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** Of Counsel

FICPI - 12th Open Forum
Munich, Germany, September 8-11, 2010

Session 7: Friday, September 10, 2010:
Internet Domain Names: TLDs – Enforcement of Rights

Presentation by *Gabriel F. Leonardos**

Domain Name Disputes in Brazil
and Selected South American Countries

Summary:

- TLDs and CC TLDs: types of domain names and numbers of registrations

- Internet Access and Domain Names in Brazil

- A brief overview of the ICANN UDRP

- TLDs available under the CCs "br", "ar" and "cl"

- Conflicts between Domain Names and TMs: dispute resolution systems in Brazil, Argentina and Chile

- Conclusion

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GTLDS AND CCTLDS: TYPES OF DOMAIN NAMES AND NUMBERS OF REGISTRATIONS

Introduction : What is a Domain Name?

The Internet may be defined as a big network of interconnected computers. Computers must be able to identify each other in order to communicate. In this regard, there is something called an IP – Internet Protocol, which is a series of numbers separated by periods, constituting a sort of virtual address that allows different computers that are hooked up to the Internet to locate one another. Therefore, if one puts the correct address in a browser, one will be connected to the accompanying website of a certain computer.

Currently, it is estimated that there are over than 3 billions IPs throughout the world. The United States, by itself, has over than 1 billion IPs. The charts bellow show some interesting statistics regarding this subject[1] :

Number of countries:	Number of IPs:
240	3,222,790,912

Rank (No. of IPs):	Total IPs:	Country:
1.	1,556,721,201	UNITED STATES
2.	250,577,477	CHINA
3.	200,481,059	UNITED KINGDOM
4.	181,977,087	JAPAN
5.	110,228,491	GERMANY
6.	88,240,638	KOREA, REPUBLIC OF

[1] http://www.domaintools.com/internet-statistics/country-ip-counts.html

7.	84,459,228	FRANCE
8.	78,905,926	CANADA
9.	45,394,420	ITALY
10.	44,171,125	NETHERLANDS
11.	43,102,304	AUSTRALIA
12.	**36,102,730**	**BRAZIL**

However, despite of the use of numerical addresses being an appropriate means of communication for computers, it would be extremely complex for the internet users to memorize different series of numbers. Therefore, in the 1980's, it was created the Domain Name System - DNS, in which the numerical addresses of the computers are decoded to an alphanumeric one, *i.e.*, the series of numbers are transposed into characters or letters. Evidently, it is much easier to remember a name than a series of numbers. Therefore, the domain name system makes it much easier to find a desired website.

A domain name is hierarchically structured and covers at least two domain levels, a top-level and a second level. Each domain name is composed by a series of character strings, technically called "labels", which are delimitated by dots. Every domain name ends in a top-level domain label - TLD, *i.e.*, the right-most characters of a domain name conveys the top-level domain, which has the intention of dividing the name space into different categories and of delegating it to different registration locations.

The hierarchy of domains descends from the right to the left label in the name. The portion of the domain name that precedes the top-level domain is called the second-level domain name, which commonly refers to a distinctive signal that might represent a company or a trademark. It is designed to identify a specific server in a top-level domain. Therefore, a second-level domain can only be

assigned once in the same top-level domain (e.g. it is not possible the existence of two domain names "abc.com"). However, equal second-level domains may exist in diverse top-level domains (e.g. "abc.com" and "abc.net").

There are also third-level domain names that are located to the left of the second-level domain name, which are often used to set up individual domains for specific purposes (for instance, *mail.abc.com*). In fact, once a domain name is registered, it is possible to establish several subdomains on third, fourth or higher levels.

Until 1993 there were less than 10,000 registered domain names. However, insofar as the Internet grew, the number of domain names has dramatically increased. There is no doubt that presently the Internet is one of the most powerful media where a brand and a company can be worldwide promoted. Therefore, given that a domain name may be considered as a worldwide shop window, it is not surprising that currently there are over than **121,000,000** registered domain names.

The chart bellow shows how many domain names are currently registered and how many domains used to be registered but are now deleted[2]:

Active	Deleted	New	Expired	Transferred	TLD
88,590,520	315,093,454	92,127	61,632	108,275	**.Com**
13,210,122	33,891,692	14,734	9,456	11,591	**.Net**
8,586,607	21,092,269	10,341	6,412	7,711	**.Org**
6,701,623	9,935,013	16,721	7,009	11,516	**.Info**
2,137,265	2,169,270	3,007	1,809	1,502	**.Biz**
1,732,638	1,701,048	3,065	2,229	1,249	**.Us**
121,090,609	384,544,324	139,995	88,547	141,844	**Total**

The entity that coordinates and manages the Domain Name System is the Internet Corporation for Assigned Names and Numbers – ICANN, an American

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2 www.domaintools.com/internet-statistics/

not-for-profit corporation that oversees the distribution of unique IP addresses and domain names.

Top-Level Domains: Generic Top-Level Domains and Country Code Top-Level Domains

A Top-Level Domain may either be a Generic Top-Level Domain (gTLD) or a Country Code Top-Level Domain (ccTLD). In addition to gTLDs and ccTLDs, there is also one special TLD, ".arpa", which is used for technical infrastructure purposes.

