

Towards a Latin American Domain Name Dispute Resolution: A Comparative Study

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Abstract

Solving domain name disputes efficiently and fairly is central to a thriving Internet. Today, there are five centers worldwide that decide domain name disputes under ICANN's Uniform Dispute Resolution Policy (UDRP). However, none of them is based in Latin America or addresses the cost, language and cultural issues arising from Latin American disputes. In 2013, establishing a Latin American domain name dispute resolution provider (hereinafter Latin American center) was identified as a priority by ICANN's Regional Strategy for Latin America and the Caribbean.

Through a comparative study of the current operating centers (the Asian Domain Name Dispute Resolution Center – ADNDRC, the WIPO Arbitration and Mediation Center in Geneva, the National Arbitration NAF – NAF- in the United States, the Czech Arbitration Court –CAC- in Europe and the Arab Center for Domain Name Dispute Resolution – ACDR- in Jordan), this foundational paper identifies a set of working principles for a Latin American domain name dispute resolution provider. The article focuses on the operational, legal, cultural and educational aspects of the operating centers, to yield suitable principles for a new center to be created. The paper also examines the structures of local centers that resolve domain disputes at the country-level in Latin America.

KeyWords: Domain names, online dispute resolution, Internet law, UDRP, ICANN, WIPO, ADNDRC

I . Introduction: Global Domain Policy, Regional Domain Dispute Resolution Centers

Solving domain name disputes efficiently and fairly is central to a thriving Internet. Despite global efforts to fight cybersquatting, domain name disputes are reaching almost 5,000 disputes per year.¹ This number will likely grow in the coming years, in light of ICANN's new generic top-level domain (new gTLDs) program, under which thousands of new domain extensions are becoming available.²

Domain name disputes worldwide are currently subject to ICANN's Uniform Dispute Resolution Policy (UDRP).³ The UDRP is a policy adopted by ICANN in 1999, applicable to disputes of all Generic Top Level Domains (such as .com., .net, .org), all new gTLDs and to some country-code top level domains (such as .us, .co and .cr, among others).

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1. World Intellectual Prop. Org., *WIPO Domain Name Dispute Resolution Statistics*, WIPO, <http://www.wipo.int/amc/en/domains/statistics/> (last visited Jan. 6, 2015); Nat'l Arbitration Forum, *Fast Facts: Domain Name Dispute Resolution*, ADRFORUM.COM, <http://domains.adrforum.com/users/icann/resources/Fast%20Facts%202013.pdf> (last visited Jan. 6, 2015).
 2. In June 2011, ICANN authorized the launch of the New gTLD Program, which allowed established entities located anywhere in the world to apply, to form and operate a new gTLD Registry. The goal of the program is to enhance competition and consumer choice, and enable the benefits of innovation. The new gTLDs Program includes both new ASCII and internationalized domain name (IDN) top-level domains. The current expansion of generic Top-Level Domains is underway, from .COM, .ORG, .NET to more than 1,300 new names or strings. Currently, more than 250 new names or strings have already been delegated. Please note that a new gTLD becomes available in the Internet only when it is delegated. Delegation means it is introduced into the Internet's Root Zone. *See* more on ICANN's new gTLD's program, *available at* <http://newgtlds.icann.org/en/>.
 3. ICANN, the Internet Corporation for Assigned Names and Numbers, "is an internationally organized non-profit corporation that has responsibility for Internet Protocol (IP) address space allocation, Protocol Identifier assignment, generic (gTLD) and country code (ccTLD) domain name system management, and root server management functions. *See* Internet Corp. for Assigned Names & Nos., *Welcome to ICANN!*, ICANN, <https://www.icann.org/resources/pages/welcome-2012-02-25-en> (last visited Jan. 6, 2015).

The policy establishes an administrative procedure, to be enforced by one of the accredited dispute resolution providers, in cases of disputes between a trademark holder (complainant) and a registrant (respondent). This procedure addresses allegedly abusive registrations, facilitates an efficient and cost-effective means to resolve these disputes without the cost and delays involved in court litigation, and reaches a decision or settlement, which is later implemented by ICANN accredited registrars.⁴ Since 2010, UDRP procedures are paperless and almost entirely online.⁵

Five service providers worldwide decide domain name disputes under the UDRP.⁶ They are located in different regions (North America, Europe, Asia and the Arab region). It is not a coincidence that they are distributed around the globe: geographical representation and diversity are values of core importance to ICANN's mission. To the date, however, none of these centers is based in Latin America nor addresses the cost, language

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4. The policy establishes under Paragraph 4 the type of disputes for which complainants can submit a dispute and it defines that applicable disputes are those in which a complainant asserts that:
 - (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
 - (ii) the domain name current holder has no rights or legitimate interests in respect of the domain name; and
 - (iii) the domain name has been registered and is being used in bad faith by the current holder. The complainant must prove that each of these three elements is present. *See* the UDRP policy followed by all ICANN Accredited Registrars, *available at* <https://www.icann.org/resources/pages/policy-2012-02-25-en>, and the UDRP rules followed by all dispute-resolution service providers – with supplementation by each provider's supplemental rules, *available at* <https://www.icann.org/resources/pages/rules-be-2012-02-25-en>.
 5. On October 30, 2009, ICANN's Board of Directors approved a new version of the UDRP Rules proposed by the World Intellectual Property Organization to remove the requirement for hard-copy submission of complaints and allowing for the electronic submission of complaints to be the only submission needed to start a case. This revised version of the Rules is in effect since March 1, 2010.
 6. Internet Corp. for Assigned Names & Nos., *List of Approved Dispute Resolution Service Providers*, ICANN, <https://www.icann.org/resources/pages/providers-6d-2012-02-25-en> (last visited Jan. 6, 2015).

and cultural issues arising from Latin American disputes. With this in mind, ICANN's Regional Strategy for Latin America and the Caribbean identified establishing a Latin American domain name dispute resolution provider as a strategic priority.⁷

In this context, our study analyzes domain name dispute resolution in Latin America and offers a comparative analysis of the current operating providers (the Asian Domain Name Dispute Resolution Center – ADNDRC-, the WIPO Arbitration and Mediation Center in Geneva, the National Arbitration NAF –NAF- in the United States, the Czech Arbitration Court –CAC- in Europe and the Arab Center for Domain Name Dispute Resolution – ACDR- in Jordan). The main goal of this study is to identify a set of working principles for a Latin American domain name dispute resolution provider, to be accredited by ICANN. Our article focuses on the operational, legal, cultural and educational aspects of the operating providers, to yield suitable principles for a new Latin American domain name dispute resolution provider. The paper also examines the structures of the centers that resolve domain name disputes at the country-level in Latin America.

II. Resolving Domain Name Disputes in Latin America under ICANN's Framework

ICANN establishes very few conditions for operating domain name dispute resolution centers, and this has allowed them to implement the structures that they considered best for their own operations and resources.⁸

7. See Internet Corp. for Assigned Names & Nos., *Latin America and the Caribbean Strategic Plan 2013-2016* (presentation), ICANN, <http://beijing46.icann.org/meetings/beijing2013/presentation-lac-strategy-10apr13-en.pdf> (last visited Jan. 6, 2015).

8. The conditions set by ICANN are established on their website. See Internet Corp. for Assigned Names & Nos., *Domain Name Dispute Resolution Policies: Approval Process for Dispute Resolution Service Providers*, ICANN, <https://www.icann.org/resources/pages/dndr-2012-02-25-en> (last visited Jan. 6, 2015). To the date, the center accreditation process does not involve the execution of a contract between ICANN and the center.

