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**Before the
World Intellectual Property Organization
Geneva, Switzerland**

In the Matter of

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| Second WIPO |) | |
| Internet Domain Name Process |) | RFC-3 |
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**Comments on the Interim Report
of the Second World Intellectual Property Organization
Internet Domain Name Process
by the Office of Advocacy
U.S. Small Business Administration**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”) is responding to the World Intellectual Property Organization’s (“WIPO”) Request for Comments (“RFC-3”) on its Interim Report of the Second WIPO Internet Domain Name Process. The WIPO has issued a general request to all interested parties to review the issues presented in the Interim Report and submit comments on the issues and recommendations. Advocacy has reviewed the Interim Report and submits the comments below.

The United States Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305, codified as amended at 15 U.S.C. §§ 634(a)-(g), 637, to represent the views and interests of small business before policy-making bodies. Advocacy’s statutory duties include serving as a focal point for concerns regarding policies as they affect small business, developing proposals for changes in policies, and communicating these proposals to the decision makers, 15 U.S.C. § 634(c)(1)-(4). It is in this capacity that Advocacy is pleased to submit the following comments to the Interim Report on behalf of U.S. small businesses.

1. Small Businesses Play an Important Role on the Internet.

Before Advocacy addresses the issues raised in the Interim Report, it is important to provide some statistical information on U.S. small businesses and the impact that the WIPO’s recommendations will have on them. The Office of Advocacy has used U.S. Census data and other data independently collected to produce studies that yielded the following statistics. These studies can be found on Advocacy’s Web page at <http://www.sba.gov/stats>.

- Small businesses represent more than 99 percent of all U.S. employers.
- They employ 52 percent of U.S. private-sector workers.
- They employ 38 percent of U.S. workers in high-tech occupations.

- They provide about 75 percent of the net new jobs in the United States.
- They provide 51 percent of the private sector output in the United States.
- They provide 55 percent of innovations as measured by U.S. patent registrations.
- Important innovations by small businesses include the airplane, the audio tape recorder, the heart valve, the optical scanner, the zipper, the personal computer, and speech recognition technology.
- 35 percent of U.S. small businesses have a Web site – which is approximately 5.6 million to 8.4 million businesses.
- According to Verisign, 80 percent of the “dot com” Internet domain names were registered to small businesses of 500 employees or less in December 2000.

The foregoing statistics demonstrate that small businesses are a dominant part of the United States economy and are the predominant creators of Web sites and users of the Internet. The Internet has become an extremely important mechanism for many small businesses to conduct business transactions electronically. Small businesses in many other nations also play an important role in their nations’ economies and are becoming increasingly major users of the Internet, including for electronic commerce. Information about small business and electronic commerce is the subject of several of our economic studies which can be found on our Web page (<http://www.sba.gov/advo>). Consequently, any proposals involving the registration of domain names and their use on the Internet need to take into account the impacts such proposals could have on small businesses, both in the United States and internationally.

2. Fundamental Concepts Underlying Advocacy’s Comments.

Our observations and comments on the Interim Report which follow are based on certain fundamental concepts applicable to some or all of the issues raised in the Interim Report. Most importantly, “words” are the building blocks of our languages, and are meant to be *in* circulation for general use by society. Removing or restricting the use of words in our languages restricts our ability to communicate freely, both domestically and internationally. Small businesses are very creative in using the words of our languages in describing themselves on the Internet and commonly use, among other things, acronyms, abbreviations, personal names, geographical terms, trade names, generic or descriptive terms, and suggestive, arbitrary, or catchy terms. Removing or restricting the use of words would severely impact the ability of small businesses and other entities to use the Internet effectively and competitively, and would place small businesses at a particular disadvantage. Several of the proposals in the Interim Report would have the effect of taking out of circulation, entire groups of words or terms. This would have the effect of limiting and inhibiting the use and growth of the Internet by small businesses and other users.

Furthermore, the Interim Report does not present a compelling case of problems in need of being fixed. For example, the Interim Report has *not* indicated or documented any widespread problems associated with the use of International Non-proprietary Names,

International Intergovernmental Organizations, personal names, geographical terms, or trade names. Hence, Advocacy questions the need for establishing a complicated process aimed at fixing an alleged problem that has not even been demonstrated to exist to any significant extent. Rather, a “wait-and-see” approach should be taken to determine whether there is any reason for concern.

