

## Comment on WIPO2 RFC-2

The Swiss Federal Institute of Intellectual Property thanks the International Bureau for its efforts in the scope of the 2<sup>nd</sup> WIPO Internet Domain Name Process and appreciates the opportunity to submit comments on RFC-2 in said process.

On the one hand we support the establishment of effective and appropriate measures to protect distinctive signs of any kind against abusive registration and use as Internet Domain Names. On the other hand we are aware of the fact that the present process is dealing with questions going beyond the Institute's main competence in the field of the protection of trademarks and geographical indications. Therefore we confine ourselves to submit some general remarks, leaving the ground for more detailed comments to the specialists for each of the different topics.

Despite all differences between personal names, INNs, names and acronyms of international intergovernmental organisations, geographical indications resp. terms, tradenames and the legal protection of these signs, there's one thing in common for all categories of distinctive signs: Any *abuse* of a sign in the scope of the Domain Name System should – as well as in the "real world" – not be tolerated and therefore be prevented resp. removed by appropriate measures. The real problems arise when it comes to define the "abuse" and the "appropriate measures" (including suitable proceedings) to find and remove such an abuse. Since the origin as well as the content and the scope of the protection of the various signs differs widely from category to category, separate solutions must be found for each of the categories, considering all the peculiarities of the case.

As for the definition of the abuse of a sign, one of the principal differences that probably will lead to different answers is the fact that some of the signs have holders with individual rights in their sign (e.g. personal names and tradenames), while others can't be legally monopolised but are protected against misleading use (e.g. geographical indications). Differences in the definition of an abuse will also result from the fact that the minimal protection of certain signs is regulated and therefore harmonized on an international level (e.g. names of international organisations, geographical indications and tradenames), while especially the protection of personal names differs substantially from country to country. Still another point to consider is the different origin of the various categories of signs: While some signs need a formal act to be protected (e.g. recommendation of INNs by the WHO, notification of the names of international organisations by the International Bureau), rights in a personal name (mostly a pseudonym) or a tradename can be established by the mere use of the sign, and such use can also be the use as Domain Name on the Internet; in this case the user of the Domain Name may not be able to prove any legitimate interest that existed before the registration/use of the Domain Name, but nevertheless he may be in good faith and there's no abuse at all.

Regarding technical solutions to reduce the tension between different legitimate users of the same sign caused by the uniqueness of each Domain Name we come back to our support already given in the scope of the first WIPO Process for directory services or gateway pages offered just under the Domain Name in question. Such service could be provided by the registry or a neutral third party after a legitimate user of the sign objected to the (bona fide!) registration of the Domain Name by another person within a certain time period. Such services seem to be especially suitable for signs where it's in the nature of the sign itself that they can't be monopolised for only one single entity (e.g. geographical indications, for which directory or gateway services could be run by the public authority competent for the geographical region concerned).