Design and Operation of Dispute Resolution in the ccTLD space

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WIPO Arbitration and Mediation Center
San Francisco, USA
WIPO Arbitration and Mediation Center

- Established 1994 to promote time and cost-effective resolution of IP disputes through ADR

  - International / cross-border

  - Specialized in IP

  - Not-for-profit

- 2000: WIPO ccTLD Program: tailored ADR procedures

Annual WIPO UDRP-based Cases

2008: 2329 cases (3958 DDN)
2009: 2107 cases (4688 DDN, including 1529 in 1 case)
2010: 2696 cases (4370 DDN)

Filing parties from over 150 countries
## WIPO Case Languages Used

<table>
<thead>
<tr>
<th>Case Language</th>
<th>Number of Cases</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>English</td>
<td>16739</td>
<td>89.03%</td>
</tr>
<tr>
<td>Spanish</td>
<td>741</td>
<td>3.94%</td>
</tr>
<tr>
<td>French</td>
<td>517</td>
<td>2.75%</td>
</tr>
<tr>
<td>Korean</td>
<td>239</td>
<td>1.27%</td>
</tr>
<tr>
<td>German</td>
<td>224</td>
<td>1.19%</td>
</tr>
<tr>
<td>Dutch</td>
<td>143</td>
<td>0.76%</td>
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<tr>
<td>Chinese</td>
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<td>0.49%</td>
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<td>Italian</td>
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<td>Portuguese</td>
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<tr>
<td>Turkish</td>
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<td>Danish</td>
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<td>0.01%</td>
</tr>
<tr>
<td>Polish</td>
<td>1</td>
<td>0.01%</td>
</tr>
</tbody>
</table>
UDRP as a flexible model

Key Features

- Contractually based: UDRP incorporated by reference in registration agreement
- Due process safeguards and advantages
  - Preserve recourse to national courts or tribunals
  - Facilitates acceptance (UDRP: <1% contested)
- Neutrality
  - Independent of ccTLD registration and administration
  - Allows ccTLD registry to “outsource” decision
  - Impartial and independent decision-makers
UWRP as a flexible model

Adjustable Elements (1)

- Bad faith registration and/or use or any infringement of intellectual property rights?
  - Infringement under national law: .ch, .fr
- Mutual jurisdiction clause: local court
- Local rights only or also “foreign” rights?
  - ccTLD typically addresses a certain territory
  - Location requirement for domain name registration?
- Trademarks only?
  - Trade names, personal names, jurisdictionally defined intellectual property rights
UDRP as a flexible model
Adjustable elements (2)

- Local language of procedure (with Panel discretion)
- Nationality and qualification of Panelists
  - Decisions based on or influenced by local law (or also with reference to past cases decided under the relevant Policy)
- Mediation element
  - .ch, .uk
- The Goal: Balance
  - Parties’ interest in predictability, fairness, efficiency and local needs of ccTLD
WIPO Procedure and Practice

- **Respondent Identity**
  - Privacy and proxies
  - Appearing in 18% filed / 12% decisions
  - Disclosures and option to amend

- **Language** of proceedings (in approx 12% decisions)
  - Panel discretion under Rules 11
  - WIPO pre-appointment request mechanism

- **Supplemental** filings (in approx 6-7% decisions)
  - Preserve panel discretion under Rules 12

- **Settlement** and suspension mechanism
  - At WIPO, some 25% of cases settle pre-panel appointment

- **Consolidation** (approx 3% decisions) and Multi-DNs

- **WIPO-recommended eUDRP**
  - Paperless filing by simple email or online
  - Notification by email with full annexes
  - Wholly benign procedural improvement
Role of Precedent and Consistency

- Decisions not binding *per se*, but consensus and majority panel positions on many common issues have developed
- Substance and Procedure, Panels and Providers, Building on Experience, FosteringPredictability

- **WIPO Overview** of WIPO Panel Views on Selected UDRP Questions
  


- **Full Text Search** of WIPO Panel Decisions
  
ccTLD Registration Models

- “Open” vs. “Restricted”

- Restricted eligibility criteria
  (Types of Restrictions: Location requirement, Nationality/Address, Verification, Entity vs. Individuals, (Numerical) Application limits)

- Open commercialization models
  (adopted by many registries today, e.g., .me, .de, .es, .fr)

- Trend towards open models (+ ADR)
ccTLD Dispute Models

- No obligation to adopt a domain name dispute resolution policy
  - But protection of intellectual property rights?
    - National courts: less suitable for more “open” ccTLDs
- WIPO ccTLD Program: not-for-profit advice on request
  - WIPO ccTLD Best Practices
    - Avoiding conflicts through appropriate registration practices
      - e.g., registration agreement, contact details, WhoIs, submission to administrative procedure
    - Protecting intellectual property in ccTLDs through administrative procedures
WIPO ccTLD Experience

- 65 ccTLDs using WIPO dispute resolution services (November 2010)
  - Initial period:
    - smaller (.sh) or “de facto” gTLDs (.tv)
  - Then:
    - more established TLDs (.au, .ie, .mx, .nl, .ch, .fr)
- Added in 2009 - 2010:
  - .ao (Angola), .bo (Bolivia), .br (Brazil), .cr (Costa Rica), .do (Dominican Republic), .hn (Honduras), .ky (Cayman Islands), .so (Somalia), tj (Tajikistan)

WIPO ccTLD cases:
- 2010: 401
WIPO ccTLD Experience

Types of Policies

- **UDRP:** 39
  - .ag, .am, .as, .bm, .bs, .bz, .cc, .cd, .co, .cy, .dj,, .ec, .fj, .gt, .ki, .ky, .la, .lc, .md, .me, .mw, .na, .nr, .nu, .pa, .pk, .pn, .pr, .ro, .sc, .sl, .so, .tj, .tk, .tt, .tv, .ug, .ve, .ws

- **Variations of UDRP:** 16
  - .ae, .ao, .au, .bo, .cr, .do, .es, .ie, .ir, .hn, .nl, .mp, .mx, .pe, .ph, .tm

- **Other (UDRP - inspired) administrative procedure:** 6
  - .br, .ch, .fr, .li, .ma, .re

- **Arbitration:** 4
  - .ac, .io, .pl, .sh
Additional Information

- Email: arbiter.mail@wipo.int
  FranciscoRios@wipo.int
  CharlotteSpencer@wipo.int
  ClaudiaMacMaster@wipo.int

- Website: www.wipo.int/amc/en/domains/index.html

- ccTLDs: www.wipo.int/amc/en/domains/cctld/