3. Whois Data Searches.

Advocacy has no objections to global, searchable Whois services. Whois services are used to determine the name and contact information for domain name registrants. Whois services can be utilized remotely over the Internet. Privacy issues inherent in a global, searchable Whois are not as severe for small businesses as they are for individuals and non-profit organizations. Small businesses hold themselves out to the public in the course of doing business. In addition, U.S. small businesses must register with a variety of governmental authorities so their contact information is a matter of public record. Nonetheless, we believe that WIPO should be commended for considering data protection and privacy because of the enormous public interest involved. Advocacy has two proposals on how to protect privacy while preserving an efficient Whois.

First, the Whois service should permit post office boxes (P.O. boxes) as valid addresses. Several million U.S. small businesses are home-based businesses. With advances in technology, we only expect this number to grow. A P.O. box offers a measure of privacy while still providing a contact address. The P.O. box should be checked regularly so that time-sensitive material sent to the P.O. box is received in time. Invalid P.O. boxes would be grounds for domain name revocation just as if the registrant had provided a false street address.

Second, the WIPO should explore the possibility of allowing registrants to be "unlisted" on Whois services to the casual viewer. Similar to the U.S. phone system, the registrant could pay an additional fee to the registrar or registry to have portions of their contact information blocked. This information would be revealed to an inquiring party that has a bona fide reason to know the information – such as an intellectual property owner who is pursuing a trademark infringement claim. Advocacy recognizes that the proposal would have to undergo significant development before it becomes an acceptable solution. Advocacy recommends that the WIPO consider a future proceeding to work out the details of this proposal.

4. International Non-Proprietary Names for Pharmaceutical Substances.

The Interim Report recommends preventing registration of International Non-proprietary Names (INNs) as domain names and canceling the registration of existing domain names that correspond to INNs. INNs are unique names used to identify a pharmaceutical substance or active pharmaceutical ingredient. INNs are selected by the World Health Organization (WHO), who maintains a list of recommended INNs, which numbers more than 8,000.

The Office of Advocacy does not support an exclusion granted to INNs. We believe that it is both overinclusive and underinclusive. It is underinclusive because it does not purge the Web of misinformation about the substances. It overinclusive because it cancels the domain names for sites that are not a threat to public health and safety. Furthermore, Advocacy is unsure if ICANN has the authority to prohibit future registration of INNs and cancel existing domain name registrations. If it does have the authority, Advocacy inquires whether cancellation of currently registered domain names amounts to a regulatory taking which could trigger a requirement for reimbursement for parties subject to U.S. law.

Instead of restricting registration of domain names, Advocacy recommends that the WIPO consider the establishment of a new top level domain (TLD) such as .INN or .drug, which would be administered by the WHO. The WHO could use this TLD to provide factual and objective information about the drug. Advocacy believes that this option will preserve public health and safety and the generic nature of INNs without restricting registration or canceling domain name registrations.

5. International Intergovernmental Organizations.

The Interim Report states that the .int TLD is insufficient to protect International Intergovernmental Organizations (IGOs) in the rapidly evolving on-line world. It proposes that the names and acronyms of IGOs protected under treaty should be excluded from registration in all existing and future generic TLDs (gTLDs), including the cancellation of existing domain name registrations.

The Office of Advocacy does not agree with this conclusion. We believe that the .int TLD is perfectly capable of protecting IGOs. We liken the challenge that IGOs face to that which is faced by the U.S. Small Business Administration (SBA). The SBA has registered the second-level domain “*sba*” on the .gov registry. The .gov registry is used to denote a U.S. government Web site. We have found that the specialty TLD of .gov protects our interests admirably. The second level domain name “*sba*” is registered on several of the other existing TLDs and there has been little confusion. For example:

- *sba.net* = SBA Automatisering (dutch high tech firm)
- *sba.org* = Southern Bakers Association
- *sba.com* = Smith, Bucklin & Associates

If the WIPO recommends excluding domain names that correspond to IGO names and abbreviations and ICANN enforces this recommendation, many small business Web sites will be taken down (*e.g.*, uno.com, ida.com, wto.com, and ucc.com). It will prevent numerous three and four letter domain names from being utilized in any gTLD, which are very popular names for small businesses. Moreover, it will take out common words or terms, such as “who,” “imo” – a

popular Internet chat expression (“in my opinion”), and “uno.” This number gets exponentially larger if the restriction is extended to include misleading registrations.