Indeed, ICANN has not established any contract or specific rules:⁹ instead, the main requirement from ICANN is that the provider establishes its own supplemental rules to enforce the UDRP, and that these supplemental rules are not in conflict with ICANN's UDRP policy and rules.¹⁰

Despite this little regulation, ICANN's bylaws and operations advance basic principles for resolving domain name disputes; which face challenges for implementation in Latin America.

To begin with, a paramount principle to ICANN is that all geographical regions are adequately represented,¹¹ and that regional problems are solved regionally. Indeed, for an organization with a truly global mission like ICANN, it is clear that even when the creation of general policies (such as the UDRP) are centralized, implementation is best when performed at a regional level. This demands the creation of regional poles to enforce the general policies and adequate structures to local needs.

ICANN has also embraced the Online Dispute Resolution (ODR) - Standards of Practice, issued by the Advisory Committee of the National Centre for Technology and Dispute Resolution (United States) in 2009.¹² These standards are guidelines for practice across the spectrum of ODR, which include the following:

- **Accessibility:** ODR systems must be accessible to system users. They should be accessible not only in that they are easy to find and access, but also in that they address geographical and language barriers.

9. See Internet Corp. for Assigned Names & Nos., *UDRP Providers and Uniformity of Process – Status Report (July 2013)*, ICANN, <https://www.icann.org/en/system/files/files/uniformity-process-19jul13-en.pdf> (last visited Jan. 8, 2015).

10. *Id.*

11. See ICANN's Bylaws, Article VI, Section 5 – “International Representation: “At all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a Geographic Region: Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. See also Article VIII, Section 5 (Diversity in Nomination Committee); Article X, Section 3 (Diversity in GNSO); Article XI, Section 2.4.g (Diversity in Regional At-Large Organizations ("RALOs")).

12. Internet Corp. for Assigned Names & Nos., *Online Dispute Resolution*, ICANN (July 2009), <http://www.icann.org/ombudsman/odr-standards-of-practice-en.pdf> (last visited Jan. 6, 2015).

Insofar as it is possible, ODR systems should strive to become media neutral in order to encourage the widest access.

- **Affordability:** ODR schemes must provide an economical alternative to formal dispute resolution processes, and provide access to justice where formal channels are not available, at an economic level that does not disenfranchise potential users in developing areas or in conflict/post conflict zones.
- **Transparency:** ODR schemes must make clear the process used in pursuit of dispute resolution or management. Further, ODR schemes must be transparent in terms of the identities and affiliations of the ODR providers, the identities and affiliations of the interveners and managers of the ODR systems, and the security efforts undertaken by the ODR provider to safeguard user data and identity.
- **Fairness:** ODR systems and providers must create a fair redress environment, unbiased toward any individual participant in the process. Software algorithms must similarly be designed to offer no systemic benefit to one party over another.
- **Innovation and relevance:** ODR schemes must remain at the cutting edge of service delivery and technological innovation. ODR schemes must meet the requirements of community, institution, and legal frameworks they serve.
- **Third parties:** Dispute resolution professionals shall have sufficient skills and training to fulfill their function, but they will not need to be licensed legal practitioners. However, ODR, when appropriate, must take measures to ensure legal experts are available for consultation when specialized knowledge on the interpretation and application of laws and regulations is required in the process of providing ODR services.
- Unfortunately, the absence of a regional domain name provider in

Latin America obstructs these principles. Today, Latin America faces the following challenges in applying the UDRP to solve disputes in the region:

- **Language:** Spanish and Portuguese are the main languages of the region.¹³ There are over 247 million users worldwide whose primary language is Spanish or Portuguese (7.8% and 3.9% of the total Internet users respectively),¹⁴ most of which do not speak English. For non-English speakers, access to UDRP procedures is very difficult: even when the UDRP centers' websites have some pages translated into Spanish, the platform and key sites to initiate a UDRP procedure are not.¹⁵ Without command of English, it is almost impossible to navigate a UDRP platform and succeed in a given case. This is also a reasonable explanation on why many Latin American respondents do not respond or defend themselves in the context of a UDRP complaint.

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13. In Latin America, twenty countries speak Spanish or Portuguese (Argentina, Aruba, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela). They account for most of the e-commerce activity in the region. Other territories speak English (Belize, Falkland Islands, Guyana, South Georgia and the South Sandwich Islands, Trinidad and Tobago), Dutch (Aruba, Netherlands Antilles, Suriname), French (French Guiana, Haiti), but in most of them, Spanish is a second-used language.
 14. Miniwatts Mktg. Grp., *Internet World Users by Language: Top 10 Languages*, INTERNET WORLD STATS (Dec. 31, 2013), <http://www.internetworldstats.com/stats7.htm>.
 15. World Intellectual Prop. Org., *Online Complaint Filing Form Complaints Under the Uniform Domain Name Dispute Resolution Policy (UDRP)*, WIPO, <http://www.wipo.int/amc/en/domains/filing/udrp/eudrpcomplaint.jsp> (last visited Jan. 6, 2015). (English only.) The problem is worsened by the fact that the UDRP procedure needs to be initiated in the language of the Registration Agreement as per the UDRP rules, which rarely is Spanish or Portuguese. See Internet Corp. for Assigned Names & Nos., *Rules for Uniform Domain Name Dispute Resolution Policy* (as approved on Oct. 30, 2009), ¶ 11, ICANN, <https://www.icann.org/resources/pages/rules-be-2012-02-25-en> (last visited Jan. 6, 2015). This problem, however, cannot be eliminated without changing the UDRP rules, which is beyond the scope of this article.

- Geographical location: Many local litigants perceive that foreign ODR providers are too distant from them. For multiple local users, sending their case to Geneva or Prague makes the process daunting, overwhelming and unlikely to be commenced.
- Legal traditions: Panelists may decide their cases on different legal traditions than litigants, without acknowledging differences in legal cultures (for instance: the importance of case law, the criteria for bad faith standards, and the importance of literal interpretation). They may inadvertently provide “one-size-fits-all” solutions that may not be adequate for any of the litigants involved. In addition, arbitration is not yet a common dispute resolution method in this part of the globe, where ADRs are perceived by many as a privatization of justice, sometimes with negative connotations.
- Lack of awareness / expertise: There is yet little awareness on what ICANN is or what ICANN does, or on how the Domain Name System works. This lack of awareness affects users, commercial users, civil society organizations and legal professionals as well. Indeed, attorneys in Latin America tend to know little about the UDRP, and are not prepared to advise their clients on how to proceed when cybersquatting occurs. This is worsened by the fact that a large number does not even speak more than one language on a professional level, which prevents them from participating proficiently in an international administrative procedure. This way, mostly only big and international companies access the dispute resolution system, through “big law” legal counsel.
- Costs: A UDRP procedure costs US\$ 1,300 at minimum.¹⁶ At this cost level, a UDRP complaint is generally too expensive for a Latin American company. Even though technically litigants can participate in a UDRP procedure without a lawyer, most complainants and many

16. See *infra* Part III.B.3.

defendants will hire a lawyer to assist them in the procedure. This increases the total cost of litigation. Due to the low use, few lawyers are specialized in UDRP complaints (and those who are specialized are generally lawyers working for the big law firms), which worsens the problem both in costs and availability for small and medium enterprises (SMEs). The cost issue leaves both Latin American complainants and defendants in a worse position than their foreign counterparts to defend their rights, and accounts for an unfair dispute resolution system.

