of INNs as domain names reflected in the Annex to the Report, it was not convinced that it was adequately demonstrated that those registrations were harmful. In the absence of evidence of harm, the Delegation proposed to adopt a wait-and-see approach rather than to take action.

21. The Delegation of France expressed support for the views expressed by the European Commission and urged that the topic not be set aside, but that action be taken to establish measures aimed at preventing abuse in the future.

22. The Delegation of Australia inquired how the suggestion of the Delegation of the United Kingdom to extend the UDRP can be reconciled with the Report's recommendation to establish a more simple notice and takedown procedure.

23. The Delegation of the United Kingdom explained that it had no fixed views of what the most appropriate method of dealing with the problem might be. Its main concern was to

avoid the establishment of exclusion mechanisms for INNs which, in its view, would unduly interfere with the domain name registration process, which, in many cases, is based on the first-come, first-served principle.

24. In response to the enquiry made by the Delegation of Australia with regard to who would have the burden of ensuring at the registration stage that no INNs were unduly registered as domain names: the registrar or the registrant, the Secretariat explained that this would be an obligation on the part of the registrant resulting from the domain name registration agreement. The Secretariat stated that, while it would also be possible to adopt a treaty imposing upon States the obligation to render illegal the registration of INNs as domain names, this might not be an effective means of dealing with the problem, particularly if only a limited number of countries were to ratify the instrument. The Secretariat remarked that the elegance of the contractual approach was that it at least has the potential of offering a truly global solution.

25. The Delegation of the United States of America stated that INNs were generic terms and had no source-identifying capacity. They should be free for use by anyone. Only if there were compelling policy reasons should deviations be made from this principle. In light of the lack of demonstrable harm resulting from the registration of INNs as domain names, the Delegation was of the view that such compelling reasons do not exist. While attempting to prevent harm from arising in the future was a commendable approach, the Delegation expressed concern about the spill-over effects which the establishment of protection for INNs might have in other areas. For instance, plant variety names were established in a similar manner as INNs. The Delegation raised the question whether establishing protection for INNs in the DNS would therefore not also lead to pressure for creating special protection for plant variety names. This raised the question where the limit would be drawn in terms of which real-world identifiers to protect and which not.

26. The Representative of the World Health Organization (WHO) stated that the problem of INNs was often not well understood. The Representative explained that INNs were unique identifiers aimed at patients' safety. The Representative observed that industry itself had requested that measures be taken to protect INNs in the DNS, because several companies had been approached with offers to purchase domain names corresponding to INNs. The Representative remarked that INNs were registered as domain names for a variety of purposes. Sometimes they were registered as a preventive measure, in order to ensure that the name could not be abused. Many domain names corresponding to INNs did not have a website associated with them, suggesting that registrants were taking a wait-and-see approach, but might use them in the future. Others were used for purposes of promoting particular commercial products. Still others were used for informational purposes, but there was no control over the quality of the information provided. The Representative was of the view that registration of an INN as a domain name provided a de facto monopoly over the term, which was contrary to the fundamental policy objectives underlying the INN system.

Names of International Intergovernmental Organizations (IGOs)

27. The Delegation of the European Community expressed support for the Report's recommendations on this issue.

28. The Delegation of the United States of America stated that, according to its understanding of the record, many problems encountered by IGOs seem capable of being resolved through informal discussions with domain name registrants, who often appeared to be willing to deactivate websites that were the subject of complaints on the part of IGOs. The Delegation recognized, however, that even if such websites were deactivated, the domain names at issue remained registered in the name of the offending registrant. Nonetheless, the Delegation was of the view that this raised the question whether the problem is of such magnitude that it required to be addressed. If the problem were found to be significant, the Delegation proposed that a study be made on how a subset to the UDRP could be created to solve the problem.
29. Following a question by the Delegation of Chile concerning the application of the Report's recommendations to the ccTLDs, a discussion followed on the relationship between ICANN, the administrators of ccTLDs and the governments of the countries and territories corresponding to the ccTLDs.
30. The Secretariat explained that this was a sensitive subject matter, which went beyond the scope of intellectual property, and that there was a wide variety in the nature of the relationships between governments and ccTLDs. It proposed that the manner in which the recommendations of the Report might be implemented in any particular ccTLD would need to take due account of the nature of the relationship and that different implementation models were possible in this connection.
31. The Delegation of France expressed support for the Report's recommendations on the topic concerned and proposed to discuss the modalities of how the recommended protection might be established.
32. The Delegation of the United Kingdom stated that it had no strong views on whether or not the extent of problems encountered warranted action, but suggested that, if action were to be taken, the modalities of protection would require further clarification.
33. The Delegation of Mexico stated that Mexico afforded protection to the names, acronyms and emblems of IGOs under Article 6 *ter* of the Paris Convention and therefore supported the Secretariat's recommendations. It expressed agreement with the view of the Delegation of France that the means of implementing the recommended protections should be investigated.
34. The Delegation of Australia shared the view of the Delegation of the United Kingdom on this topic. However, to the extent protection were to be established, it inquired what the legal basis for such action might be.
35. The Representative of the International Federation of the Red Cross and Red Crescent Societies inquired what action ICANN might be expected to take in relation to any decision of this body or any other WIPO body to establish protection for the identifiers at issue.
36. The Secretariat stated that these last two questions were among the central issues facing the SCT. Normally, at the international level, the legal basis for the action under consideration would take the form of a treaty. However, there was a widely held view that the treaty process was too lengthy and inflexible to offer adequate solutions for the problems

covered by the Report. For instance, if only a few countries were to ratify the treaty, it would be relatively simple for a user to avoid its application by locating its activity (for instance, the server) in a country where the treaty was not in force. The advantage of a contractually based system, such as the UDRP, was that it is globally enforceable without the need to resort to national courts and could avoid complex questions of applicable law. The essential question was how to reflect, within the ICANN system, a policy which falls beyond the scope of ICANN's mandate (which is the technical management of the DNS) and therefore was to be established by competent fora other than ICANN. In this respect, an alternative approach might take the form of a resolution by the General Assembly of WIPO or the Assembly of the Paris Union, which could be implemented in the DNS through the ICANN contractual system. This approach would require the cooperation of ICANN and more discussions would be required with member States on how best to ensure such cooperation. For further consideration, the Secretariat stated that one possible way of securing ICANN cooperation might take the form of a memorandum of understanding, as such a vehicle was now frequently used to record private/public sector arrangements at the international level (by, for instance, the International Telecommunication Union).

37. The Delegation of the United Kingdom was of the view that the contractual approach might be the most efficient means of achieving the desired result in the gTLDs, and, in due course, also in the ccTLDs. A contractual approach was also more consistent with current practices in the Internet in general and the DNS in particular.

38. The Delegation of Australia asked the Secretariat whether it would be possible to elaborate on the actual harm caused by the registration of the names and acronyms of IGOs as domain names.

39. The Secretariat explained that there was significant participation by international intergovernmental organizations in the Second WIPO Internet Domain Name Process. As part of the Process, the Office of Legal Affairs of the United Nations had expressed frustration about the situation, because the only available avenue for action to redress the abusive practices consisted of reverting to court action, which was hard to reconcile with the principle of immunity of IGOs. The Secretariat also referred to several concrete examples of the abusive registration of names and acronyms of IGOs as domain names, as documented in the Report.