Advocacy recommends that the .int gTLD be strengthened and that all IGOs receive the domain name appropriate in this gTLD. IGOs that currently use domain names outside the .int gTLD (*e.g.*, imo.org and wto.org) should maintain their existing names but also have the equivalent domain names in the .int gTLD resolve to their IP address as well. If the .int gTLD is used consistently and universally by all IGOs, users will recognize the importance and meaning of the .int gTLD. This distinction will become even more apparent as more gTLDs are added to the Web and the TLD becomes a means of identifying the broad categories of Web pages on the Internet.

6. Personal Names.

Advocacy reviewed the Interim Report’s discussion and proposals for restricting the registration and use of personal names and is concerned that such proposals would interfere with the ability of small businesses to use effectively the Internet in support of their business activities. The use of “personal” names, including first names, surnames, and full names, is very common and important to *many* small businesses. Most of these names are neither famous nor distinctive. Small businesses often use their *own* personal names, either alone or in conjunction with other terms, in their business (trade) names.

Personal names are an important means for many small businesses to identify themselves and to add a “personal” connection with the local community they serve. As a result, these small businesses typically use their business names containing their personal names in their domain name registrations. Restriction, or complete removal from use, of personal names in domain name registrations would limit many small businesses from being able to identify themselves to and connect their businesses with their community. U. S. law, particularly at the Federal level, provides only limited protection for personal names, thereby allowing essentially unrestricted use of personal names by small businesses and others.

In addition, there are many personal names that also have *dual* or *secondary* (*i.e.*, both personal name and non-name or general) meanings, such as: “smith,” “ford,” “potter,” “carpenter,” “farmer”; “john,” “art,” “frank,” “patty,” “dick,” “bob,” “terry.” Any proposal aimed at precluding or restricting the registration of personal names would end up unacceptably removing many general or generic words of our languages from use. General words, by their nature, are the building blocks of our languages and, as already discussed, are meant to be in circulation for general use by society. Consequently, any proposal that would remove general words from use in domain name registrations, including personal names with secondary meanings, cannot be supported by Advocacy.

Furthermore, Advocacy is concerned that there is not, and there cannot be, a definitive list of personal names. While many personal names are commonly used, many others are not. A set of personal names could not be defined which is neither underinclusive nor overinclusive. An overinclusive proposal would end up removing from use names that also have secondary meanings, thereby unacceptably removing many words of our languages from use. On the other hand, an underinclusive proposal would inequitably restrict some names while leaving other names in the public domain.

Small business people should have an equal opportunity to use their names in domain names as others do. Consequently, Advocacy does not support any approach that would restrict the use of personal names. To do so would severely and disproportionately impact small businesses. Rather, Advocacy recommends that a “wait-and-see” approach be taken to determine whether there is any reason for concern, and delay amending the Uniform Dispute Resolution Policy (UDRP) to see if there are disputes or questions in need of resolution.

7. Geographical Terms.

The Interim Report contains discussion and proposals for restricting the registration and use of geographical terms. Advocacy is concerned about such proposals because many small businesses use geographical terms, either alone, or in conjunction with other (non-geographic) terms, in their business (trade) names. Many small businesses associate themselves with their local communities by adding a personal connection with the geographical areas they serve through the use of geographical terms in their business names and registered domain names. Restricting or completely removing geographical terms in domain name registrations from use would limit the ability of small business people to identify themselves to and connect with their geographical area.

Additionally, in many instances, it is unclear whether a term is “geographical” or not. In other instances, a geographical term may have *dual* or *secondary* (i.e., both geographical and non-geographical, or general) meanings. *For example*: “Bend,” Oregon. Advocacy is concerned that any proposal that would restrict or prohibit the registration of geographical terms would unacceptably remove many general words of our language from circulation for general use by society. Hence, Advocacy cannot support any proposal that would eliminate from use general words in domain name registrations, including geographic terms with secondary meanings.