These challenges are problematic for honouring the Online Dispute Resolution - Standards of Practice of 2009. Indeed, the UDRP is unaffordable for the average Internet commercial user in Latin America. The UDRP also does not comply with the third parties requirement, without enough professionals prepared to embark in dispute resolution procedures. The situation is worsened by the fact that none of the current providers targets the Latin American market, or has enough incentives to ensure legal experts are available (and affordable) in the Latin American region for consultation.

Furthermore, the UDRP does not comply with the General requirement of the Standards, given that neither the current providers nor ICANN are spending enough resources to educate the Latin American Internet community by providing generic information to users and stakeholders about the Domain Name System and the UDRP. In the case of the UDRP providers, only WIPO would be expected to invest resources to educate the Latin American Internet community, as it is the only perceived “multi-regional” provider. The other four providers are expected to serve regional markets and not Latin America. Regarding ICANN, it is with this issue in mind that ICANN’s Regional Strategy for Latin America and the Caribbean identified establishing a Latin American domain name dispute resolution provider as a strategic priority.¹⁷

17. Internet Corp. for Assigned Names & Nos., *supra* note 7.

III. A Comparative Study of Current Dispute Resolution Centers

While all the five centers apply the same UDRP policy, they have adopted different working structures. The very few conditions established by ICANN have led each center to implement different operations, according to their own criteria and resources.¹⁸

In this section, we will analyze these differences in implementation, and evaluate adequate options for a new Latin American domain name dispute resolution provider.

A. Legal Aspects

1. Legal Structure

The legal structure of UDRP centers is very diverse: there are international organizations, for-profit corporations, non-profit corporations and joint ventures with no legal structures of their own.

The World Intellectual Property Organization (WIPO) is an international organization; a United Nations agency dedicated to intellectual property.¹⁹ It is formed by 186 member States, and has its principal office in Geneva, Switzerland.²⁰

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18. This has the advantage of developing different centers that reflect their regional characteristics, but has potential problems of disparity in the application of the UDRP. *See* Internet Corp. for Assigned Names & Nos., *supra* note 9. The problem mostly affects the selection of panelists and the fairness of the decisions, but not other aspects of provider operations. *See*, for example, Michael Ettetdgui, The Muscovitch Law Firm, *2012 Domain Name Dispute Study: 7 Select Panelists Decide Nearly Half of All Cases*, DNATTORNEY.COM (Aug. 28, 2012), <http://www.dnattorney.com/NAFdomainnamedisputestudy2012.shtml>; Andrew Allemann, *Study Shows Million Dollar Domain Arbitrators and UDRP Bias*, DOMAIN NAME WIRE (Mar. 22, 2010), <http://domainnamewire.com/2010/03/22/study-shows-million-dollar-domain-arbitrators-and-udrp-bias/>.
 19. World Intellectual Prop. Org., *Inside WIPO*, WIPO, <http://www.wipo.int/about-wipo/en/> (last visited Jan. 8, 2015).
 20. WIPO also has external offices in Rio de Janeiro, Tokyo, New York, and Singapore. However, these offices do not deal with domain name disputes. *See* World

The National Arbitration NAF (NAF, also known as NAF) is a limited liability company with offices in Minneapolis and New Jersey, in the United States.²¹ It offers services relating to arbitration, mediation and domain name disputes. Since February 2013, ICANN has authorized NAF to provide Uniform Rapid Suspension (URS) services, besides UDRP services.

The Asian Domain Name Dispute Resolution Center (ADNDRC) is an umbrella organization created by the China International Economic and Trade Arbitration Commission (CIETAC) and the Hong Kong International Arbitration Centre (HKIAC). It provides UDRP services and Registrar Transfer Dispute Resolution Policy (TDRP) services, from four offices in the Asia region. These offices are located in Beijing, China (operated by CIETAC);²² Hong Kong (operated by HKIAC, a non-profit corporation);²³ Seoul, Korea (operated by the Korean Internet Address Dispute Resolution Committee - IDRC)²⁴ and Kuala Lumpur, Malaysia (operated by the Kuala Lumpur Regional Center for Arbitration –KLRCA-, a non-profit, non-governmental entity supported by the Malaysian government).²⁵

The Czech Arbitration Court (CAC) is a non-profit organization based in Prague and attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic.²⁶ CAC's

Intellectual Prop. Org., *External Offices*, WIPO, <http://www.wipo.int/about-wipo/en/offices/> (last visited Jan. 8, 2015).

21. BBB of Minn. & N.D., *BBB Business Review*, BETTER BUS. BUREAU, <http://www.bbb.org/minnesota/business-reviews/mediation-services/national-arbitration-forum-in-saint-louis-park-mn-11003157> (last visited Jan. 8, 2015).
22. See CHINA INT'L ECON. & TRADE ARBITRATION COMM'N, <http://www.cietac.org/index.cms> (last visited Jan. 8, 2015).
23. See H.K. INT'L ARBITRATION CTR., <http://www.hkiac.org> (last visited Jan. 8, 2015).
24. See INTERNET ADDRESS DISPUTE RESOLUTION COMM., <http://www.idrc.or.kr/english/> (last visited Jan. 8, 2015).
25. See KUALA LUMPUR REG'L CTR. FOR ARBITRATION, <http://www.klrca.org.my/corporate/> (last visited Jan. 8, 2015).
26. Arbitration Ctr. for EU Disputes, *About the Czech Arbitration Court*, ADR.EU, http://eu.adr.eu/about_us/court/ (last visited Jan. 8, 2015).

services include the resolution of domestic and international commercial disputes related to IP and technology matters, UDRP domain name disputes and .eu domain name disputes.

The Arab Center for Dispute Resolution (ACDR) is a joint venture between the The Arab Intellectual Property Mediation and Arbitration Society (AIPMAS), and the Arab Society for Intellectual Property (ASIP), both non-profit institutions with their respective headquarters in Amman, Jordan and Munich, Germany.²⁷ It does not have its own legal structure. Its aim is to resolve domain name disputes under UDRP, and was launched in January 2014.

In this varied scenario, it would seem that a Latin American domain name dispute resolution provider has several options to follow and could potentially adopt any type of legal structure. We believe, however, that for accountability reasons it would be ideal for the center to be a legal entity of its own structure, with its own organization, assets and legal liability. To be accessible to Latin Americans, it should be based in one or more Latin American countries.

2. Liability

WIPO and ACDR establish a disclaimer from liability that extends to the center and the administrative panel, except in cases of deliberate wrongdoing.²⁸ ADNDRC, in turn, specifies that the exclusion also extends

27. Arab Ctr. for Domain Name Dispute Resolution (ACDR), *Proposal to Become a New UDRP Provider*, ICANN, <https://www.icann.org/en/system/files/files/acdr-01mar13-en.pdf> (last visited Jan. 8, 2015).

28. WIPO Supplemental Rules (Paragraph 12) and ACDR Supplemental Rules (Paragraph 17) provide: "Other than cases resulting from deliberate wrongdoing, an Administrative Panel, the Center and its staff shall not be liable to a party or a concerned registrar for any act or omission in connection with the administrative proceeding under the UDRP." World Intellectual Prop. Org., *WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy* (in effect as of Dec. 1, 1999), WIPO, <http://www.wipo.int/amc/en/domains/rules/supplemental/#8> (last visited Jan. 8, 2015); Arab Ctr. for Domain Name Dispute Resolution (ACDR), *ACDR Supplemental Rules*, ICANN, <https://www.icann.org/en/system/files/files/acdr-annex-3-supplemental-rules-28sep10-en.pdf> (last visited Jan. 8, 2015).

to cases of fraud, dishonesty or deliberate wrongdoing, without prejudice to any existing rule of law.²⁹ CAC and NAF do not provide any disclaimer.