40. The Delegation of Sweden stated that it was unsure of the true extent of the problem, but recognized that there might be good reasons why the issue was of concern to governments. The Delegation urged that an appropriate distinction be made between gTLDs and ccTLDs and stated that it would be preferable that any action that might be taken be confined to the gTLDs, at least as a start. The Delegation also expressed a preference for a contractual approach for dealing with the problem, which would more adequately reflect current practice for the management of the DNS.

41. The Delegation of Australia stated that, if the purpose was to eradicate bad faith practices, it would be desirable to do so both at the level of the gTLDs and the ccTLDs, although the specific modalities through which this could be achieved might have to differ from one ccTLD to another. The Secretariat clarified that the recommendations contained in the Report were aimed primarily at the gTLDs, but that they were also offered for

consideration to the administrators of ccTLDs, whomight wish to apply them on a voluntary basis.

42. The Delegation of the United States of America noted that IGOs would prefer absolute protection of their names and acronyms in the DNS, for which there currently would be no basis under Article 6 *ter* of the Paris Convention. Instead of such absolute protection, the Report recommended a more moderate form of protection in cases where the names and acronyms of IGOs were registered in bad faith and in a manner that was misleading to consumers. The Report recommended that a new administrative procedure be created for these cases, because certain aspects of the UDRP (the requirement that a complainant submit to the jurisdiction of certain national courts in relation to the dispute) would require IGOs to waive their immunity. The Delegation expressed several concerns with regard to the Report's recommendations. First, it was of the view that the creation of an administrative challenge procedure for exclusive use by IGOs would go beyond the protection currently offered by Article 6 *ter* of the Paris Convention. The Delegation illustrated this point by explaining that, under United States law, IGOs are required to resort to court litigation to enforce their rights under Article 6 *ter* of the Paris Convention. Secondly, if the IGOs were not required to submit to the jurisdiction of any court in relation to the dispute, there would be no opportunity for a registrant to appeal a decision emanating from the administrative procedure. Thirdly, the question would need to be addressed how the operation of the administrative procedure would be funded. Notwithstanding the above concerns, the delegation expressed a willingness to examine the possibility of creating a subset to the UDRP to address any perceived problems regarding this topic.

43. The Representative of the International Federation of the Red Cross and Red Crescent Societies (IFRC) explained that the name and emblem of the Red Cross were protected by specific provisions of the Geneva Conventions. The Representative inquired whether any other international organizations benefited from such strong form of protection for their names in their constituent instruments.

44. The Secretariat replied that it was not aware of any other organizations benefiting from such protection, but stated that, for instance, the Bank of International Settlements in Basel benefited from a provision protecting its name which was implemented in the national laws of certain jurisdictions.

45. The Delegation of Japan noted that, under certain circumstances, the registration or use of a domain name corresponding to the name or acronym of an IGO might constitute an infringement of the Paris Convention or the TRIPS Agreement. The Delegation identified the legal nature of the protection offered under those international instruments as the core issue to be addressed, which merits further study and discussion.

Personal Names

46. The Delegation of Australia noted that the Report recommended no action on the issue of personal names and expressed support for that recommendation.

47. The Delegation of the Republic of Korea shared the view of the Delegation of Australia, but added that a study on the protection of personal names in the real and virtual worlds would be desirable.

48. The Delegation of Switzerland stated that persons, who are commercially active and who have acquired a reputation in their personal names in one or more jurisdictions protecting unregistered marks, could find relief for the abuse of their names in the DNS under the UDRP. However, to the extent the activities of the persons in question were confined to countries in which unregistered trademarks were not protected, the UDRP would not offer them any protection. There was therefore a problem of unequal access to the UDRP which should be redressed. However, the Delegation recognized that such redress also could be achieved through the expansion of the scope of the UDRP to trade names and therefore wished to reserve its position on this question until that portion of the Report has been discussed in the Special Session.

49. The Delegation of France supported the view of the Delegation of Switzerland and stated that it would like to see the matter studied further.

Indications of Source and Geographical Indications

50. The Delegation of the European Community expressed concerns about the recommendations in the Report regarding geographical indications, in particular because they did not sufficiently take into account the problems encountered in connection with their registration in the DNS. Considering the provisions of the TRIPS Agreement, the Delegation disagreed with the position that the international legal framework was not sufficiently advanced to deal with the problem. The Delegation observed that marks also were protected differently from one jurisdiction to another and referred in this respect to the differing treatment of unregistered marks in Member States. The Delegation expressed the view that at the recommendations of the Interim Report were more appropriate and requested additional explanations why geographical indications would not warrant the same protection in the DNS as marks. The Delegation also recalled that panelists were primarily asked to rule upon the existence of abuse, rather than the validity of rights.

51. The Delegation of France emphasized the need to protect geographical indications and said that such indications constituted intellectual property rights long recognized as such, and should be protected irrespective of the medium, including on the Internet. The Delegation added that geographical indications represented a vital source of economic value for all countries with a heritage to be protected. The Delegation also noted the increasing number of instances of bad faith and, in line with the Delegation of the European Community, said that the UDRP offered a satisfactory method of protecting geographical indications on the Internet and that it should therefore be extended to such indications.

52. The Delegations of Chile, Hungary, Switzerland and Turkey expressed their support for the position of the European Community.

53. The Delegation of the United States of America observed that the UDRP had proved useful because there existed a sophisticated international understanding of trademark rights. Even if the procedures for obtaining trademark registration varied throughout the world, the Delegation believed that there was core agreement regarding the subject matter eligible for protection as a registered trademark (e.g., words and phrases). The Delegation noted that the Report itself stated that, unlike for trademark rights, geographical indications were not defined nor protected similarly around the world. Given the different systems of protection

for geographical indications and the evolving world thought on what constituted a geographical indication, the Delegation stated that UDRP cases involving geographical indications would not be obviously bad faith squatting cases. The Delegation explained that, while the concept of "bad faith" might be a constant, proof of "bad faith" would run the continuum from obvious and easy to subtle and complex. The Delegation believed that evidence of "bad faith" would fall into the "subtle and complex" end of the continuum and supported this point of view by the fact that some terms (e.g., "CHEDDAR") considered protected terms in one country were equally considered obvious generic (unprotectable) terms in other countries. Without a clear international understanding of what were geographical indications, the Delegation was convinced that UDRP panels would, in fact, be given the responsibility of creating new, internationally binding law. The Delegation recalled that the Panel Report itself cautioned against such a result, stating that, "new laws should only be effected through a representative and legitimate authority." The Delegation further stated that panelists would be in a position of giving extra-territorial effect to the laws of one country, at the expense of the laws of a competing sovereign. The Delegation questioned whether world thought on issues of jurisdiction, choice of law, and extra-territorial effect had yet evolved to the point where sovereigns would be comfortable with accepting the opinion of a one or three person panel in rendering decisions with universal effect.