A Country-Code Top-Level Domain (ccTLD) is a two-letter domain especially designated for a particular country or autonomous territory. The rules and policies for registering domain names in the ccTLDs vary significantly. They are assigned by various service organizations in different countries and administered by their respective governments or by private entities with government approval.

Some ICANN-accredited registrars provide registration services in the ccTLDs. Nevertheless, ICANN does not specifically accredit registrars to provide ccTLD registration services.

By the other hand, a Generic Top-Level Domain is a three or more-letter code defining a generic concept. Generally, the gTLDs are ruled by the Uniform Domain Name Dispute Resolution Policy – UDRP, which has been adopted by all ICANN-accredited registrars and also by certain managers of country-code top-level domains (e.g., .nu, .tv, .ws). However, we will discuss in more detail about the UDRP later.

Originally, with the advent of the Domain Name System in the 1980s, there were only seven gTLDs available to all Internet users throughout the world, namely, .com (commercial enterprises) .edu (for educational), .gov (for governmental organizations), .int (for organizations established by international treaties), .mil

(US militaty), .net (for computers of network providers), and .org (miscellaneous organization). Despite of the original purposes of .com, .net and .org, they are now in practice open for use by anyone.

Due to the growth of the Internet and the consequent increase of domain names, it became desirable to create additional generic top-level domains. As a consequence, today there are 20 (twenty) existing gTLDs, which are listed below[3]:

gTLD	Entity
.aero	air-transport industry
.asia	Asia-Pacific region
.biz	business
.cat	Catalan
.com	commercial
.coop	cooperatives
.edu	educational
.gov	governmental
.info	information
.int	international organizations
.jobs	companies
.mil	U.S. military
.mobi	mobile devices
.museum	museums
.name	individuals, by name

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[3] http://en.wikipedia.org/wiki/List_of_top_level_domains

.net	network
.org	organization
.pro	professions
.tel	Internet communication services
.travel	travel and tourism industry related sites

Furthermore, a Top-Level Domain name may either be unsponsored or sponsored. An unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor thus carries out delegated policy-formulation responsibilities over many matters concerning the TLD. [4]

INTERNET ACCESS AND DOMAIN NAMES IN BRAZIL

Relevant general data about Brazil:

Firstly, it is worth mentioning that Brazil is a federal republic consisting of twenty-six states, and one federal district (Brasilia, the capital), with Portuguese as the official language.

Brazil is the largest country of South America and the fifth largest country in the world, with 8.514.215,3 Km². To make an estimation of its scale, the distance between Rio de Janeiro and Manaus, in Amazonas, namely 3.257 Km², is larger than the distance between Barcelona, in Italy, and Moscow of Russia, specifically 3.017 Km².

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[4] http://www.icann.org/en/general/glossary.htm

Besides being the largest country of South America, Brazil is also the most populous one and the sixth most populous of the world, with approximately 193.252.604 of people[5]. Only the State of São Paulo, by itself, has a population roughly equal to the one of Spain (approximately 40 millions). Of the overall of Brazilian population, 53,7%, (its majority) is composed by Caucasians and the minority is composed by indigene (only 0,4%), according to the last Brazilian census.

Brazil and the Internet – some statistics:

It is estimated that over than 67,5 millions of Brazilians with more than 16 years frequently access the Internet. In July of 2009, considering merely the web browsing, Brazil ranked first related to the average of web-surfing time. The chart below illustrates Brazil position compared to other countries.

Average of web-surfing time of Internet Users (per month)		
Position	**Country**	**Time**
1st	Brazil	48h26m
2nd	U.S.A	42h19m
3rd	United Kingdom	36h30m
4th	France	33h22m
5th	Japan	31h55m
6th	Spain	31h45m
7th	German	30h25m
8th	Italy	28h15m
9th	Australia	23h45m

Access to the Internet in Brazil is often done in public places with called "LAN Centers" (LAN being the acronym for local area network): usually cybercafés of simply places where an Internet-connected computer is available for use under a low fee.


5
http://www.ibge.gov.br/series_estatisticas/geraarquivo.php?tipo=csv&idserie=POP300&idnivel=BR