Advocacy also is concerned that many geographical names are duplicated throughout the world. There is no fair and rational basis for one jurisdiction to have standing, such as under the Uniform Dispute Resolution Process, over another jurisdiction, or to have priority to use a name over another jurisdiction with the same name. *For example*: “Athens,” Georgia *versus* “Athens,” Greece; “Lebanon,” Pennsylvania *versus* “Lebanon,” New Jersey *versus* the country of “Lebanon.” Conflicts like this have not been, but need to be, adequately evaluated before any

attempts to proceed ahead. Advocacy is very concerned about potentially giving nations or other governmental units extraterritorial powers and effect over domain name registrations.

Moreover, there is no definitive list of geographical terms, and it would be impossible to define a set of geographical terms that is not underinclusive or overinclusive. Advocacy is concerned that an overinclusive proposal would end up removing from use geographical terms that also have secondary meanings (see discussion above), while an underinclusive proposal would inequitably restrict some geographical terms while leaving other names in the public domain. Furthermore, many geographical terms are also personal names. *For example:* “Washington,” D.C. *versus* George “Washington”; “Madison,” Wisconsin *versus* James “Madison”; the Commonwealth of “Virginia” *versus* “Virginia” Dare. The proposals have not adequately considered how terms that are both geographic and personal (and possibly also generic) would be handled.

For the foregoing reasons, restricting the registration and use of geographical terms would severely impact many small businesses and their ability to use the Internet effectively and competitively. Small businesses should have an equal opportunity to use geographical terms in domain names. Therefore, Advocacy does not support an approach that would restrict the use of geographical terms. Advocacy encourages a “wait-and-see” approach with geographical terms to determine whether there is any reason for concern. Advocacy also encourages that any amendments to the UDRP be postponed to determine whether disputes or questions are arising which need to be resolved.

8. Trade Names.

The Interim Report discussed proposals for restricting the registration and use of trade names. Advocacy is concerned about proposals to restrict the registration and use of trade names because trade names are the fundamental way that businesses, whether small or large, identify themselves on the Internet and in other avenues of commerce. Many trade names are neither famous nor distinctive, and many are also used as trademarks.

Trade names encompass a very broad and ill-defined area. Small businesses use a wide variety of terms to identify themselves, for example, acronyms, abbreviations, letter sequences, generic or descriptive terms, suggestive, arbitrary, or catchy terms, and, as already noted, personal names and geographical terms. Any proposal aimed at precluding the registration of trade names will end up unacceptably removing many such terms from circulation for general use. Moreover, there never will be a definitive list of trade names, as the universe of trade names is constantly evolving over time, with the addition and removal of trade names daily as businesses start up and cease operating.

Consequently, Advocacy does not support any approach that would restrict the use of trade names. Advocacy does not see a need to address protection of trade names, and *agrees*

with the Interim Report recommendation that no special procedure is needed at this time, through the UDRP or otherwise, to protect trade names against abusive registration and use practices.

Restricting the registration and use of trade names would greatly impact and place at a severe disadvantage, many small businesses and their ability to use the Internet effectively and competitively.

9. Conclusions.

The Interim Report does not present a compelling case of problems in need of being fixed. Hence, Advocacy questions the need for establishing a complicated process aimed at fixing an alleged problem that has not even been demonstrated to exist to any significant extent. Rather, a “wait-and-see” approach should be taken to determine whether there is any reason for concern.

Aside from having not been demonstrated to be necessary, Advocacy is concerned that the Interim Report’s proposals pertaining to INNs, IGOs, personal names, geographical terms, and trade names would severely and disproportionately impact small businesses. Any proposals involving the registration of domain names and use on the Internet need to take into account the impacts such proposals could have on small businesses.

Advocacy wishes to thank the WIPO for this opportunity to submit comments. We are happy to work with the WIPO staff on small business issues in this and other proceedings.

Sincerely,

/s/ _____
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/s/ _____
Jonathan R Pawlow
Assistant Chief Counsel for Intellectual Property

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