54. The Delegation of the European Community expressed disagreement with the position of the Delegation of the United States of America and stated that, in light of the fact that there existed international norms and definitions of geographical indications, in particular in the TRIPS Agreement, it would be inconsistent to protect marks through the UDRP and not geographical indications. The Delegation recognized that certain terms might be considered generic in a number of jurisdictions, but explained that this could also be the case in relation to marks and was therefore not a problem that arises solely in connection with geographical indications. The Delegation stated that an assessment would need to be made by competent panelists of whether a geographical indication had been abused in the domain name registration process, in a manner similar to how the UDRP operated with regard to marks.

55. The Delegation of Australia expressed support for the position of the Delegation of the United States of America. While the Delegation agreed that there was a uniform definition of geographical indications at the international level in the TRIPS Agreement, there remained important differences between jurisdictions on how to acquire, maintain and protect rights in geographical indications. According to the Delegation, in light of the latter differences, providing protection through a single procedure, such as the UDRP, would result in the creation of new law, cutting across various differing domestic laws.

56. The Delegation of Guatemala stated that, in its view, the international legal framework for geographical indications was not sufficiently developed to allow, at this stage, panels constituted under the UDRP to solve conflict between geographical indications and domain names.

57. The Delegation of the Ukraine supported the positions of the European Community, France and other Delegations, favoring the protection of geographical indications in the DNS, because abuse and confusion to the public should not be permitted in any circumstances.

58. The Delegation of Romania also expressed support for the point of view of the European Community.

59. The Delegation of Venezuela, while expressing support for the position of the European Community, requested that the matter be studied further.

60. The Delegation of Algeria emphasized the need to protect geographical indications using the most appropriate legal means. Referring to the current dispute involving South Africa, whose name had been registered as a domain name, the Delegation wondered how such a matter could be resolved and what means of protection could be envisaged, either on the assumption that the UDRP would be extended to geographical indications, or in the opposite case.

61. The Delegation of Switzerland referred to the concern expressed by the Delegation of Australia and recognized that extending the UDRP to geographical indications would likely result in panelists having to deal with delicate questions of application of national law and scope of protection to be granted. However, the Delegation noted that such questions were not new, for panelists had to address questions of unregistered marks under the UDRP. The questions that needed to be examined were first, what was the national law that applied to the claimed unregistered trademark, second, what were the conditions under which that law granted protection, and third, whether those conditions were met. The Delegation stated that this examination took place on a case-by-case basis, as there were no harmonized rules. The Delegation also commented on the situation where a defendant might claim that its registration and use of the domain name was legitimate and in good faith, because the term at issue was deemed generic in the registrant's jurisdiction. The Delegation remarked that such situations could arise in relation to trade or service marks. The Delegation therefore concluded that no special or different conditions attached to the consideration of geographical indications under the UDRP than those attached to trade and service marks.

62. The Delegation of France emphasized that the object of the debate was to protect existing rights on the Internet and not to attempt to harmonize national rights. The Delegation also noted that it was not a matter of granting jurisdictional authority to the arbitrators. Moreover, the Delegation observed that numerous States were currently adopting legislation designed to protect geographical indications and, in this regard, it would be a pity if the efforts of those States were reduced to nothing by individuals registering domain names that usurped geographical indications.

63. The Delegation of Panama noted that the legal instruments of the Paris Convention and the TRIPS Agreement created rights concerning geographical indications. The Delegation noted that the Report had given evidence of cases where geographical indications had been registered as domain names by persons without any connection to the geographical place, that the Report had found international law inadequate to protect geographical indications in the DNS, and that new instruments were necessary to solve this problem. For this reason, the Delegation supported the recommendations in the Report.

64. The Delegation of Senegal recalled the existence of an organization that grouped together 16 countries, in accordance with the Bangui Agreement. The Delegation mentioned that as part of the entry into force of the TRIPS Agreement, the Bangui Agreement had been revised and, when the latter Agreement came into force, it would enable countries to put in place measures aimed at protecting geographical indications. The Delegation underlined that as part of this subregional agreement, a single geographical indication could be extended to

several countries and, in that connection, the question of determining the right that could be held by each State arose. The Delegation noted the usefulness of the Bangui Agreement in the face of such a difficulty, insofar as the Agreement constituted a uniform law for all States. Finally, the Delegation highlighted Senegal's concern regarding the protection of geographical indications on the Internet, and noted the transfer of practices considered to be unlawful in developed countries to developing countries where national laws preventing such practices did not exist.

65. The Delegation of the Russian Federation noted that, in the Russian Federation, protection was provided only for one type of geographical indication, namely appellations of origin. The Delegation noted that the question of protection of geographical indications on the Internet was difficult because protection was differently granted in different countries and would be difficult to harmonize. The Delegation expressed the view that the precise form of protection was not critical. The important point, according to the Delegation, was that there was a right in a mark and that confusion to the public should be avoided. The Delegation expressed the view that the same principles should be upheld in relation to geographical indications, irrespective of the form of protection they were granted in different jurisdictions. The Delegation therefore agreed with the position put forward by the Delegation of the European Community.

66. The Delegation of Chile, referring to the intervention by the Delegation of France, noted that this meeting was not aiming for an agreement on one system of protection, but sought to provide opinion about whether geographical indications should be protected under the UDRP. The Delegation drew a distinction between false indications of origin and geographical indications, and noted the remarks of the Delegation of Australia with regard to the sui generis protection of such identifiers. The Delegation noted that false indications of source did not require protection, but that a framework for protection of geographical indications was established by the TRIPS Agreement, which also defined geographical indications and required States to grant them protection. The Delegation noted that the principles relating to geographical indications under the TRIPS Agreement could apply to any form of protection of that category of industrial property, and therefore did not standardize the way in which countries could grant protection, whereas they did provide a collective framework for such protection.

67. The Delegation of the United States of America raised a point for consideration of the meeting by noting that most delegations had indicated that there existed a well-understood definition of geographical indications in the TRIPS Agreement, which might apply directly to the DNS and could be enforced under the UDRP. The Delegation hypothetically put itself in a domain name case panelist's position, deciding a dispute concerning a geographical indication, and noted that the panelist would have to ask first, looking at Article 22(1) of the TRIPS Agreement (which applies only to goods, and not services), what the legal situation would be if the domain name corresponding to a geographical indication was used in relation to services, for example, tourism. Second, the panelist would have to enquire if the domain name was functioning as a geographical indication and therefore eligible for protection (i.e., identifying goods originating in a territory where a given quality or character of the goods was attributable to their geographical origin). The Delegation gave the example of <americantourism.com> and asked whether a domain name used in the context of a tourism service would be eligible for protection as a geographical indication, raising questions whether the United States was known for its tourism services and whether an essential

characteristic of the good was derived from the United States. From this, the Delegation concluded that Article 22(1) did not provide a clear definition of geographical indications. The Delegation noted that, in respect of trademarks, although Article 15(1) of the TRIPS Agreement detailed eligible subject matter, this issue still required further clarification, despite 100 years of legal development. The Delegation concluded that the international community was now only at the preparatory stage of discussing the definition of a geographical indication and that a lot of debate was still necessary before such identifier could be protected by a procedure such as the UDRP.