According to a research performed by the Brazilian Internet Steering Committee - CGI.br, which is in charge of the coordination and integration of the activities of Internet services in Brazil, residential accesses to the Internet ranked first, in 2009, regarding accesses in public places for the first time since 2007, when started the proliferation of the LANCenters in Brazil, as it can be inferred from the chart below:
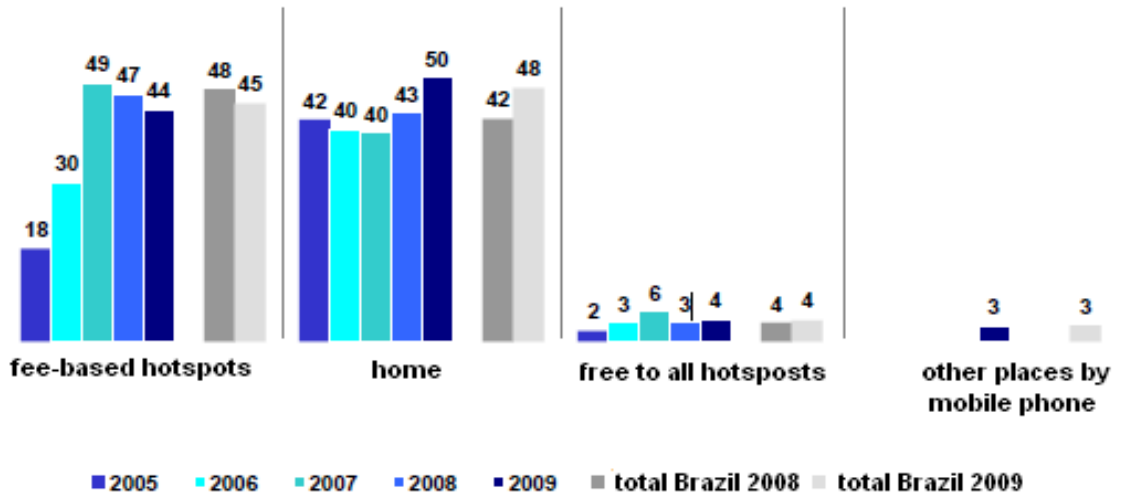
However, from the total of the residential accesses to the Internet in Brazil, only 66% of these accesses are through broadband. Still, Brazil is on the list of the top 20 countries with the highest number of world internet broadband subscribers in 2007, as it can be inferred from the chart below[6]:
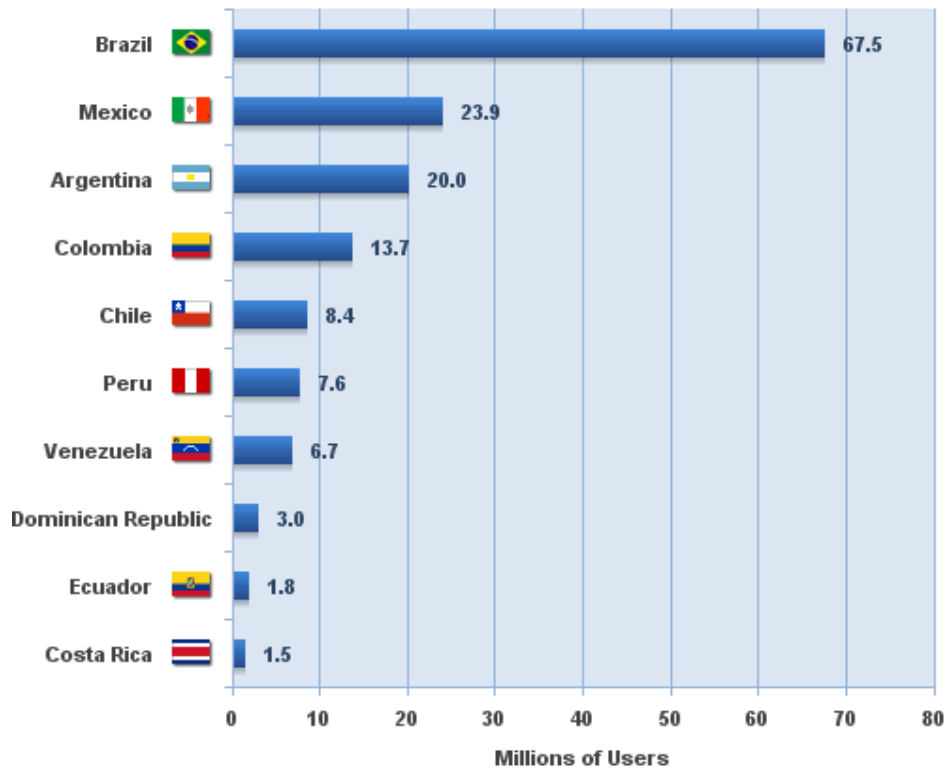
TOP COUNTRIES WITH THE HIGHEST NUMBER OF WORLD INTERNET BROADBAND SUBSCRIBERS IN 2007				
#	Country or Region	Broadband Subscribers	Broadband Penetration (%)	Population (2007 Est.)
1	United States	66,213,257	21.9 %	301,967,681
2	China	48,500,000	3.7 %	1,317,431,495
3	Japan	27,152,349	21.1 %	128,646,345
4	Germany	17,472,000	21.2 %	82,509,367
5	Korea, South	14,042,728	27.4 %	51,300,989
6	United Kingdom	13,957,111	23.1 %	60,363,602
7	France	13,677,000	22.3 %	61,350,009
8	Italy	9,427,300	15.8 %	59,546,696

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[6] http://www.internetworldstats.com

9	Canada	7,675,533	23.7 %	32,440,970
10	Spain	7,505,456	16.7 %	45,003,663
11	**Brazil**	**6,417,000**	**3.4 %**	**186,771,161**
12	Netherlands	5,388,000	32.8 %	16,447,682
13	Taiwan	4,505,800	19.6 %	23,001,442
14	Australia	3,939,288	18.8 %	20,984,595
15	Mexico	3,728,150	3.5 %	106,457,446
16	Turkey	3,632,700	4.8 %	75,863,600
17	Russia	2,900,000	2.0 %	143,406,042
18	Poland	2,640,000	6.9 %	38,109,499
19	India	2,520,000	0.2 %	1,129,667,528
20	Sweden	2,478,003	27.2 %	9,107,795
TOP 20 Countries		268,150,077	6.9 %	3,890,377,607
Rest of the World		36,321,302	1.4 %	2,684,288,810
Total World Subscribers		304,471,379	4.6 %	6,574,666,417

