

# WIPO



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## WIPO GENERAL ASSEMBLY

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### WIPO ccTLD PROGRAM

#### *Memorandum of the Director General*

1. The memorandum of the Director General on the Organization's activities in the area of domain names submitted to the Assemblies of the Member States of WIPO at the occasion of their Thirty-Fifth Series of meetings (document WO/GA/26/3) reported on the entry into force of the Uniform Domain Name Dispute Resolution Policy (UDRP) and the initial influx of disputes filed under the UDRP with the WIPO Arbitration and Mediation Center (the Center) in the first half of the year 2000. Apart from the continuing administration of domain name disputes by the Center (see WIPO Publication No. 457(E)), the principal developments regarding domain names during the period covered by this Memorandum concern: (1) the WIPO ccTLD Program and (2) the Second WIPO Internet Domain Name Process. The purpose of the present Memorandum is to report on the status of the WIPO ccTLD Program. The Second WIPO Internet Domain Name Process is the subject of a separate report (document WO/GA/27/1).

2. As a result of the implementation by the Internet Corporation for Assigned Names and Numbers (ICANN) of the recommendations contained in the Report of the first WIPO Internet Domain Name Process and, in particular, due to the entry into force of the UDRP for all domain names registered in .COM, .NET and .ORG, the potential for cybersquatting in the gTLDs concerned has been reduced significantly. However, the situation is different in the country code Top Level Domains (ccTLDs). There are over 240 ccTLDs and the degree to which their administrators have adopted procedures that are aimed at the protection of

intellectual property interests varies widely. In certain ccTLDs, robust intellectual protection measures are in place and, consequently, few problems have arisen or are expected to arise in the future in those domains. However, in more than a few instances adequate intellectual property protection measures are lacking or deficient, entailing the risk that certain ccTLDs may develop into safe havens for cybersquatting activities. In light of this situation, the intellectual property community now is focusing its attention on curbing the potential for rights infringements in the ccTLDs. This trend is further reinforced by the increased use of the ccTLDs and the fact that many of them are moving from “closed” (where registrations can be made only by persons or entities connected to the territory in question) to more “open” (where registrations are open to persons or entities irrespective of any connection to the territory in question) business models, making it easier for bad faith registrants to implant themselves in the domains concerned.

3. As a response to these developments and at the specific request of a number of its Member States (see document WO/GA/26/3), WIPO launched its ccTLD Program in the summer of the year 2000. The objective of the Program is to enhance the protection of intellectual property in the ccTLDs through cooperation with their administrators. During the period covered by this Memorandum, WIPO has taken several actions towards that goal. These actions are further detailed below.

#### Intellectual Property Awareness Building among ccTLD Administrators

4. The origins of the Internet and the Domain Name System (DNS) lie in the technical and scientific communities that have initiated and nurtured their development over several decades. While the more popular gTLDs nowadays are operated by commercial actors on a for-profit basis, the scientific and technical origin of the Internet is felt more strongly at the level of the ccTLDs. Many ccTLDs are run on a not-for-profit basis and the persons who are responsible for them often have a scientific or engineering background. Certainly in the case of the smaller registries, the core staff would not usually include legal counsel. It should therefore come as no surprise that the subject of intellectual property is still fairly novel terrain for many ccTLD administrators and their staff. In the vast majority of cases where intellectual property protection measures are non-existent or inadequate in the ccTLDs, this is not due to any lack of goodwill on the part of the ccTLD administrators concerned, but simply a function of insufficient familiarity with legitimate intellectual property concerns and possible solutions for those concerns. In an attempt to improve upon this situation, WIPO has made a significant effort in the context of its ccTLD Program to raise ccTLD administrators' awareness of the relevance of intellectual property for their operations. These efforts have taken the form of (1) the transmission of a communication to all ccTLD administrators in which WIPO offered to cooperate with them with a view to the proper management of intellectual property in their domains, (2) the organization of the Conference on Intellectual Property Questions relating to the ccTLDs and (3) the participation of WIPO in meetings and seminars organized by the ccTLD administrators. More details regarding each of these items are provided below.