B. Operational Aspects

1. Languages

The UDRP establishes that procedures under the policy should be conducted in the language of the registration agreement of the domain name under dispute.³⁰ The domain name system allows for domain registration in a wide range of languages, from Afrikaans to Vietnamese,³¹ and the current centers formally cover a broad part of these languages.

WIPO, for example, is able to resolve disputes in Chinese, Czech, Danish, Dutch, English, French, German, Hebrew, Italian, Japanese, Korean, Norwegian, Polish, Portuguese, Romanian, Russian, Slovak, Spanish, Swedish and Turkish.³²

NAF provides dispute resolution services in Chinese, Dutch, English, French, German, Japanese, Korean, Polish, Russian and Spanish.³³

The CAC allows disputes in Czech, German, English, Spanish, French, Italian, Maltese, Dutch and Slovak.³⁴

29. Asian Domain Name Dispute Resolution Ctr., *The ADNDRC Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy* (in effect as of July 26, 2012), ¶ 16, ADNDRC, http://www.adndrc.org/mten/IMG/pdf/Supplemental_Rules_26-07-2012_en.pdf (last visited Jan. 8, 2015).

30. *See supra* note 15 and accompanying text.

31. *See* the languages supported by ICANN Accredited Registrars, *available at* <http://www.internic.net/language.html>.

32. World Intellectual Prop. Org., *Update on Trademark-Related Aspects of the Domain Name System*, WIPO (Jan. 29, 2014), SCT/31/6, at 2, http://www.wipo.int/edocs/mdocs/sct/en/sct_31/sct_31_6.pdf.

33. Nat'l Arbitration Forum, *Frequently Asked Questions*, ADRFORUM.COM, <http://domains.adrforum.com/main.aspx?itemID=1604> (last visited Jan. 8, 2015).

34. *See* the languages supported by CAC's panelists, *available at* http://udrp.adr.eu/adr/panelists/index.php?filter_dispute_type=all&filter_name=&filter_language=mt&filter_country=all.

ADNDRC has solved disputes in English, Chinese and Korean.³⁵

Lastly, ACDR supports Arabic, English and French, and plans to expand to Spanish, Chinese, German, Italian and Korean.³⁶

While today WIPO, NAF and CAC do provide services in Spanish and WIPO also provides services in Portuguese, their services are not enough for the Latin American users. As was explained above, the dispute resolution platforms and procedural rules are in English, so if one wishes to start a procedure in another language one must understand English first. With this in mind, a Latin American domain name dispute resolution provider should provide not only dispute resolution processes but also complete platforms in the languages of the region that are currently underserved: Spanish and Portuguese. That way it could truly serve the Latin American community.

2. Supplemental Rules

Supplemental rules are issued by each provider to complement ICANN's UDRP Rules and establish internal procedural rules for the application of the UDRP. There are differences between the supplemental rules of different centers, which are mainly procedural and do not have a significant impact on the rights of the parties involved.

Some of these differences are the following:

- the length of the complaint and the response;³⁷
- the possibility of having extensions and stays;³⁸

35. Asian Domain Name Dispute Resolution Ctr., *UDRP Decisions*, ADNDRC, http://www.adndrc.org/mten/UDRP_Decisions.php (last visited Jan. 8, 2015).

36. Arab Ctr. for Domain Name Dispute Resolution (ACDR), *supra* note 27.

37. WIPO establishes a limit of 5,000 words (Paragraph 11) as CAC (Paragraph 13) and ACDR (Paragraphs 5 and 6). ADNDRC has a lower limit of 3,000 words (Paragraph 13). NAF establishes a 15-page limit (Paragraphs 4 and 5).

38. Only regulated expressly by NAF (Paragraph 6), CAC (Paragraphs 3 and 11), and ACDR (Paragraph 9), but provided in all centers with consent from the

- the possibility of filing of additional presentations;³⁹
- the formation of the panel;⁴⁰
- the length and date of issuance of the decision;⁴¹
- the possibility of correcting the decision;⁴²
- the forms of communication between the parties and with the center;⁴³
- the calendar used for determining all deadlines and due dates;⁴⁴
- and the exclusion of liability mentioned above.

We believe that the new center's supplemental rules could also incorporate accepted procedures in the resolution of UDRP cases (for example, the possibility to pursue the procedure in a certain language if both parties understand the language, even when said language is not the language of the registration agreement; and other procedural issues).⁴⁵ This

administrative panel.

39. Expressly allowed only by NAF, with payment of additional fee (Paragraph 7), although in practice it has been allowed by other centers without being regulated in their Supplemental Rules.
40. NAF and ADCR rules allow a complainant to change a 3-member panel to a 1-member (Paragraph 9 and Paragraph 10 respectively) and the possibility to challenge the selection of a panelist (Paragraph 10 and Paragraph 11 respectively).
41. No word limit in all WIPO (Paragraph 11), NAF (Paragraph 13), ADNDRC (Paragraph 13), CAC (Paragraph 13), ACDR (Paragraph 12).
42. By the panel in NAF (Paragraph 14), or at a party's request in ACDR (Paragraph 13), or both in ADNDRC (Paragraph 11) and CAC (Paragraph 9).
43. Either through an online platform, by e-mail, phone or fax. Some of the Supplemental Rules mention regular post but this might not be applicable today in the context of a paperless UDRP. *See* WIPO (email or online platform, Paragraph 3); NAF (e-mail or phone, Paragraphs 4, 5, and 11); ADNDRC (e-mail, fax, phone, and mail, if necessary, Paragraphs 3 and 4); CAC (email or online platform, fax, telecopy, post, Annex C); ACDR (e-mail, fax, or post, Paragraph 3).
44. NAF takes into account the United States federal holidays, Saturdays, and Sundays (Paragraph 1); ACDR considers Fridays and Saturdays (Paragraph 2), and with CAC, they both consider public holidays in the country or the state of the Provider or either of the Parties (Paragraph 2).
45. *See* World Intellectual Prop. Org., *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition*, WIPO (2011), <http://www.wipo.int/amc/>

way, supplemental rules could provide more predictability to the parties and panelists and facilitate the use of the new center.

The center’s supplemental rules should also be available in the main languages of the center (Spanish, Portuguese and English) to allow easy use in all languages.

3. Fees

The fees depend on the number of panelists and the number of domain names disputed. An overview of the fees of disputes is provided in these simplified tables:⁴⁶

1 to 5 domain names

	Single Panelist	Three Panelists
WIPO	US\$ 1,500	US\$ 4,000
NAF	US\$ 1,300 / 1,450	US\$ 2,600 / 2,900
ADNDRC	US\$ 1,300 / 1,600	US\$ 2,800 / 3,300
CAC	US\$ 1,300	US\$ 3,100
ACDR	US\$ 1,500 / 1,700	US\$ 2,600 / 3,700

6 to 10 domain names

	Single Panelist	Three Panelists
WIPO	US\$ 2,000	US\$ 5,000
NAF	US\$ 1,800	US\$ 3,600
ADNDRC	US\$ 1,900	US\$ 3,800
CAC	US\$ 1,600	US\$ 4,000
ACDR	US\$ 2,100	US\$ 4,500

As we can see, NAF, ADNDRC and the CAC provide the least expensive fees for single panelist disputes, at US\$ 1,300; and NAF

[en/domains/search/overview2.0/](http://www.wipo.int/amc/en/domains/search/overview2.0/) (last visited Jan. 8, 2015).