Brazil is also the fifth country in the world with highest number of internet users (67.5 million users as of 2009), and is the first in Latin America[7]:

Latin America - Top 10 Internet Countries

	Millions of Users
Brazil	67.5
Mexico	23.9
Argentina	20.0
Colombia	13.7
Chile	8.4
Peru	7.6
Venezuela	6.7
Dominican Republic	3.0
Ecuador	1.8
Costa Rica	1.5

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[7] http://www.internetworldstats.com/stats7.htm

	TOP 20 COUNTRIES WITH HIGHEST NUMBER OF INTERNET USERS					
#	Country or Region	Population, 2009 Est	Users Latest Data	% Population (Penetration)	Growth 2000-2009	% of World Users
1	China	1,338,612,968	360,000,000	26.9 %	1,500.0 %	20.8 %
2	United States	307,212,123	227,719,000	74.1 %	138.8 %	13.1 %
3	Japan	127,078,679	95,979,000	75,5 %	103.9 %	5.5 %
4	India	1,156,897,766	81,000,000	7.0 %	1,520.0 %	4.7 %
5	Brazil	198,739,269	67,510,400	34.0 %	1,250.2 %	3.9 %
6	Germany	82,329,758	54,229,325	65.9 %	126.0 %	3.1 %
7	United Kingdom	61,113,205	46,683,900	76.4 %	203.1 %	2.7 %
8	Russia	140,041,247	45,250,000	32.3 %	1,359.7 %	2.6 %
9	France	62,150,775	43,100,134	69.3 %	407.1 %	2.5 %
10	Korea South	48,508,972	37,475,800	77.3 %	96.8 %	2.2 %
11	Iran	66,429,284	32,200,000	48.5 %	12,780.0 %	1.9 %
12	Italy	58,126,212	30,026,400	51.7 %	127.5 %	1.7 %
13	Indonesia	240,271,522	30,000,000	12.5 %	1,400.0 %	1.7 %
14	Spain	40,525,002	29,093,984	71.8 %	440.0 %	1.7 %
15	Mexico	111,211,789	27,600,000	24.8 %	917.5 %	1.6 %
16	Turkey	76,805,524	26,500,000	34.5 %	1,225.0 %	1.5 %
17	Canada	33,487,208	25,086,000	74.9 %	97.5 %	1.4 %
18	Philippines	97,976,603	24,000,000	24.5 %	1,100.0 %	1.4 %
19	Vietnam	88,576,758	21,963,117	24.8 %	10,881.6 %	1.3 %
20	Poland	38,482,919	20,020,362	52.0 %	615.0 %	1.2 %
	TOP 20 Countries	4,374,577,583	1,325,437,422	30.3 %	359.9 %	**76.4 %**
	Rest of the World	2,393,227,625	408,556,319	17.1 %	461.5 %	**23.6 %**
	Total World	6,767,805,208	1,733,993,741	25.6 %	380.3 %	**100.0**

It is not surprising, thus, that in 2009 Portuguese was already the fifth more often used language in the Internet[8]:

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[8] http://www.internetworldstats.com/stats7.htm

Top 10 Languages in the Internet in millions of users
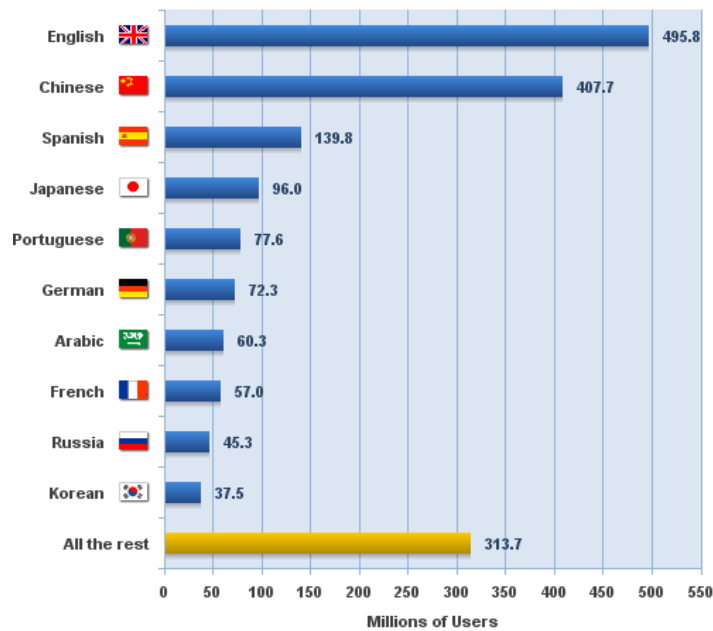
Top Ten Languages Used in the Web (Number of Internet Users by Language)					
TOP TEN LANGUAGES IN THE INTERNET	**Internet Users by Language**	**Internet Penetration by Language**	**Growth in Internet (2000 - 2009)**	**Internet Users % of Total**	**World Population for this Language (2009 Estimate)**
English	**499,213,462**	39.5 %	251.7 %	27.7 %	1,263,830,976
Chinese	**407,650,713**	29.7 %	1,162.0 %	22.6 %	1,373,859,774
Spanish	**139,849,651**	34.0 %	669.2 %	7.8 %	411,631,985
Japanese	**95,979,000**	75.5 %	103.9 %	5.3 %	127,078,679
Portuguese	**77,569,900**	**31.4 %**	**923.9 %**	**4.3 %**	**247,223,493**
German	**72,337,310**	75.0 %	161.1 %	4.0 %	96,389,702
Arabic	**60,252,100**	17.5 %	2,297.7 %	3.3 %	344,139,242
French	**57,017,099**	16.9 %	375.2 %	3.2 %	337,046,097
Russian	**45,250,000**	32.3 %	1,359.7 %	2.5 %	140,041,247
Korean	**37,475,800**	52.7 %	96.8 %	2.1 %	71,174,317
TOP 10 LANGUAGES	**1,492,595,035**	33.8 %	379.2 %	82.8 %	4,412,415,512
Rest of the Languages	**309,735,422**	13.2 %	525.3 %	17.2 %	2,355,389,696
WORLD TOTAL	**1,802,330,457**	26.6 %	399.3 %	100.0 %	6,767,805,208