68. The Delegation of the European Community expressed the view that the distinction between goods and services in relation to geographical indications was beyond the scope of the present discussion and did not pose any particular difficulties in relation to the UDRP. The Delegation noted that the Report of the first WIPO Internet Domain Name Process had established that the questions to be resolved by a panelist were confined merely to whether the domain name was identical or misleadingly similar to the protected identifier, whether the registrant had any rights or legitimate interests in the domain name and whether the domain name had been registered and used in bad faith. The Delegation recognized that domain names corresponding to geographical indications could be used in relation to services (e.g., <tequila.com> could be used to promote party services) in which case, even though protection of the geographical indication 'tequila' could be claimed, no rights would be infringed. In this respect, the Delegation noted that the central question was whether the name was abused in a manner contemplated by the UDRP.

69. The Delegation of Australia expressed its support for the Report's recommendations on geographical indications and noted that it did not share the views expressed by the Delegation of the European Community. The Delegation noted that the international framework for protection of geographical indications was at a preparatory stage and the fundamental framework for the protection of geographical indications remained to be agreed by the international community. Referring to document SCT/6/3, the Delegation stated that there was a lack of common understanding surrounding this protection, and that it would therefore be premature to attempt to reflect the current state of international law in a global dispute resolution process for geographical indications in the DNS. The Delegation noted that there was no clear consensus on what is the definition of a geographical indication in accordance with the TRIPS Agreement and that there remain considerable differences in recognition of rights in geographical indications at national levels. The Delegation also noted the difficulty in addressing the application of exceptions and the unresolved question of treatment of homonymous geographical indications. The Delegation emphasized that it was not appropriate for domain name panelists to decide questions of applicable law and thereby create international law, which was legitimately created via intergovernmental processes that took into account the broader context of geographical indications in the physical world. The Delegation stated that these questions, addressing the use and misuse of geographical indications online, warranted discussion in the SCT, which was the appropriate forum for such discussions. Further, the Delegation noted that such SCT discussions need not interfere, but would complement, this Special Session's consideration of the Report and the Delegation anticipated the critical work that would take place on the issue of geographical indications in the ordinary sessions of the SCT.

70. The Delegation of the European Community clarified that it had not supported the extension of legal protection of geographical indications, but proposed that the existing

protection established under the TRIPS Agreement should be recognized to the DNS. The Delegation noted that the Member States had endorsed this approach at their Assemblies on October 3, 2001.

71. The Delegation of the United States of America expressed its willingness to participate in the substantive work that remained to be done in the area of geographical indications, and recalled its intervention to this effect at the September 2000 and March 2001 meetings of the SCT. The Delegation remarked that the international community was on the threshold of agreement on the issue of geographical indications, but that there was at present no clear fundamental understanding of what may constitute a geographical indication and no agreement on protectable subject matter: for example, the Delegation noted that Members were not in agreement as to whether a country name could be a geographical indication. Further, the Delegation noted a lack of agreement on whom may own a geographical indication and remarked that this was a fundamental issue yet to be addressed. The Delegation stated that trademarks and geographical indications raised different considerations: for example, the international community shared a clear understanding that individuals might own and assert rights in trademarks, whereas there was no consensus on whether individuals might own or assert rights in geographical indications. The Delegation also remarked that there was no consensus on how geographical indications might be created, and whether natural or legal persons might set standards for geographical indications. Further, the Delegation noted that, in the absence of agreement on the term of a geographical indication, this important question had to be debated, together with the issue of how geographical indications might be challenged, cancelled or de-authorized. Finally, the Delegation stated that these questions should be addressed by the SCT in its ordinary sessions, so that an international consensus and guidance could be gained.

72. The Delegation of Canada noted, referring to the Report, that considerations of domain names and geographical indications were difficult and raised strong and divided views among Members. The Delegation noted that the UDRP was functioning inefficiently at this time and supported the recommendations made in the Report that, in order to maintain the integrity of the UDRP, more considerations should be given to the issues before extending its application to geographical indications. In this respect, issues to be considered included questions of applicable law, the lack of harmonization in the international legal system for geographical indications and the appropriate mechanisms for the creation of new law. The Delegation noted that the scope of protection for geographical indications was currently limited to goods only, whereas a domain name registration incorporating the unauthorized use of a geographical indication might not violate international rules as there might be no use of the domain name in connection with goods. The Delegation expressed its concern that the UDRP was not the appropriate mechanism for extending the protection granted to geographical indications and noted that these issues should be considered in a broader context. Finally, the Delegation stated that the ordinary SCT meetings provided the appropriate forum for considerations of these questions.

73. In response to the statement made by the Delegation of the United States of America, the Delegation of France emphasized that the distinction between the question of geographical indications on the one hand, and the protection of such indications against their registration in bad faith as domain names on the other, had been the subject of a decision by the Assemblies of the Member States. The Delegation said that it was therefore difficult to renege on a decision taken by a higher authority. The Delegation added that, although the question of

geographical indications was referred back to the ordinary session of the SCT, it intended to formulate a number of clarifications relating to the matters raised by the Delegation of the United States of America. As regards the question of whether a country name could constitute a geographical indication, the Delegation stated that under the TRIPS Agreement such a hypothetical situation could be envisaged. The Delegation underlined, however, that the features or reputation of a product were generally linked to a more restricted area than that of the whole of the territory of a country. As to who could own a geographical indication, the Delegation said that since such indications were collective user rights, only producers in the area of the geographical indication could use the name and concluded that the indication did not belong to a single person. As to whether a natural person could contest a domain name, the Delegation said that this was possible, and considered that it was in the interest of a producer located in a geographical area benefitting from a geographical indication to act against the registration in bad faith of a domain name corresponding to said geographical indication. As to the duration of protection for the geographical indication, the Delegation emphasized that such a period was unlimited. As regards whether a geographical indication could be revoked, the Delegation stated that such a hypothetical situation, which was extremely rare, could be envisaged only in cases where all the features of the product were no longer present or also if the State concerned considered that the geographical indication should no longer exist and made appropriate provision for that purpose. Finally, the Delegation confirmed that it was essential to protect geographical indications on the Internet and emphasized that, in line with the Delegation of the European Community, it was not a matter of discussing such protection in general terms throughout the world but in relation to domain names.

74. The Delegation of Guatemala stated that, in view of the lack of international consensus on the issue of geographical indications, it did not support the extension of the UDRP to include geographical indications. The Delegation noted that such an extension of the UDRP without international consensus on the underlying issues would raise significant questions of applicable law, and that such issues would be appropriately raised in the SCT.

75. The Delegation of Australia expressed its understanding that the issue under consideration was whether existing protection for geographical indications could be enforced in the DNS under the UDRP. The Delegation noted that, given the lack of consensus among the international community as to the treatment of geographical indications, such an extension of the UDRP would force domain name panelists to address questions of how and whether a geographical indication was established, who owned the geographical indication and therefore who had standing to bring a claim. In the process, panelists would be required to create international law and thereby extend the system for protection for geographical indications. The Delegation stated that these issues are properly addressed in the regular meetings of the SCT. The Delegation emphasized the need for an international consensus to provide an adequate basis to protect existing rights in geographical indications.