*WIPO Communication to the ccTLD Administrators*

5. The transmission of this communication, which was intended as a general introduction to WIPO, as well as the assistance which the Organization can offer to ccTLD administrators has been reported upon previously in document WO/GA/26/3.

*Conference on Intellectual Property Questions relating to the ccTLDs*

6. This one-day Conference organized in Geneva on February 20, 2001, served as a forum where the ccTLD and intellectual property communities could meet and exchange views on the challenges ahead. In order to facilitate the maximum participation of ccTLD administrators, the registration fee was waived for representatives of ccTLDs and the participation of 10 administrators from developing countries was financed by WIPO. Speakers were selected among leading figures in the ccTLD and intellectual property communities. The topics covered the practice of certain ccTLDs to market themselves as *de facto* gTLDs, the registration of domain names in non-Roman scripts, privacy issues arising from the public availability of domain name registrant contact details, and the relevance of the UDRP for ccTLDs. In addition, an announcement was made of a draft of the WIPO ccTLD Best Practices for the Prevention and Resolution of Intellectual Property Disputes, a voluntary set of intellectual property guidelines for the benefit of ccTLD administrators (more details on this document are provided below). One noteworthy feature of the Conference was its unexpectedly high rate of attendance. Close to 500 persons participated in the event, reflecting much broader interest in the Conference than initially anticipated. This high rate of attendance may point to a need for an appropriate forum for establishing links between intellectual property interests and ccTLD communities.

*WIPO Attendance at Meetings and Seminars Organized by ccTLD Administrators*

7. Increasingly, WIPO is invited to make presentations on intellectual property issues at meetings and seminars organized by the administrators of ccTLDs (e.g., .NL [Netherlands], .SE [Sweden], .PL [Poland]). Apart from forging institutional relationships between WIPO and ccTLD administrators, these sessions permit local communities to be introduced to the subject of intellectual property and the importance of its protection in the domains concerned.

Provision of Intellectual Property Advice and Assistance to ccTLD Administrators

8. Next to intellectual property awareness building, WIPO also has provided advice and assistance to administrators of ccTLDs on the management of intellectual property issues in their domains. This advice and assistance has been provided in three forms: (1) the publication of the WIPO ccTLD Best Practices for the Prevention and Resolution of Intellectual Property Disputes, (2) counseling ccTLD administrators who seek intellectual property advice from WIPO, and (3) advising ccTLD administrators on the conduct of national consultations that draw inspiration from the first and Second WIPO Internet Domain Name Processes.

*Publication of the WIPO ccTLD Best Practices for the Prevention and Resolution of Intellectual Property Disputes*

9. The Member States request which lays at the origin of the WIPO ccTLD Program included the specific instruction that WIPO “develop, for the assistance of the administrators in ccTLDs, voluntary guidelines for the development of practices and policies to curb abusive and bad faith registration of protected names, and to resolve related disputes.” The same request noted that “[t]o the extent possible, consistency in these and across the domain name system would ensure that no jurisdiction would become a haven for bad faith registrants.”

10. On the basis of its prior work in the area of domain names, its experience gained in the administration of the UDRP and the lessons learnt and feedback received from ccTLD administrators, WIPO prepared a draft of such guidelines, entitled the WIPO ccTLD Best Practices for the Prevention and Resolution of Intellectual Property Disputes (WIPO ccTLD Best Practices), which was announced at the occasion of the Conference on Intellectual Property Questions relating to the ccTLDs. This draft subsequently was published on the WIPO electronic commerce website (<<http://ecommerce.wipo.int>>) in the following languages: Arabic, Chinese, English, French, Russian and Spanish. Interested parties were invited to submit comments on the draft and a final version of the document, taking into account those comments, was published on June 20, 2001 (WIPO Publication No. 839(E)\*). A copy of the said publication is attached to the present document.