Domain Names in Brazil:

The Brazilian system of domain name registration was created in 1998 and since then the registrations of domain names is based on a "first come, first served" basis. An application will only be rejected if an identical domain name already exists, or in case the same has already been reserved by the Brazilian Internet Steering Committee – CGI.br, a multistakeholder organization composed by members of the government, the enterprise sector, the third sector and the academic community. Also, the registration of domain names which contains terms that are contrary to moral values and good customs will not be allowed.

The CGI.br is responsible for the coordination and integration of the activities of Internet services in Brazil. In order to execute its activities, CGI.br has created a non for-profit civil organization named "Brazilian Network Information Center" - NIC.br, which performs the execution of all <.br> TLDs registrations.

The Brazilian rules regarding domain names registrations also establishes the possibility to not register a domain name which is similar to a famous or well-known trademark. The Brazilian Trademark Office provides a list of such trademarks to the register that must reject the application of a domain name identical to these brands.

In case the register reject or grant an application for a domain name, no administrative appeal may be filed against the referred decision. In this sense, one may only pursue for the cancellation of a domain name registration by means of a lawsuit before a State Court.

As already mentioned, it can be difficult to find a desirable and available gTLD. Just for instance, all three letters possibilities of combination are gone on the most well-known gTLD, .com, and also all four letters words are depleted on said TLD. In this sense, due to the enormous number of already registered gTLDs and due to the fact that gTLDs will not rank as high as ccTLDs when it come to regional searches, an increase in Brazil´s local registration for the corresponding to the

international and most popular TLD in the world has occurred. The charts below show the numerical evolution of .br TLDs [9]:

	Jan	Fev	Mar	Abr	Mai	Jun	Jul	Ago	Set	Out	Nov	Dez
2010	1.968.709	1.990.796	2.026.237	2.068.022	2.102.667	2.138.509						
2009	1.553.940	1.571.593	1.608.351	1.651.412	1.692.145	1.725.447	1.769.918	1.804.602	1.848.161	1.909.349	1.934.935	1.949.461
2008	1.240.931	1.251.231	1.273.830	1.300.184	1.342.327	1.374.644	1.415.968	1.449.059	1.473.396	1.497.893	1.527.274	1.533.642
2007	1.037.296	1.052.794	1.074.052	1.089.609	1.112.567	1.135.134	1.151.856	1.175.688	1.193.293	1.212.183	1.227.703	1.230.907
2006	866.969	880.782	899.044	912.512	928.149	944.051	957.979	978.129	993.504	1.006.111	1.021.431	1.029.103
2005	715.152	723.933	738.270	753.110	767.997	783.352	796.837	810.095	828.508	838.639	850.228	858.596
2004	558.408	574.758	594.221	611.005	626.784	639.686	657.458	671.654	682.512	693.385	698.612	708.947
2003	425.121	438.757	450.441	464.186	479.295	490.873	507.809	509.919	506.236	513.045	527.664	539.274
2002	417.610	426.005	423.468	413.312	408.729	406.662	408.416	417.653	430.927	434.140	443.803	413.365
2001	369.857	379.470	391.592	402.844	392.303	403.511	416.277	430.227	442.172	422.719	433.849	447.916
2000	163.659	184.320	209.675	231.539	254.986	274.674	292.539	310.955	325.297	338.517	349.750	359.670
1999	70.882	74.517	81.048	87.131	93.340	100.212	108.192	115.145	123.955	132.720	142.373	151.278
1998	27.592	30.268	33.696	36.362	39.746	43.461	46.512	51.328	55.100	58.634	63.850	67.777
1997	7.998	8.684	9.901	10.853	11.873	13.444	15.007	16.841	19.521	21.508	23.495	25.802
1996	851	1.006	1.280	1.823	2.283	2.862	3.769	4.512	5.169	5.883	6.678	7.507
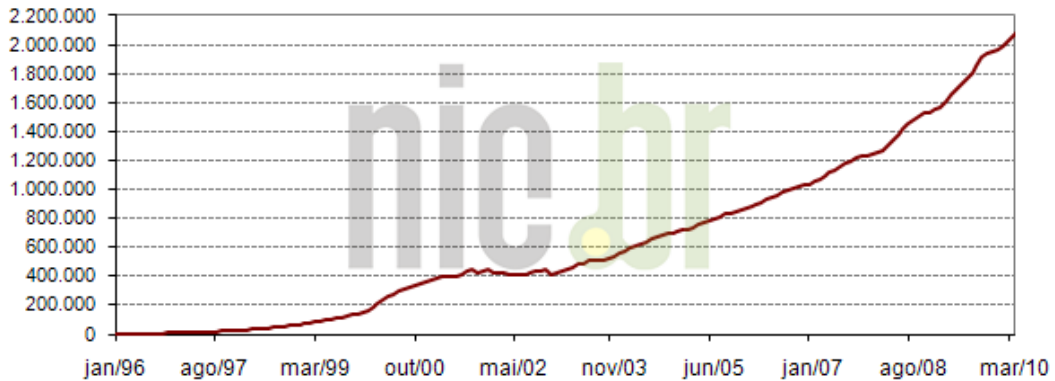
In fact, in a list of the nine top ccTLDs Registries by Domain Name Base, Brazil is in the 7th position, with more than 2 million domain name registrations under the TLD .br. The chart bellow illustrates the ninth biggest ccTLDs [10]:

Position	Country	ccTLD
1	China	.cn
2	German	.de
3	United Kingdom	.uk
4	Netherlands	.nl

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[9] http://www.cetic.br/dominios/index.htm
[10] http://www.cgi.br/publicacoes/revista/edicao02/txt.htm

5	Russia	.ru
6	Argentina	.ar
7	**Brazil**	**.br**
8	Italy	.it
9	Poland	.pl

In Brazil, there are 67 available TLDs under the ccTLD .br, which are detailed on the list below[11]:

TLD:	QUANTITY:	%
BLOG.BR	4311	0.20
FLOG.BR	199	0.01
NOM.BR	2663	0.12
VLOG.BR	101	0.00
WIKI.BR	1158	0.05
	8432	0.39
ADM.BR	2022	0.09
ADV.BR	14612	0.67
ARQ.BR	2834	0.13
ATO.BR	108	0.00
BIO.BR	438	0.02
BMD.BR	25	0.00
CIM.BR	655	0.03
CNG.BR	12	0.00
CNT.BR	1662	0.08
ECN.BR	154	0.01
ENG.BR	5070	0.23
ETI.BR	2715	0.12
FND.BR	50	0.00
FOT.BR	1093	0.05
FST.BR	136	0.01
GGF.BR	22	0.00
JOR.BR	604	0.03
LEL.BR	153	0.01
MAT.BR	171	0.01
MED.BR	3721	0.17
MUS.BR	1140	0.05
NOT.BR	113	0.01
NTR.BR	98	0.00
ODO.BR	1041	0.05
PPG.BR	770	0.04
PRO.BR	2863	0.13
PSC.BR	594	0.03
QSL.BR	75	0.00
SLG.BR	13	0.00
TAXI.BR	316	0.01
TEO.BR	59	0.00
TRD.BR	129	0.01
VET.BR	513	0.02
ZLG.BR	21	0.00
	44002	2.02

TLD:	QUANTITY:	%
AGR.BR	874	0.04
ART.BR	5457	0.25
ESP.BR	878	0.04
ETC.BR	1036	0.05
FAR.BR	306	0.01
IMB.BR	1381	0.06
IND.BR	11845	0.54
INF.BR	4640	0.21
RADIO.BR	272	0.01
REC.BR	171	0.01
SRV.BR	4172	0.19
TMP.BR	82	0.00
TUR.BR	4352	0.20
TV.BR	4397	0.20
	39863	1.83
AM.BR	309	0.01
COOP.BR	422	0.02
FM.BR	548	0.03
G12.BR	588	0.03
GOV.BR	1125	0.05
MIL.BR	34	0.00
ORG.BR	41489	1.91
PSI.BR	272	0.01
	44787	2.06
B.BR	148	0.01
JUS.BR	201	0.01
	349	0.02
BR	1199	0.06
EDU.BR	1990	0.09
	3189	0.15
COM.BR	1961446	90.21
NET.BR	72138	3.32
	2033584	93.53
Total	2174206	100.00

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[11] http://registro.br/estatisticas.html

As seen, the TLD .com.br is the country´s most popular Brazilian TLD, representing over than 90% of all Brazilian ccTLDs registrations.