76. The Delegation of Japan, summarizing the discussions, noted that with INNs and IGOs, a form of international legislative system already existed: INNs under a number of Resolutions of WHO, and IGOs under the auspices of the Paris Convention. The Delegation noted that, so far as protection of country names was concerned, reference could be made to the ISO 3166 list of country codes. The Delegation drew a distinction in the case of geographical indications, which were complex and whose protection in the DNS was difficult. The Delegation noted the related discussion taking place in other fora, such as the WTO in

the context of the TRIPS Agreement, and remarked that steps in this area should be carefully taken.

77. The Delegation of the European Community, referring to the definition of geographical indications in Article 22(1) of the TRIPS Agreement, expressed the view that there existed agreement at the international level as to what a geographical indication was, while discussions focus on the distinct question of how to develop their protection. The Delegation noted that the outcome of the WTO Ministerial meeting in Doha had included the establishment of a multilateral registry of geographical indications for wines and spirits (under TRIPS Agreement, Article 23(4)) to come into force by Spring 2003 and the extension of the protection provided in Article 23 to products other than wines and spirits. The Delegation described the concern expressed by the Delegations of the United States of America, Canada and Australia, as relating to the principle of protection, which, in the Delegation's view, had already been agreed at the international level. The Delegation noted that the question of who could register a geographical indication in the DNS and the rightsholder whom might bring a claim under the UDRP (whether a government, association, individual, etc.) would be decided under each legal system and was not required to be harmonized in order to include geographical indications in the UDRP. The Delegation noted that the harmonization of the term of protection of geographical indications also was not a precondition to their inclusion in the UDRP, because the UDRP would protect a rightsholder so long as their right in the geographical indication was valid. The Delegation remarked that panelists applying existing law relating to geographical indications, similarly to those applying trademark law to cybersquatting cases, were not creating new law despite the lack of harmonization, but simply recognizing existing agreed rights at the international level. Noting the WTO's proposed multilateral register for geographical indications, the Delegation remarked that it would be wise for this meeting to recognize the existing foundation for protection of geographical indications at the international level by extending that protection to the DNS. The Delegation remarked that the mandate to address the issue of geographical indications in the DNS had been given to the Secretariat at a meeting in Sydney in 2000 and it was the Special Session's responsibility to address this.

78. The Delegation of Australia noted that, rather than advocating harmonization of law, what was required was an international consensus on the underlying principles for protection of geographical indications. The Delegation stated its view that the Delegation of the European Community had mischaracterized the degree of consensus on the work to be carried out in the WTO and TRIPS Council.

79. The Delegation of the United States of America noted that the question of who is a rightsholder is a fundamental question of direct application to discuss issues relating to the UDRP. The Delegation stated that the UDRP was designed to efficiently resolve clear cases of trademark cybersquatting involving an owner with a right and another party without ownership rights who was acting in bad faith. By contrast, the Delegation noted that complaints involving geographical indications would involve conflicts with competing claims of legitimacy that would commonly result in protracted UDRP disputes, often involving claims of generic use (e.g., <champagne.com> might be deemed a generic term, and therefore free for registration and use as a domain name, in certain jurisdictions, but might be protected in others). The Delegation concluded that at this stage, given that many UDRP cases involving geographical indications would not be clearcut, it was premature for this meeting to extend protection of geographical indications to the DNS.

80. The Delegation of the European Community, referring to the example of <champagne.com>, noted that persons other than the owner of the geographical indication would have the right to use that identifier in the DNS under the UDRP, if such use was legitimate under their national legal system. The Delegation noted that an analogous situation existed under trademark law, where protected trademarks in one jurisdiction may be generic words in other jurisdictions, but that the requirement of bad faith under the UDRP meant that such situations were not difficult to resolve. The Delegation noted that whether in any one case the use of an identifier was legitimate depended on whether the use being made of the domain name was determined by the panel to be in bad faith, not the mere act of its registration as a domain name. The Delegation noted that if there was no bad faith use being made of the geographical indication, then no grounds would exist to prevail on a complaint brought under the UDRP.

81. The Delegation of Italy supported the view of the Delegation of the European Community and stated that it saw an equivalence between trademarks and geographical indications in the context of the DNS. The Delegation drew a parallel with the United States Digital Millennium Copyright Act which provided for a simple notice and takedown procedure in cases of manifest copyright piracy on the Internet, despite the fact that questions of copyright ownership and exceptions and limitations also were most complex. The Delegation noted that there were several norms regarding geographical indications at the international level, including those in the Lisbon Agreement and the TRIPS Agreement, and stated that what was sought was not the creation of new norms, but the enforcement of those that already existed in the context of the DNS.

82. The Representative of the International Wine Law Association (AIDV) stated that the members of his Organization relied on the DNS to conduct their businesses and, in doing so, made use of rights accorded to them by the industrial property system. The Representative observed that there appeared to be consensus on the fact that there existed problems in relation to geographical indications on the Internet, but that there was no consensus on whether any actions should be taken to redress these problems. As a possible solution, the Representative referred to the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet, as adopted by the WIPO General Assembly and the Assembly of the Paris Union. The Representative noted that the Joint Recommendation applied also to "other industrial property rights" and proposed that this language be integrated into the UDRP to broaden its scope to all industrial property rights.

83. The Representative of the International Federation of Industrial Property Attorneys (FICPI) stated that it had no objections in principle against the extension of the UDRP to geographical indications, but noted that numerous issues were unclear, which would render the task of panels constituted to rule upon conflicts between geographical indications and domain names under the UDRP difficult. Furthermore, the Representative stated that it would be difficult for ICANN to implement an extension of the UDRP to geographical indications through its contractual system because it was unlikely that a consensus would emerge on this issue within the relevant ICANN bodies. The Representative recalled that the purpose of the UDRP was to solve manifest problems quickly and observed that introducing the complex area of geographic indications into the UDRP would not be consistent with that goal.

84. The Delegation of the United States of America stated that it did not believe the problem encountered in relation to geographical indications in the DNS was of such a nature that it warranted an intellectual property solution through the UDRP. Furthermore, the Delegation expressed its understanding that the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet did not apply to domain names.

85. The Delegation of France spoke in response to the previous statement made by the Delegation of the United States of America, according to whom no problems currently existed to justify the extension of the UDRP to geographical indications. The Delegation referred to the numerous examples of registrations in bad faith of geographical indications as domain names appearing in Annexes 8 and 9 of the Report. The Delegation emphasized that these examples represented only an illustration of a more widespread problem, and therefore concluded that an urgent problem existed which called for protection of geographical indications that were legally recognized, had significant economic value and were used in bad faith.

86. The Delegation of Australia recognized that geographical indications had been registered as domain names, but questioned whether all such registrations were necessarily inappropriate or in bad faith, particularly because the terms at issue might be deemed generic in certain jurisdictions.

87. In response to the statement made by the Delegation of Australia, the Delegation of France emphasized that it endorsed the position of Australia insofar as an assessment of bad faith was necessary in order to ascertain how the problem was to be solved. The Delegation made it clear that France's position was to favor extension of the UDRP in cases of improper registration of geographical indications as domain names.