11. The WIPO ccTLD Best Practices constitute a voluntary set of minimum standards for intellectual property protection in the ccTLDs. Recognizing the wide variety in ccTLD registration conditions and procedures, they do not purport to be a tailor-made intellectual property protection scheme to be imported as such within a particular domain. Rather, they are intended as a flexible framework built around a number of basic elements that are deemed critical from an intellectual property perspective. They focus on the three areas of domain name registration practices and procedures which are most important for the protection of intellectual property: (a) the domain name registration agreement, (b) the collection and availability of domain name registrant contact details, and (c) alternative means for resolving disputes concerning domain name registrations.

12. The WIPO ccTLD Best Practices state that it is a basic pre-requisite for the proper management of a domain that the rights and obligations of a registrant and a registration authority arising from the registration of a domain name be comprehensively recorded in a formal registration agreement. In addition, the document recommends the incorporation of certain contractual clauses into the registration agreement that are specifically intended to alleviate conflicts between domain names and intellectual property rights. As regards contact details, the ccTLD Best Practices emphasizes the importance of the public availability in real-time of registrant contact details through WHOIS services. Recognizing that mandatory privacy law may have a bearing on this question, the ccTLD Best Practices state that “[i]n situations where administrators of ccTLDs are legally bound to abide by privacy regulations preventing them from disclosing registrants contact details to bona fide complainants through WHOIS services, other measures will need to be put in place to ensure that such complainants are not frustrated in their legitimate attempts to enforce their rights.” Regarding dispute

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\* Currently available in English, French and Spanish. The Arabic, Chinese and Russian versions are under preparation.

resolution, the ccTLD Best Practices recommend the adoption of alternative dispute resolution (ADR) mechanisms that function as an adjunct to, rather than a replacement of court proceedings. The ccTLD Best Practices refrain from proposing a single ADR model for all ccTLDs, but encourage ccTLD administrators to adopt a system that best suits their circumstances, provided it meets certain minimum requirements. In light of the efforts that have been put into its development and the experience gained under it, the UDRP is presented as a prime reference model in this connection, although a number of adjustments are recommended based on the lessons learnt from its operation and the need to tailor it to the local circumstances of the ccTLDs.

*Counseling ccTLD Administrators on Intellectual Property Matters*

13. In the context of the ccTLD Program, WIPO has encouraged ccTLD administrators to seek its advice on intellectual property issues that may arise in their domains. It is believed that WIPO is appropriately placed as a neutral organization to provide such advice on an independent and free-of-charge basis. Typically, ccTLD administrators seek WIPO's advice on the consistency of the terms of their domain name registration agreements and their dispute policies with intellectual property requirements. In certain cases, WIPO's advice is limited to one or a few written communications (either of a more general or specific nature), while in other cases the Organization's involvement is much more extensive and includes drafting the relevant documents for consideration of the ccTLD administrators concerned.

14. Since the start of its ccTLD Program, WIPO has provided the assistance described above in one form or another to the administrators of the following 48 ccTLDs:

Antigua & Barbuda (.AG)	Christmas Island (.CX)	Panama (.PA)
Anguilla (.AI)	Ecuador (.EC)	Paraguay (.PY)
Argentina (.AR)	El Salvador (.SV)	Poland (.PL)
Ascension Island (.AC)	France (.FR)	Peru (.PE)
Armenia (.AM)	Guatemala (.GT)	Philippines (.PH)
American Samoa (.AS)	Honduras (.HN)	Republic of Congo (.CG)
Australia (.AU)	India (.IN)	Russia (.RU)
Bahamas (.BS)	Japan (.JP)	St. Helena (.SH)
Belgium (.BE)	Latvia (.LV)	Switzerland (.CH)
Bolivia (.BO)	Madagascar (.MG)	Trinidad & Tobago (.TT)
Brazil (.BR)	Mexico (.MX)	Turkey (.TR)
Chili (.CL)	Netherlands (.NL)	Tuvalu (.TV)
Cuba (.CU)	Namibia (.NA)	United Arab Emirates (.AE)
Colombia (.CO)	New Zealand (.NZ)	Uruguay (.UY)
Costa Rica (.CR)	Norway (.NO)	Venezuela (.VE)
Cyprus (.CY)	Niue (.NU)	Western Samoa (.WS)