Any legal entity established in Brazil or foreign companies that retains a local attorney may register a domain name under the ccTLD .br.[12]

A BRIEF OVERVIEW OF THE ICANN UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY - UDRP

Overall information:

As a domain name have the potential to globally promote or even denigrate a trademark or a company, by drawing the attention of millions of internet users, domain name disputes are commonplace.

In order to solve said disputes, ICANN adopted the Uniform Domain Name Dispute Resolution Policy – UDRP on August 26, 1999. The UDRP is part of the Registration Agreement that Internet users sign to register domain names in an ICANN- accredited center. Said policy sets out the legal construction for the decision of disputes between a domain name registrant and a third party. Every domain name registrars organized under ICANN is required to adopt the UDRP.

The UDRP is typically applicable to second-level domain name registrations in the following gTLDs: .aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and travel. In addition, some ccTLDs registrars have also voluntarily agreed to abide by the UDRP. In fact, the UDRP is applicable to domain name dispute resolution services regarding 62 ccTLDs, such as <.au>, <.es> and <.fr>. Any person or entity wishing to register a domain name in these

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12 http://registro.br/faq/faq1.html

gTLDs and ccTLDs is required to consent to the terms and conditions of the UDRP[13].

One that claims the ownership of a registered domain name, called as the complainant, must first choose one of the ICANN accredited centers to decide the dispute, namely, Asian Domain Name Dispute Resolution Centre**,** National Arbitration Forum**,** The Czech Arbitration Court Arbitration Center for Internet Disputes or WIPO – World Intellectual Property Organization.

The last cited ICANN accredited center, *i.e.*, WIPO, is the most important international organization regarding the protection of intellectual property rights. By means of its Arbitration and Mediation Center, WIPO is responsible for the judgment of over than 60% of the domain names global disputes and had already judged more than 18.000 cases. The chart below shows the total number of cases that WIPO judges per year[14]:

YEAR	NUMBER OF CASES
1999	1
2000	1857
2001	1557
2002	1207
2003	1100
2004	1176
2005	1456
2006	1824
2007	2156
2008	2329
2009	2107
2010 (until July)	1494
Total	**18264**

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13 http://www.wipo.int/amc/en/domains/guide/#a1
14 http://www.wipo.int/amc/en/domains/statistics/cases.jsp

The great majority of the complainants before the WIPO Arbitration and Mediation Center are from the United States, such as the majority of the respondents (the holder of a domain-name registration against which a complaint is initiated) [15]:

COMPLAINANT COUNTRY FILING (RANKING)		
COUNTRY	NUMBER OF CASES	% OF CASES
U.S.A.	7637	41.81%
France	1993	10.91%
United Kingdom	1355	7.42%
Germany	1038	5.68%
Switzerland	965	5.28%
Spain	828	4.53%
Italy	626	3.43%
Netherlands	402	2.20%
Canada	357	1.95%
Australia	314	1.72%

RESPONDENT COUNTRY FILING (RANKING)		
COUNTRY	NUMBER OF CASES	% OF CASES
U.S.A.	6893	37.74%
United Kingdom	1527	8.36%
China	1059	5.80%
Spain	822	4.50%
Canada	817	4.47%
Republic of Korea	662	3.62%
France	595	3.26%
Australia	438	2.40%
Netherlands	370	2.03%
United Kingdom	6893	37.74%

The UDRP Procedure

Anyone is able to file a domain name complaint concerning a gTLD using the UDRP Administrative Procedure. There is no requirement that such Complaint be prepared or submitted by a lawyer. As regards to a dispute involving a domain

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[15] http://www.wipo.int/amc/en/domains/statistics/countries.jsp?party=C

name registered in a ccTLD, such procedure may also be used, whenever the referred ccTLD registration authority adopted the UDRP voluntarily[16].

The applicability of the UDRP is restricted to conflicts regarding <u>trademarks</u>, since it makes no provisions for business names and other distinctive signs.

The complainant must prove three elements in the administrative proceeding: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) that the respondent have no rights or legitimate interests in respect of the domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith[17]. In situations other than these, the UDRP provides that disputes must be resolved by traditional means such as voluntary negotiation and lawsuits.

The dispute will be judged by an Administrative Panel, which is composed by one (single Panel) or three (three-member Panel) persons, referred as panelists. These panelists must be impartial and experts in the area of international trademark law, electronic commerce and Internet-related issues. There are only three sorts of decisions that can be rendered by the Administrative Panel: (i) order that the disputed domain name(s) be transferred to the complainant; (ii) order that the disputed domain name(s) be cancelled; or (iii) ecide in favor of the domain name registrant (i.e., deny the requested remedy[18]. Therefore, no indemnity or losses and damages may be imposed.

Despite of not being possible to appeal against a UDRP decision by means of the administrative proceeding, in case one is not satisfied with such decision, one has the option to appeal from same by filling a lawsuit within 10 (ten) days of having received the UDRP panel´s decision.

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16 http://www.wipo.int/amc/en/domains/guide/#a1

17 Paragraph 4(a) of the UDRP Policy

18 http://www.wipo.int/amc/en/domains/guide/#a1

It is also possible for a party to start a lawsuit in court before an administrative proceeding is commenced or during such proceeding. In any of these cases, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.[19]

Benefits of the UDRP Procedure

The UDRP is an alternative to a more expensive and lengthier judicial proceeding regarding a dispute involving the registration and use of an Internet domain name. The UDRP Administrative Procedure costs approximately US$ 1.5 thousand dollars, plus the party own attorney's fees, and a decision is usually rendered in about two months.