Geographical Terms

88. The Chair requested the Secretariat to provide clarifications on the Report's treatment of ISO 3166 country codes, Annex 12 of the Report and the relationship between ICANN, the Government Advisory Committee of ICANN (GAC) and the SCT process.

89. The Secretariat noted that the GAC was the body recognized by the By-Laws of ICANN (a not-for-profit corporation established under the laws of California) as a consultative policy body with advisory powers only. The Secretariat explained that the GAC normally met immediately before ICANN's public meetings and was composed mainly of officials from telecommunications ministries with officials from industrial property offices also attending some meetings. The Secretariat explained that Annex 12 of the Report, containing a list of domain names corresponding to country names registered by persons mostly unconnected with the countries in question, was not an exhaustive list, but merely illustrative. The Secretariat noted that in some cases, such as <australia.com>, which is registered by an official tourist authority, the domain name was not unconnected with the Government concerned. Finally, the Secretariat explained that the recommendations in the Report concerning ISO 3166 country codes were in response to a GAC advice calling for protection of these codes in the gTLDs because, in certain instances, they had been used in a manner which caused confusion with the ccTLDs.

90. The Delegation of France considered that the use of a country name as a domain name, a number of examples of which were included in Annex 12 of the Report, could not continue and that, given the importance of country names, a way of protecting those names should be found.

91. The Delegation of Chile noted that the registration of country names as domain names was a great problem and of serious concern to States. The Delegation gave the example of <chile.com>, which was not registered by the Government of Chile.

92. The Delegation of Sweden commented that it would be difficult to take action on all areas raised by the Report, and that a list of priorities would be helpful in this respect. The Delegation noted its view that protection of names of places, such as cities, was a difficult issue because multiple cities may share the same name and the decision as to which place could legitimately claim the name would be problematic. The Delegation expressed its agreement with the Report's recommendation on ISO 3166 country codes, as this would minimize potential confusion to users. The Delegation noted that, in an initial phase, country names could be protected, as their misuse in the DNS was an area of concern to Member States and their names were limited in number. Nonetheless, the Delegation noted that at further discussion was necessary on the questions of how to determine the name of a country and in what languages protection ought to be granted.

93. The Delegation of Netherlands stated that, until recently, limited protection was granted to names of cities, towns and provinces in the .NL ccTLD and that similar protection could be provided generally at the ccTLD level. The Delegation also noted its concern, as evidenced in Annex 12, that <amsterdam.com> had been registered in connection with disreputable services, and remarked that the names of countries, cities, towns and provinces did need some form of protection, particularly in the ccTLDs.

94. The Delegation of Kenya noted that the registration of country names and indigenous names by unconnected individuals was a serious concern that requested attention in an international forum. The Delegation noted with concern that the names Kenya (country name) and Maasai (an indigenous group in Kenya) had already been registered in such manner.

95. The Delegation of the United Kingdom endorsed the comments of the Delegation of Sweden, and noted that priority areas for action needed to be identified. The Delegation noted that the ISO 3166 standard does not provide a precise list of country names. However, the ISO 3166 standard could provide a good starting point for such a list. The Delegation emphasized that any mechanism for protection had to be simple and easily understood.

96. The Delegation of France supported the recommendation contained in the Report whereby the question of protection for the names of countries, regions and municipalities should be considered within an appropriate intergovernmental authority and the need to create new international rules for the protection of those names determined. Furthermore, the Delegation emphasized the importance of extending such protection both to gTLDs and ccTLDs, since acts of bad faith occurred in both cases.

97. The Chair remarked that the interventions indicated the Member States' concern that actions should be taken to protect, in particular, country names in the DNS, but posed the

question how such protection could be granted. The Chair noted that only two Special Sessions were scheduled before a report was to be provided to the WIPO General Assembly. The Chair therefore called for proposals to concretely address the concerns that had been expressed by delegations, including France, Chile, Sweden, the Netherlands, Kenya and the United Kingdom.

98. Assuming that protection was favored and that steps were required to concretize this desire, the Secretariat raised a number of questions for consideration by delegations. First, which terms should be protected? In this respect, it was noted that delegations had expressed a view that protection be granted to country names as a priority (and perhaps also ISO 3166 country code elements). Second, which mechanism could be employed to identify the name of the country to be protected? Would this be a system of self-nomination or would it be based on the United Nations Terminology Bulletin (ST/CSSER.F/347/Rev.1), as utilized by the Secretariat in drafting the Report. Third, in which domains should protection be granted? In this respect, the Bureau noted that the question of protection of geographical terms was urgent, as there are signs that the current introduction of seven new gTLDs, if successful in ICANN's estimation, might be followed by further new domains which would provide more scope for registration of such terms by persons unconnected with them. Fourth, should protection be granted prospectively or also retrospectively? In the latter case, the Secretariat observed that this might entail the cancellation of existing domain name registrations and possibly also of acquired rights. Fifth, which mechanisms should be employed to grant protection: the UDRP or some other, more absolute, form of protection (e.g., an exclusion mechanism)? Sixth, should protection be granted for the exact name only or also for misleading variations of the name (e.g., in respect of <unitedkingdom.com> or also <united kingdom.com>)? The Bureau noted that these complex questions would need to be addressed if protection were recommended.

99. The Delegation of the Republic of Korea noted that, even though names of countries and cities might not be regarded as forms of intellectual property, the Delegation would still support their protection in the DNS. The Delegation suggested that protection should be extended to names of countries (the full name, as well as the short name) and their capitals, as recognized by all other nations, and noted that extending protection to regions and municipalities would raise complex questions. The Delegation expressed a preference that such protection be granted retrospectively and that reasonable remunerations should be paid to the domain name registrants should it lose its registration. The Delegation noted that protection should be extended to the exact name first and that the question of protection of variations of names could be considered at a later stage.

100. The Delegation of the United States of America suggested that the problems expressed in relation to country names and other geographical names may not require a solution in international law. The Delegation stated that the forced development of international law in the context of the DNS was not, in its view, a proper approach, and preferred the development of international law by a treaty process through which national governments would have time to consider the implications and outcomes of any agreement. The Delegation remarked that there were numerous problems that could follow from the creation of international law to protect country names. For instance, if country names were protected as intellectual property through Article 6 *ter* of the Paris Convention, in the United States, thousands of valid trademark registrations containing variations of country names could be affected. The owners of such marks might be required to prove that they obtained permission to use the name of

their own country in relation to their goods, even if this use was incidental. The Delegation noted that, in view of the different standards applied to geographical names and the nature of the problem, such names could be protected most appropriately at the ccTLD level.

101. The Delegation of the United Kingdom noted that a problem lay in the fact that no acceptable list of country names existed as a standard. The Delegation noted that the absence of such a list posed a significant barrier to solving the problem of protection of country names.

102. The Secretariat confirmed that no standard list of country names existed in international law and that the determination of such names was a question of some controversy in a small minority of cases. The Secretariat noted that the United Nations Terminology Bulletin contained the most widely accepted list of country names, both in their full and short form.

103. The Delegation of Chile expressed its disagreement with the Delegation of the United States of America and noted that the problem of country names could not be solved solely at the level of the ccTLDs. The Delegation questioned why the mechanisms proposed in the Report for the protection of country names differed and were less detailed than the mechanisms proposed for INNs and IGOs, emphasizing that the protection of countries names was equally important.