*Advising ccTLD Administrators in the Conduct of National Consultations Drawing Inspiration from the First and Second WIPO Internet Domain Name Processes*

15. The administrator of .NL has initiated a national consultation process with a view to, *inter alia*, the possible introduction of an alternative dispute resolution procedure for its domain. This process replicates, at the national level, the first WIPO Internet Domain Name

Process. To steer the process, a working group has been constituted by the administrator of .NL. WIPO has been invited and has accepted to become a member of the working group in order to provide advice on the conduct of the process and on all related intellectual property issues. A website has been created to support the .NL process (<<http://www.domeinnaam.nl>>) where all relevant information is made available to the public, both in Dutch and English. During the period covered by this Memorandum, a number of other ccTLD administrators have expressed a possible interest to conduct similar national processes with the same WIPO involvement.

#### Alternative Dispute Resolution in the ccTLDs

16. The cooperation launched by WIPO in relation to the ccTLDs has resulted in the adoption of dispute resolution procedures, for which WIPO has been designated as administrator, by a number of ccTLDs. Other ccTLDs are also actively considering doing so in the future. The ccTLDs in question generally fall into two categories. A first category is those ccTLDs that have adopted or are considering adopting the UDRP without making any modifications to it. A second category consists of those ccTLDs that have adopted the UDRP or are contemplating doing so, but have made or are likely to introduce several changes to it in order to ensure that the procedure meets the specific requirements of the domain in question. Depending on the case, these modifications may be minimal or more extensive.

17. To date, the following 20 ccTLDs that have adopted the UDRP or a version thereof have appointed the WIPO Arbitration and Mediation Center as dispute resolution service provider, on either an exclusive or a non-exclusive basis:

Ascension Island (.AC)	Lao People's Democratic Republic (.LA)	Pitcairn Island (.PN)
Antigua & Barbuda (.AG)	Mexico (.MX)	Romania (.RO)
American Samoa (.AS)	Namibia (.NA)	St. Helena (.SH)
Bahamas (.BS)	Niue (.NU)	Trinidad and Tobago (.TT)
Cyprus (.CY)	Panama (.PA)	Tuvalu (.TV)
Fiji (.FJ)	Philippines (.PH)	Venezuela (.VE)
Guatemala (.GT)		Western Samoa (.WS)

18. To date, 44 cases have been filed with the Center in relation to registrations in ccTLDs. The status of these cases and the ccTLDs in which the registrations were made are as follows:

ccTLD	Total	Pending	Resolved
American Samoa (.AS)	1	0	1
Mexico (.MX)	1	1	0
Niue (.NU)	4	0	4
Philippines (.PH)	2	0	2
Romania (.RO)	2	1	1
Tuvalu (.TV)	25	9	16
Venezuela (.VE)	2	1	1
Western Samoa (.WS)	7	1	6

Future Work

19. During the period covered by this Memorandum, the structure for WIPO's work in relation to the ccTLDs, as well as the institutional contacts between WIPO and many ccTLD administrators, has been put in place. WIPO proposes to continue its work in this area based on this structure and those contacts. Essentially, the task will consist of persuading the administrators in question to adopt registration policies and procedures that are conducive to intellectual property protection and to update those policies in response to further developments affecting the DNS.

*20. The General Assembly is invited to note the work undertaken and proposed to be continued in the context of the WIPO ccTLD Program.*

[WIPO Publication No. 839(E) is attached]