46. Each center has its own complex structure of fees. To simplify the analysis, we focus here only on domain name disputes that involve 1 to 10 domain names.

provides the least expensive fees for three-member panels, at US\$ 2,600, 2,900 and US\$ 3,600 depending on the number of domain names disputed.

This structure of fees is still incredibly high for most Latin American users. To enable true participation by the Latin American public, the regional provider should attempt to implement lower fees; for example, by adopting more efficient technology and possibly lower compensation for panelists, or means of payments that would allow installments as most local purchases do in the Latin American market. Also, a regional provider must work with ICANN to focus on awareness actions for the public and training schemes targeting for professionals, to enable them to offer representation services in UDRP cases at an accessible rate to the general public.

4. Marketing

It is notable how centers have done very little marketing of their services. NAF and the ACDR (through its “sister firm” Abu Ghazaleh Intellectual Property AGIP) have had continued presence as a sponsor at International Trademark Association (INTA) meetings,⁴⁷ but we are not aware of any other awareness or educational actions.

As mentioned above, we believe that the low use in Latin America is due, in part, to the lack of awareness on the system. A regional provider in Latin America would have to go beyond actions at the INTA. The Latin American Internet market is dominated by SMEs, which are the engine of our digital economies. ICANN should not only recognize the need for a regional provider but also support the creation of this provider and offer to it the proper resources it will need to create awareness and educate the general public on how the Domain Name System works, and what is the purpose of the UDRP and how it works. Undertaking marketing actions should be considered as essential means to create awareness among relevant stakeholders and SMEs in the region.

47. ACDR’s accreditation application mentions AGIP as a “sister firm. *See Arab Ctr. for Domain Name Dispute Resolution (ACDR)*, *supra* note 27. *See more on the sponsorship of both NAF and AGIP, available at* <http://www.inta.org/AnnualMeeting/Pages/SponsorshipOpportunities.aspx>.

C. ADR Aspects: Handling of Decisions and Panelists

1. Case Publication

The UDRP establishes that all decisions should be published online in full, except when the Administrative Panel involved makes an exception to publish portions of the decision.⁴⁸

In compliance with this provision, the centers publish their decisions online, each in their website.⁴⁹ Decisions are generally published in the language of the procedures, but CAC also adds a non-official summary in English for some of them.

It has been pointed out that decisions should be posted in a standard format so that third parties and academics can access them easily.⁵⁰ We add that publishing decisions that way would also help with decisions not being manipulated after being published.⁵¹

We believe that translation of short summaries should be implemented

48. Internet Corp. for Assigned Names & Nos., *Uniform Domain Name Dispute Resolution Policy* (as approved on Oct. 24, 1999), ICANN, <https://www.icann.org/resources/pages/policy-2012-02-25-en> (last visited Jan. 6, 2015). Paragraph 4(j) provides: “The Provider shall notify us of any decision made by an Administrative Panel with respect to a domain name you have registered with us. All decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.

49. See WIPO’s decisions, *available at* <http://www.wipo.int/amc/en/domains/decisions.html>; NAF’s decisions, *available at* <http://domains.adrforum.com/decision.aspx>; ADNDRC’s decisions, *available at* https://www.adndrc.org/cn/case_decision.php (Beijing), https://www.adndrc.org/hk/case_decision.php (Hong Kong), https://www.adndrc.org/kr/case_decision.php (Seoul), https://www.adndrc.org/kl/case_decision.php (Kuala Lumpur); and CAC’s decisions, *available at* https://udrp.adr.eu/adr/decisions/index.php?filter_dispute_type=udrp.

50. George Kirikos, Comments to *NAF Panelists and Complainants Caught Systematically Copying/Pasting Nonsense into UDRP Decisions*, CIRCLEID (Apr. 23, 2010), http://www.circleid.com/posts/20100423_naf_copying_pasting_nonsense_into_udrp_decisions/.

51. George Kirikos, *NAF Caught Revising Past UDRP Decisions?*, CIRCLEID (June 16, 2010), http://www.circleid.com/posts/naf_caught_revising_past_udrp_decisions/.

in a Latin American domain name dispute resolution provider, where the primary languages of use will probably be Spanish and Portuguese, but not English.

2. Panelists: panel composition, training and sanctions for misconduct

Panelists are a key part to the well functioning of a dispute resolution system. Panelists are required to ensure their impartiality and independence, and they are required to sign a declaration of impartiality or its equivalent before accepting their appointment to resolve a domain name dispute.⁵²

All centers have a list of panelists from a wide variety of countries. Nevertheless, this does not automatically guarantee diversity of backgrounds; most of the arbiters are lawyers in trademark private practice. This has raised questions of impartiality in the decisions: many have pointed out that panelists should come from other sectors of trademark law, such as academia and the judiciary; and that panelists should never be allowed to act as a complainant's representatives.⁵³

Taking into account these comments, we understand that a Latin American domain name dispute resolution provider would incorporate panelists with diverse backgrounds in trademark law; including not only academia and the judiciary but also businesses and international organizations in the field of intellectual property and Internet law.

52. In WIPO's procedures this is called the "Declaration of Independence and Impartiality. World Intellectual Prop. Org., *supra* note 28, ¶ 8.

53. Konstantinos Komaitis, Comments to *Still Insisting on a UDRP Review*, KONSTANTINOS KOMAITIS BLOG (June 8, 2011), <http://www.komaitis.org/1/post/2011/06/still-insisting-on-a-udrp-review.html>; Nat Cohen, Comments to *Why Is a WIPO Panelist Sending a C&D Letter to My Personal Trainer?*, DOMAIN ARTS (Oct. 21, 2011), <http://www.domainarts.com/2011/10/21/my-personal-trainer-registers-sofitdc-com-receives-cd-from-sofitel-sent-by-a-wipo-panelist/>; Nat Cohen, Comments to *A Domain Investor Goes to WIPO's Home in Geneva to Learn More About UDRP*, DOMAIN NAME WIRE (Mar. 21, 2014), <http://domainnamewire.com/2014/03/21/wipo-workshop-geneva/>.

Regarding the training and accreditation of panelists, we note that all centers have a process to accredit their panelists and usually they provide an optional continuing training program. WIPO, for example, organizes meetings and workshops on recent domain names cases. Some of them are intended for panelists only, but most of them are open workshops. Faculty for the workshops consists of experienced UDRP panelists with extensive domain name expertise, and senior legal staff of the WIPO Center.⁵⁴ In turn, CAC and ADRC have expressed interest in organizing annual seminars, periodic webinars and online discussions.

ADNDRC is the only center that accredits panelists for a fixed term (three years) and requires re-accreditation after such term. To renew their inclusion in the list of arbiters, panelists are required to submitting an up-to-date application form and a one page CV, and show evidence that the panelist has completed either a refresher seminar regarding Domain Names Dispute Resolution process approved by the ADNDRC or issued not less than three Administrative Decisions within a three-year period since last assessment.⁵⁵ This center has a training committee that designs and organizes such training courses.