104. The Delegation of the United States of America clarified its earlier statement, noting that, while country names might deserve protection, the Delegation did not believe that this issue required the development of new international law. The Delegation noted that country names were currently not protected as intellectual property, as opposed to the names of IGOs under Article 6 *ter* of the Paris Convention. The Delegation stated that, if Member States were of the view that country names required protection, it preferred that such protection were granted at the ccTLD level, as opposed to using Article 6 *ter* as the vehicle for protection. The Delegation noted that such protection, in the context of the DNS, might be best discussed in the GAC at ICANN, which was better positioned to take business-related, as opposed to intellectual property-related, decisions. The Delegation stressed that it was not in the interests of the countries to develop ad hoc solutions for the protection of country names, which would apply only on the Internet. The Delegation noted its preference for a principled intellectual property approach, and stated that, in its view at this time, country names should not be protected as intellectual property.

105. The Delegation of the European Community expressed its agreement with the comments of the Delegation of the United States of America as to whether country names were intellectual property, and noted that such names were not originally included for protection in Article 6 *ter* of the Paris Convention. However, the Delegation observed that, simply because country names were not considered to be intellectual property, their protection should not be overlooked. The Delegation noted that WIPO had a mandate from its Member States to study these issues and, even if not strictly within the realm of intellectual property, the work reflected a problem that affected Member States. The Delegation stated that, if an agreement was reached by the Member States to protect such names, then ICANN should also be directed as to the best way to implement such protection. The Delegation noted it did not favor any one particular method of dealing with the problem, but that the solution could consist of a combination of various measures, including protection at the ccTLD level, use of the ICANN contractual system, or an agreement between States and the GAC.

106. The Delegation of the United Kingdom reiterated that the problem of how to convert the ISO 3166 standard into a standard list for protection of country names posed a barrier to progress.

107. The Secretariat clarified that the ISO 3166 standard includes territories not recognized as States in the international context and also included entities or parts of States. The Secretariat noted that the International Organization for Standardization (ISO) was not an intergovernmental organization, but was a non-governmental organization with a mission to promote standards. The Secretariat stated that a name of a country could be determined through self-nomination, but that the results of such a method might not be universally accepted in all cases. The Secretariat noted that this problem had been resolved by the United Nations Terminology Bulletin, which functions primarily as a translation device and has no formal status in law. The Secretariat observed that the United Nations Terminology Bulletin, which is used by WIPO for treaty depositary notifications, might constitute a more appropriate basis for protection of country names than the ISO 3166 list.

108. The Delegation of Turkey expressed its support for the protection of country names, but asked in which languages such protections should be granted and whether protections should be extended to all languages or only to those most commonly used. The Delegation noted that the protection of city names was a more difficult issue, as more than one person or entity could share those names. For example, the Delegation noted that the name of the city of Aydin in Turkey, was also used as a personal name and as a company name. The Delegation noted that the names of municipalities, cities and other geographic names therefore would be problematic to protect, unless they also qualified as geographical indications.

109. The Delegation of Australia stated that it did not share the same enthusiasm for protecting country names as other delegations, but noted that it was clear from the debate, the Report and the comments submitted by participants to the Second WIPO Process, that there existed widespread concern about this issue, which needed to be resolved. The Delegation agreed with the Delegation of the United States of America that it was important not to imbue the names of countries with status as forms of intellectual property. The Delegation stated that it was not clear whether this issue should be addressed only at the second level of domain names or also at the third level, whether by a contractual arrangement with ICANN or otherwise, whether in the gTLDs or also in the ccTLDs, whether solely in relation to the abusive registration and use of domain names or in all cases, whether only in relation to identical domain names or also domain names that are variations of country names. The Delegation observed that, while it considered it important not to imbue country names with the status of intellectual property so as not to distort the intellectual property system, it was also important to recognize the role of WIPO in developing any mechanism of protection.

110. The Delegation of Guatemala noted that protection of country names was an important issue, whether such names were protected as intellectual property or not. The Delegation asked whether, if such names were not considered to be intellectual property, the meeting had the competence to consider the issue of their protection, and posed the question whether this might more appropriately be dealt with at the level of the ccTLDs.

111. The Delegation of Honduras endorsed the concerns of other delegations and expressed its interest in further discussion on this matter in order to find a solution to the problem which confronted numerous countries.

112. The Delegation of China expressed the view that the issues should be treated in accordance with international law. It noted that, as far as geographical indications and trademarks were concerned, Chinese law provided that geographical indications could be registered as collective and certification marks. The Delegation noted that the use of country names in some commercial circumstances was valid, and remarked that each situation would need to be analyzed on a case-by-case basis.

113. The Delegation of Australia endorsed the suggestion made by the Delegation of China that any protection for country names in the DNS should allow for the legitimate use by trademark and business name owners (e.g., China Bicycle Co.). The Delegation referred to the intervention of the Delegation of Guatemala, as to whether this meeting was the appropriate forum, or whether the GAC was the appropriate forum, and emphasized that delegations should not allow this issue to bounce indefinitely from one forum to another. The Delegation noted that, if the GAC was determined to be the most appropriate forum, then strong input in any event would be required from the intellectual property perspective. The Delegation also referred to the Delegation of Guatemala's suggestion that protection of country names in the ccTLDs may be adequate, and asked whether such protection would be considered satisfactory if the name of Guatemala were registered at the gTLD level as <guatemala.com>. Finally, the Delegation noted that in the case of Australia, as <australia.com> was registered by a tourist authority, the Government did not find this objectionable.

Trade Names

114. The Delegation of Norway stated that trade names represented an important category of rights which were protected by the Paris Convention and should also be protected against abusive domain name registrations through the UDRP.

115. The Delegation of the United States of America supported the Report's recommendations regarding trade names.

116. The Delegation of Sweden explained that trade names functioned in the same way as trademarks and that many companies only relied on trade names. For these reasons, the Delegation favored an extension of the UDRP to trade names.

117. The Delegation of Australia stated that, while it was open to being persuaded otherwise, it was inclined to support the recommendations of the Report on trade names. The Delegation failed to see widespread abuse of trade names in the DNS and believed that, in any event, those companies that were most likely to be the victims of cybersquatting would have obtained trademarks corresponding to their trade names, particularly in jurisdictions, such as Australia, where trademarks could be acquired through use.