ADNDRC is also unique in that all panelists are required to adhere to the Code of Conduct for Administrative Panelists.⁵⁶ The code of conduct regulates panelist behavior inside and outside of UDRP cases.⁵⁷ Its purpose

54. See an overview of WIPO's Advanced Workshop on Domain Name Dispute Resolution, which took place in Geneva, Switzerland on October 29-30, 2013, available at <http://www.wipo.int/amc/en/events/workshops/2013/domainname/>.

55. Asian Domain Name Dispute Resolution Ctr., *Procedures for Inclusion on the Asian Domain Name Dispute Resolution Centre Administrative Panel*, ¶ D, ADNDRC, <http://www.adndrc.org/mten/RegistrationAsAPanelist.php> (last visited Jan. 8, 2015).

56. *Id.* ¶ E.

57. See Asian Domain Name Dispute Resolution Ctr., *Code of Ethical Conduct for*

is not only to serve as a guide to the conduct of panelists, but also to serve as a point of reference for users of the administrative proceedings and to promote general public confidence in the system. If a panelist fails to observe the code of conduct, the ADNDRC Panel Selection Committee may remove the panelist at its discretion. NAF provides limited standards for impartiality and independence, which are incorporated into its supplemental rules, but not in a separate code addressed at panelists or applied by a special committee.⁵⁸

In these aspects, ADNDRC is a model of domain name dispute resolution that a Latin American domain name dispute resolution provider could follow. Having a set of standards for panelist behavior seems essential in a context where arbiters of other centers have been severely criticized for “copy & pasting decisions and not devoting enough time to deciding the cases assigned to them.”⁵⁹ A Latin American domain name dispute resolution provider should proactively avoid these problems by adopting a proper panelist accreditation system as well as its own code of

Panelists, ADNDRC, http://www.adndrc.org/mten/img/pdf/Code_of_Ethical_Conduct_for_Panelists.pdf (last visited Jan. 8, 2015).

58. See Nat’l Arbitration Forum, *The FORUM’s UDRP Supplemental Rules*, ¶ 10, ADRFORUM.COM, <http://domains.adrforum.com/main.aspx?itemID=631&hideBar=False&navID=237&news=26> (last visited Jan. 8, 2015).
59. George Kirikos, *NAF Panelists and Complainants Caught Systematically Copying/Pasting Nonsense into UDRP Decisions*, CIRCLEID (Apr. 23, 2010), http://www.circleid.com/posts/20100423_naf_copying_pasting_nonsense_into_udrp_decisions/. See also Andrew Allemann, *National Arbitration Forum Panelist Sued for Judicial Misconduct*, DOMAIN NAME WIRE (July 22, 2009), <http://domainnamewire.com/2009/07/22/national-arbitration-forum-panelist-sued-for-judicial-misconduct/>.

conduct.

3. Lessons from ccTLD disputes in Latin America

A Latin American domain name dispute resolution provider would also be apt to solve local country-code domain name (ccTLD) disputes. We provide a table as Annex I with the current situation of domain name dispute resolution in Latin America. We focus on countries that are members of LACTLD, the Latin American and Caribbean ccTLDs Organization, and countries who are not members of LACTLD but currently submit their disputes to WIPO.⁶⁰

As shown in the table, the current situation reflects that most ccTLDs in the region submit their disputes to WIPO while many have developed their own services and a minority refers their cases to other providers. This means a lost opportunity for the region in terms of the absence of standards of practice, lack of uniformity and incoherence, affecting the Internet ecosystem of the region as a whole.

A regional provider would be able to serve the needs of the regional ccTLDs and its customers and market. It would also become a relevant actor that will be able to lead a community based elaboration of best practices for domain name dispute resolution in Latin America that will have a potential positive impact on Internet users in the region. Such a provider will also be able to create awareness, training and educational materials in the local languages, helping Internet users, legal professionals, communicators and educators.

While WIPO has performed a wonderful job in creating standards at the global level, and has allocated unique expertise in the field and efforts to educate and promote the use of ADR worldwide, we still believe that WIPO alone cannot address the Latin American needs and challenges, simply because this is not part of its core mission and because it does not yet have a physical presence in the region. Latin American domain name dispute resolution provider for ccTLDs would be able to make a difference for the region, by helping to bring awareness, education and training of

60. See a list of LACTLD members, available at <http://www.lactld.org/en/associate-affiliate-members/>.

users, legal professionals and educators and enhancing the regional digital economy by creating a healthier Internet ecosystem. Such a center will be able to help to build trust for Internet users of the region, by addressing their needs and understanding the market characteristics it serves.

IV. Working principles for a Latin American UDRP Service Provider

Latin America experiences an incorporation of new Internet users on a daily basis. Growth rates for Internet penetration are high in comparison with other regions. In this sense, penetration rate was 38.4% in 2011, while rising to 43% in 2013, representing 255 million users. In 2016 this number is expected to grow to 53.4%.⁶¹

This process suggests that the digital economy in the region is in constant expansion, and thus, the Domain Names Industry will keep evolving and growing, particularly with the introduction of new gTLDs. In this sense, even though there were only twenty-four applications for new gTLDs coming from the Latin American countries, the situation suggests that many more than strings have the potential to become relevant in the next months or years. Indeed, there are many strings on words of common use in the regional Internet market, both in Spanish and in English.⁶²

Despite the numbers are still low in comparison with the developed world, the Latin American region is increasingly targeted for its great opportunities. Also, governments and private sector stakeholders alike have become aware of the fact that ICTs have elevated efficiency and thus became strategic tools for economic growth in the whole region, helping to develop competitiveness and transparency.

“Various studies point out that at an international level the digital divide might be closing and that the developing countries might be going through an unprecedented catching up process in terms of access. [...] It has been

61. ComScore, Inc., *Latin America's Internet Population Grows 15 Percent in Past Year to 112 Million People*, COMSCORE (Mar. 18, 2011), <http://www.comscore.com/Insights/Press-Releases/2011/3/Latin-America-s-Internet-Population-Grows-15-Percent-in-Past-Year-to-112-Million-People>.

62. For instance: app, chat, blog, cloud, fan, fashion, football, video, yoga, boutique, etc.

sustained that the difference will be smaller as markets become saturated in developed countries.⁶³

From the comparative analysis above, we see that there are multiple ways of implementing a domain name dispute resolution service provider. Based on our study, a Latin American domain name dispute resolution provider should follow the following principles:

A.Regional Structure and Operations:

- Legal structure: the center has the freedom to adopt any legal structure, including a for-profit or a non-profit corporation. We recommend that the center is based in one or more Latin American countries, for example Chile and/or Brazil.
- Liability: The center's supplemental rules could optionally incorporate a disclaimer, although we believe that the legal effect of this disclaimer would be limited under applicable national laws in force in Latin America.
- Supplemental Rules: These internal rules should be provided in the three languages supported by the center. They could incorporate procedurally accepted procedures in the resolution of UDRP cases (such as those provided by WIPO), to provide predictability, transparency and facilitate the use of the new center.

63. U.N. ECON. COMM'N FOR LATIN AMERICA & THE CARIBBEAN (ECLAC), LA SOCIEDAD DE LA INFORMACIÓN EN AMÉRICA LATINA Y EL CARIBE: DESARROLLO DE LAS TECNOLOGÍAS Y TECNOLOGÍAS PARA EL DESARROLLO [INFORMATION SOCIETIES IN LATIN AMERICA AND THE CARIBBEAN: DEVELOPMENT OF TECHNOLOGIES AND TECHNOLOGIES FOR DEVELOPMENT], at 48, U.N. Sales No. E.08.II.G.72 (Wilson Peres & Martin Hilbert eds., 2009). On the other hand, the same study refers to the internal digital divide as a challenge to overcome being the internal digital divide the result of social and economic inequalities pre-existent in the region. Also it points out that access to broadband and connectivity are not sufficient indicators but the quality of the information and communication digitally transmitted should also be considered when analyzing the internal digital divide in Latin America. For more detail, *see supra* ch. II.

- Operational capacity for gTLDs and ccTLDs: The center would not only resolve disputes for generic top level domains, but also for country-code domain disputes which are in need of local resolution.
- Operational capacity for implementing other services such as the Uniform Rapid Suspension (URS) services: The regional center will also be able to implement URS services, which is one of the rights protection mechanisms created under the new gTLDs program.⁶⁴

B. User Centered Services:

- Affordability and fees: The services offered will represent a cost-effective remedy, saving time and money to its users, in comparison with other remedies available, such as the courts system. Efforts should be allocated in minimizing costs and fees for users of the system, adjusting the fees to the local market reality and needs. The center will explore offering discounts or free services to targeted stakeholders. (similar to the benefit of “litigation with no cost” which is available in many Latin American countries). In line with this principle, the center will offer training courses and materials to help create a more expanded offer of attorneys offering representation services to the regional users of the center, creating competition and lowering attorney fees for both complainants and respondents.
- Marketing, accessibility and languages: The center should actively promote its services and raise awareness on domain name disputes, not only in the intellectual property community but also in the business,

64. Currently only NAF and ADNDRC provide URS services but it is expected from ICANN to open up a process to enable more entities to offer URS services after a certain period of time. A UDRP service provider from Latin America will create the right experience and expertise to diversify the services and be able to also offer URS services when ICANN is ready to diversify the quantity of providers.

particularly SMEs, and Internet users community to prepare the use for complainants and respondents. The center's website, blog and social network pages will be easy to find and will be well promoted by online marketing tools, offering information (about the center, ICANN, Domain Names, the UDRP and ADR methods), awareness materials, training and educational materials for users, attorneys and neutrals will be available in Spanish, Portuguese and English. Records of the cases will be translated into these languages as well. The creation of such a service provider, thus, will create better chances for the regional ecosystem to keep evolving and the UDRP to become a useful tool for the Latin American public.

- **Transparency:** All decisions should be published in an accessible format with a commitment to transparency. Moreover, the UDRP policy, the UDRP rules, the supplemental rules, code of conduct, and panelist information and background as well as all relevant information concerning the process and the system design will be made available to all parties and their representatives at all time. The center will create materials that will assure that all parties understand the nature of the process, the settlements and decisions, and all the legal and practical consequences of the procedures. The center will offer information regarding its own privacy and security policies, terms and conditions of use and all other relevant information. Trends, reports and statistics will be made available, making all possible efforts to become a source of information that will help with evolution of the regional Internet ecosystem and domain names industry, by providing useful information on domain names use and abuse, and on the use of the Dispute Resolution services it will provide.

C. Professional and Operational Excellence:

- **Training and certification of panelists:** Panelists can be trained through an online platform. The list of panelists should be balanced between lawyers in Intellectual Property private practice and lawyers in other

areas such as academic, judiciary and international organizations. A code of conduct should be adopted and panelists accreditation should be reviewed every certain fixed term.

- **Enforcement:** in line with the ICANN Business Constituency (BC) current position, a Latin American domain name dispute resolution provider will be willing to commit under uniform and enforceable standards developed for all UDRP service providers governing the administration of UDRP cases by providers.⁶⁵
- **Due process and impartiality:** The center implementation of technology services and its supplemental rules will respect due process and will be designed to assure an impartial process. System design will be neutral treating each party equally and offering a list of diverse panelists.
- **Technology and innovation:** The center will offer Privacy and Security Standards in line with the regional and international requirements. The center will ensure the impartiality of the Technology (including System Design, Platform Features and Procedural issues). Also, the center will offer reports, metrics, level of service at market expectations, and cost effective procedures, training of employees and panelist. The center will offer responsive technology in order to be able to access it through different devices. Finally, the center will ensure that its technology will keep evolving to stay innovative, relevant and up to date.

With these principles in mind, a regional UDRP provider would attend the needs of the region.

We are well aware that the UDRP is a uniform policy and should be applied that way across centers. But the regional implementation that we propose here does not affect the uniform application of the policy. The

65. For more information on BC's position on UDRP Providers, *see* Letter from Elisa Cooper, Chair of the ICANN Bus. Constituency, to Fadi Chehade, President & CEO of ICANN, and Steve Crocker, Chairman of the ICANN Bd. (Sept. 18, 2013) (on file with author), *available at* <https://www.icann.org/en/system/files/correspondence/cooper-to-chehade-crocker-18sep13-en.pdf>.

aspects reviewed here refer mainly to procedural implementations that do not have impact on the substantive aspects of the policy. Without affecting the application of the policy, they substantially enhance the atmosphere for proper dispute resolution in Latin America.

Academics have shown that efficiency is a key factor for a UDRP dispute resolution center, and that centers are more efficient in handling cases where they share the language of the parties and they have a close geographic location.⁶⁶ With this in mind, we underscore the importance of a regional implementation of a UDRP provider in Latin America.

V. Conclusions

In this paper, we have provided a comparative study of the current operating domain name dispute providers, and identified a set of working principles for a Latin American domain name dispute resolution provider. We have focused on the particularities of the UDRP system when applied in Latin America, on the functioning of providers from other regions and on the domain name disputes at the country-level. We have highlighted the importance of its regional structure and operations, the user centered services and the professional and operational excellence.

The proposed principles are meant to start the foundations of the Latin American domain name dispute resolution provider to be created, and to contribute to the discussions sparked by ICANN's Latin American and the Caribbean strategy. With these principles in mind, we believe that the new UDRP provider would attend the regional needs and will become a relevant actor that, in spite of the challenges it will have to overcome, will help bring value by enhancing the evolution and maturity of the regional digital economy ecosystem. Only by considering the particulars of our region we can work towards a truly uniform dispute resolution and one global Internet.

66. Jay P. Kesan & Andres A. Gallo, *The Market for Private Dispute Resolution Services – An Empirical Re-Assessment of ICANN-UDRP Performance*, 11 MICH. TELECOMM. & TECH. L. REV. 285 (2005), available at <http://www.mttl.org/voleleven/kesan&gallo.pdf>.

Annex I: Current state of Country-Code Domain Name Dispute Resolution in
Latin America and the Caribbean

Extension (.country)	Registry	Dispute Resolution Policy	Accredited Center
.ag ⁶⁷	Nic Ag (UHSA School of Medicine)	UDRP ⁶⁸	WIPO
.ar Argentina	NIC Argentina (Secretaría Legal y Técnica – Presidencia de la Nación)	NIC Argentina's own rules (not based on UDRP)	NIC Argentina
.aw Aruba	NIC AW (SETAR)	UDRP ⁶⁹	SETAR Arbitrary Board ⁷⁰
.bo Bolivia	NIC Bolivia (Agencia para el Desarrollo de la Sociedad de la Información en Bolivia)	Dispute resolution policy based on UDRP ⁷¹	WIPO ⁷² Arbitration Center of the Bolivian National Chamber of Commerce ⁷³ . Procedures in Spanish only

67 Not a LACTLD member.

68 NIC Ant. & Barb., Nic AG Domain Dispute Policy, Nic AG, http://www.nic.ag/dispute_policy.htm (last visited Jan. 8, 2015).