118. The Delegation of Denmark expressed the view that the UDRP should be broadened to cover trade names.

119. The Delegation of Sudan also favored the extension of the UDRP to tradenames.
120. The Delegation of the United States of America set out several reasons why it believed that the UDRP should not be broadened to cover tradenames. First, the Delegation believed that there were few instances where tradenames did not also function as trademarks and, rather than taking action at this stage, suggested to monitor the situation in order to determine whether the number of such instances might increase in the future. Second, the Delegation explained that there was no uniform definition of what constituted a tradename under international law and that, under such circumstances, conflicts between tradenames and domain names were best left to courts to resolve. The Delegation also was of the view that the question of tradenames is more appropriately dealt with at the level of the ccTLDs.
121. The Delegation of France stated that the extension of the UDRP to tradenames was of interest, *inter alia*, for small and medium-sized enterprises, and in particular in countries where no system of protection existed for unregistered marks. The Delegation added that it hoped the discussions would continue on this subject which remained, however, secondary to that of geographical indications.
122. The Delegation of Senegal said that the provisions on the protection of tradenames in Senegal were the result of the 1977 Bangui Agreement. The Delegation also referred to the existence of the Organization for Harmonization of Business Law in Africa (OHADA). The Delegation explained that this Organization was designed to harmonize business law in Member States. The Delegation pointed out that the rights linked to tradenames originated in the trade registers of these States, at least in all the French-speaking States in Africa.
123. The Representative of the International Wine Law Association (AIDV) stated that its prior statement also applied to tradenames, as they also form part of the industrial property system. The Representative reiterated that the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs on the Internet applied, in his view, to domain names.
124. The Representative of the International Association for the Protection of Industrial Property (AIPPI) observed that no international treaty obliged States to protect unregistered marks, which explained why many countries did not protect such marks in their jurisdiction. The Representative noted that, nonetheless, unregistered marks fell under the scope of the UDRP. The Representative remarked that the Paris Convention imposed an obligation on States to protect tradenames. According to the Representative, it would not be logical for the UDRP to apply to identifiers which were not protected by international law (unregistered marks) and not apply to those that were protected by the Paris Convention (tradenames). Furthermore, the Representative stated that, as a practical matter, it would not be more difficult for a panel constituted under the UDRP to find the existence of a tradename than the existence of an unregistered mark. The Representative added that not extending the UDRP to tradenames created a bias in favor of those jurisdictions that protect unregistered marks. The Representative also stated that the testimony of the administrator of the UK ccTLD referred to in the Report suggested that many of the problems it encountered in the DNS concerned tradenames. The Representative was of the view that broadening the scope of the UDRP to tradenames would permit small and medium-sized enterprises better to defend their rights in the DNS. The Representative did not share the Report's concern that very small enterprises with a reputation only in a very limited geographical area might inappropriately

obtaining global protection for their tradenames through the UDRP, because it would be unlikely that many such small businesses would revert to the UDRP.

125. The Delegation of Switzerland expressed support for the extension of the UDRP to tradenames. The Delegation stated that the Report set out essentially two reasons why it refrained from recommending to do so, but found those reasons unconvincing. First, the Report stated that there was no internationally recognized definition of a tradename. The Delegation did not consider this to be a significant obstacle, because there existed no uniform definition of unregistered marks either and, nonetheless, the UDRP had successfully been applied to this class of identifiers by deciding on the existence of such mark on the basis of national law. The Delegation observed that, in light of the Paris Convention, the international legal framework for tradenames was more developed than for unregistered marks. Second, the Report stated that there was insufficient harmonization of the scope of protection offered to tradenames. In the view of the Delegation, this did not constitute a problem either, as the UDRP defines its own scope of protection, namely the abusive registration and use of a domain name. The Delegation considered that the UDRP's scope of protection could be simply applied to tradenames, without the need for further harmonization of international law.

126. The Delegation of the European Community expressed its skepticism regarding the wisdom of taking a wait-and-see approach in the context of the DNS, because past experience had demonstrated that this could lead to irreversible problems.

Conclusions and Future Work

127. The debate on all topics of the Report having concluded, the Chair drew the following conclusions:

1. INNs

128. The majority of delegations considered that, in view of insufficient evidence of the abusive registration of INNs as domain names and of the harm resulting from the registration of INNs as domain names, no immediate action was necessary.

2. Names and Acronyms of International Intergovernmental Organizations (IGOs)

129. The majority of delegations expressed interest in accordin g some protection to the names and acronym of IGOs against abusive registration as domain names, but considered that further work was needed to identify the way in which any such protection might function. The Special Session asked the Secretariat to consult with other IGOs to provide evidence of the extent of problems encountered with the abusive registration of names and acronym of IGOs as domain names. Such evidence should be presented to the Second Special Session. In addition, the Special Session asked the Secretariat to provide a paper giving detail of how any proposed protection of names and acronym of IGOs would function in practice.

3. Personal Names

130. The majority of delegations considered that no action was necessary on the protection of personal names, outside the existing UDRP, at this stage.

4. Geographical Identifiers

(a) Indications of Source and Geographical Indications

131. Views on the question were divided. Whilst more delegations favored the modification of the UDRP to allow protection for geographical indications than those who opposed such a modification, no agreement had been reached. Accordingly, it was decided to continue discussions on the issue at the Second Special Session to examine the many useful questions raised. Any delegation would be free to submit comments or papers for consideration before the Second Special Session.

(b) Geographical Terms

132. Most delegations favored some form of protection for country names against registration by parties unconnected with the constitutional authorities of the country in question. However, it was recognized that many details of any such protection were unclear. It was decided that delegations should be invited to submit comments on the following questions to the Secretariat before the end of February 2002 and that the Secretariat should prepare a paper on the basis of comments received for distribution before the Second Special Session and for consideration by that Session. The questions were:

- (i) How should the name of a country be identified (for example, by reference to the United Nations Terminology Bulletin, ISO Standard 3166, or by some other method) and should both the long and short names of countries be protected?
- (ii) In what languages should country names be protected?
- (iii) To what domains should any protection be extended (for example, to all, both existing and future, gTLDs, only to future gTLDs, also to ccTLDs, etc.)?
- (iv) How should any alleged acquired rights be treated?
- (v) What mechanisms should be used to implement protection (for example, the UDRP or some other mechanism)?
- (vi) Should any protection extend to the exact country name only or also to misleading variations?
- (vii) Should protection be absolute or should it be dependent upon showing of bad faith?

5. Trade Names

133. A majority of delegations considered that trade names should be protected against abusive domain name registrations through the UDRP. Certain delegations, however, opposed such an extension of the UDRP. It was decided to continue discussions on this question at the Second Special Session to see if an agreed position would be reached.

Policy Options for Treatment of Issues

134. The Chair noted that insufficient progress had been made at the First Special Session on the substance of the issues concerned to be able to address this item of the agenda. The Chair proposed that this topic therefore be considered at the Second Special Session. In this connection, the Chair remarked that it would be useful for delegations if the Secretariat were to provide further explanations on the relationship between the Special Sessions and ICANN.

135. The Secretariat stated that the relationship between the Special Session and ICANN was uncharted territory. The Secretariat recalled in this connection that the UDRP itself was the result of the recommendations formulated by the first WIPO Internet Domain Name Process, which were adopted by ICANN with some adjustments following its own review processes. With regard to the means available for the implementation of any decisions that might be taken by the Special Sessions, the Secretariat referred to the explanation of the options for intellectual property policy contained in Chapter 2 of the Report.

136. This report was unanimously adopted by the Special Session of the Standing Committee on December 7, 2001.

[Annex follows]

ANNEXE/ANNEX/ANEXO

LISTE DES PARTICIPANTS / LIST OF PARTICIPANTS

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* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membres sans droit de vote.

* Based on a decision of the Standing Committee, the European Community was accorded Member status without a right to vote.

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