69 SETAR, Domain Name Registration, SETAR, http://setar.aw/index.php?option=com_content&view=article&id=79&Itemid=361 (last visited Jan. 8, 2015).

70 SETAR, Rules and Regulations for Registration of .AW Internet Domain Names, SETAR, <http://www.setar.aw/images/stories/pdfs/domainrules.pdf> (last visited Jan. 8, 2015).

71 NIC Bol., Política de Solución de Controversias en Materia de Nombres de Dominio Registrados Bajo el ccTLD .bo, NIC.BO, https://www.nic.bo/pol_sol_controversias.php (last visited Jan. 8, 2015).

72 Id.

73 Conciliación y Arbitraje Comercial, <http://www.arbitraje.bo> (last visited Jan. 8, 2015).

.br Brazil	CGI Br (Comite Gestor da Internet no Brasil)	Dispute resolution policy based on UDRP ⁷⁴	WIPO Canada-Brazil Chamber of Commerce Procedures in Portuguese only
.bz Belize	NIC Belize (University College of Belize)	UDRP	WIPO
.cl Chile	NIC Chile (Universidad de Chile)	Dispute resolution policy based on UDRP ⁷⁵	NIC Chile
.co Colombia	.CO Internet S.A.S. (CO Internet SAS)	UDRP	WIPO and NAF ⁷⁶
.cr Costa Rica	NIC Costa Rica (Academia Nacional de las Ciencias)	Dispute resolution policy based on UDRP policy and rules ⁷⁷	WIPO
.cu Cuba	Cuba NIC (CENIAInternet)	Cuba NIC's own rules (not based on UDRP) ⁷⁸	National mediation and arbitration entities
.cw Curacao	Registry Curacao (University of the Netherland Antilles)	Registry Curacao's own rules (not based on UDRP) ⁷⁹	No dispute resolution system

74 Registro.br, SACI-Adm, Registro.br, <http://registro.br/dominio/saci-adm.html> (last visited Jan. 8, 2015)

75 NIC Chile, *Reglamentación para el Funcionamiento del Registro de Nombres del Dominio .CL*, NIC.CL (Dec. 1, 2013), <http://nic.cl/reglamentacion.html>.

76 CO INTERNET S.A.S., *Solución de Controversias*, COINTERNET.COM.CO, <http://www.cointernet.com.co/dominios/administracion-de-sus-dominios-co/solucion-de-controversias> (last visited Jan. 8, 2015).

77 World Intellectual Prop. Org., *Domain Name Dispute Resolution Service for .CR*, WIPO, <http://www.wipo.int/amc/en/domains/cctld/cr/index.html> (last visited Jan. 8, 2015).

78 NIC Cuba, Normas para el Centro Cubano de Información de Red, CUBANIC, http://www.nic.cu/docum_det.php?doc_id=1&opt=1 (last visited Jan. 8, 2015).

79 See Registry Curacao's own rules, available at <http://www.una.an/ccunasite/index.php/domreg/registering-a-cw-domain/rules-and-regulations>.

.do (Dominican Republic)	NIC Do (Pontificia Universidad Católica Madre y Maestra)	Dispute resolution policy based on UDRP. ⁸⁰	WIPO
.ec Ecuador	NIC Ec (NIC.EC)	UDRP ⁸¹	WIPO
.gd ⁸² Grenada	NIC Gd (The National Telecommunications Regulatory Commission (NTRC))	UDRP ⁸³	WIPO
.gt Guatemala	NIC Gt (Universidad del Valle de Guatemala)	UDRP	WIPO
.hn Honduras	NIC Hn (Red de Desarrollo Sostenible)	Dispute resolution policy based on UDRP. ⁸⁴	WIPO
.ht Haiti	NIC Ht (Consortium FDS/RDDH)	No dispute resolution system available	
.ky ⁸⁵ Cayman Islands	ICT@ (The Information and Communications Technology Authority)	UDRP ⁸⁶	WIPO ⁸⁷

80 See NIC Dom. Rep., *Política de Solución de Controversias en Materia de Nombres de Dominio para .DO*, NIC.DO, <http://www.nic.do/descargas/files/PoliticaSolucionControversia.pdf> (last visited Jan. 8, 2015); NIC Dom. Rep., *Reglamento de la Política de Solución de Controversias en Materia de Nombres de Dominio para .DO*, NIC.DO, <http://www.nic.do/descargas/files/Reglamento.pdf> (last visited Jan. 8, 2015); World Intellectual Prop. Org., *Domain Name Dispute Resolution Service for .DO*, WIPO, <http://www.wipo.int/amc/en/domains/cctld/do/index.html> (last visited Jan. 8, 2015).

81 NIC Ecuador, *Política de Resolución de Disputa*, NIC.EC, <http://nic.ec/info/resolucion.htm> (last visited Jan. 8, 2015).

82 Not a LACTLD member.

83 NIC Gren., *General Terms & Conditions for the Registration of .GD Domain Names*, NICGD (Aug. 15, 2013), <http://www.nic.gd/terms.php>.

84 World Intellectual Prop. Org., *Domain Name Dispute Resolution Service for .HN*, WIPO, <http://www.wipo.int/amc/en/domains/cctld/hn/index.html> (last visited Jan. 8, 2015).

85 Not a LACTLD member.

86 Info. & Comm'ns Tech. Auth., *Dispute Resolution Policy*, ICTA, <http://www.icta.ky/dispute-resolution-policy> (last visited Jan. 8, 2015).

87 *Id.*

.lc ⁸⁸ Saint Lucia	NIC LC (Universidad de Puerto Rico)	UDRP ⁸⁹	WIPO ⁹⁰
.mx Mexico	NIC México	Dispute resolution policy based on UDRP ⁹¹	WIPO
.ni Nicaragua	NIC Nicaragua (Universidad Nacional de Ingeniería)	UDRP ⁹²	
.pa Panama	NIC Panamá (PANNET / Universidad Tecnológica de Panamá)	UDRP ⁹³	WIPO
.pe Peru	NIC Perú (Red Científica Peruana)	Dispute resolution policy based on UDRP ⁹⁴	WIPO, Peruvian Cybertribunal
.pr Puerto Rico	NIC Puerto Rico (Gauss Research Laboratory Inc.)	UDRP	UDRP

88 Not a LACTLD member.

89 NIC St. Lucia, *Domain Dispute Policy*, Nic LC, <http://www.nic.lc/dispute-policy.htm> (last visited Jan. 8, 2015).

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.sv El Salvador	SvNET (Asociación SVNet)	Dispute resolution policy based on UDRP	Mediation and Arbitration Center from the American Chamber of Commerce ⁹⁵
.sx Saint Martin	Sint Maarten (Sint Maarten)	UDRP	CAC
.tt ⁹⁶ Trinidad and Tobago	NIC TT (University of the West Indies Faculty of Engineering)	UDRP ⁹⁷	WIPO
.uy Uruguay	NIC Uy (SeCIU – Universidad de la República)	Dispute resolution policy based on UDRP ⁹⁸	Conciliation and Arbitration Center from the Uruguayan National Commerce and Services Chamber. ⁹⁹
.ve Venezuela	NIC Ve (CONATEL)	UDRP	WIPO

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