Such procedures are considered more informal than litigation and it is also advantageous to have the assurance that all ICANN-accredited registrars will abide by the decision.

Furthermore, the UDRP procedure is international in scope, providing a single mechanism for resolving a domain name dispute regardless of where the registrar or the parties are located[20].

Moreover, given the novelty and the specificity of the subject in matter, another advantage regarding the UDRP is that the domain name conflict will be appreciated by experts in intellectual property area.

CONFLICTS BETWEEN DOMAIN NAMES AND TRADEMARKS: DISPUTE RESOLUTION SYSTEM IN BRAZIL, ARGENTINA AND CHILE

Domain names and trademarks:

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19 http://www.icann.org/en/dndr/udrp/uniform-rules.htm
20 http://www.wipo.int/amc/en/domains/guide/#a1

A domain name is used to represent companies or services in the Internet, which configures a function conventionally performed by trademarks. However, it is clear that domain names and trademarks are not the same.

Trademarks are based on a traditional system, which stems from the sovereignty of the States and obeys the territoriality principle. Due to the specialty principle, the coexistence of identical or similar brands is only prohibited if the products/services covered by such brands are confusingly similar. The entity responsible for trademarks registrations must be alert to such trademarks principles and verify the legality of the applications submitted to its examination.

By the other hand, domain names usually adopt the "first come, first served" policy and the registrars do not make judgments concerning the legitimacy of the domain name application. In addition, due to the Internet operation, the coexistence of two identical domain names is not possible.

The absence of a watchful consideration as to the legitimacy of the domain names applications increases the conflict between trademarks and domain names. There are several assumptions on which two or more owners with legitimate interests in the same term wish to register it as a domain name. Moreover, the "first come, first served" policy enables third parties to register a domain name in bad faith, without having any legitimate rights regarding the terms used in the domain name.

In a globalized world, either small medium or big companies are interested in showing and selling their products in different markets throughout the world. Companies that operate internationally have acknowledged that the creation of a ccTLD facilitates the access to a domain name regarding the internet users of such country. By the other hand, said behavior also called the attention of third parties with bad-faith, such as the cybersquatters that register domain names concerning a well-known trademark in order to sell same to its legitimate owner.

Thereafter, we are going to analyze the dispute resolution system in Brazil, Argentina and Chile regarding such domain names conflicts.

Brazil:

In Brazil there is no administrative proceeding or alternative dispute resolution ("ADR") method to challenge the registration of a domain name before the Brazilian registrar.

In this sense, a domain name dispute regarding a Brazilian ccTLD may only be discussed by a Brazilian court, which may be a very time-consuming and expensive process. A judicial measure takes an average of 9 years, in São Paulo, or 5 years, in Rio de Janeiro, to be concluded.

Despite the fact that a lawsuit is more expensive and lengthier than an administrative proceeding, the Brazilian Internet Steering Committee - CGI.br currently has no intention of adopting a widespread ADR method for domain name disputes.

Not all is lost in Brazil: if this can be of solace, one may fully rely on Brazilian Courts to recover unduly registered domain names. Brazilian Courts have consistently decided in favor of the rightful trademark owner and in some cases hefty damage awards have been granted in favor of those whose trademark rights have been infringed by domain name squatters.

Argentina:

Akin to Brazil, the registration of domain names, in Argentina, which are contrary to moral values and good customs will not be allowed. Such country also adopts a "first come, first served" policy and does not accept domain names applications which are equal to other existing one. In addition, Argentina rejects applications

that may be confused with government institutions or bodies or with International Organizations, except when applied for by such parties themselves.

Nic-Argentina is the entity responsible to administrate the ccTLD .ar. There are no charges for registering a domain name under such ccTLD and the domain names are valid for one year from the date of registration.

When filing an application for a domain name, the registrant must state that same knows and accepts the applicable rules, procedures and guidelines of Nic Argentina.

In order to apply for registration of a domain name, the registrant must furnish the information requested for in the electronic form. The information supplied will be in the nature of a sworn statement. Therefore, when filling in the electronic form, the registrant and/or applicant represents and warrants that, to the best of his/her knowledge and belief, all the information furnished in the registration application is true and accurate. NIC Argentina is empowered to refuse a domain registration application if it is found to contain false or wrong data. The registrant and/or applicant, if different persons, must sign an affidavit stating that the domain name register is not requested for an illegal purpose or violates any legislation, and that all the details submitted are true, and that no information that NIC Argentina could have considered essential to accept the domain name application has been concealed or omitted. Also, the registrant and/or applicant, undertakes to immediately inform NIC Argentina of any modification in the details. Violation of this rule will allow NIC Argentina to reject the application or immediately cancel the domain name registered. [21]

When a person notifies that the information provided in the domain name register application is inaccurate, NIC Argentina will take the appropriate steps to investigate the supposed inaccuracy. In the case the information provided is proved to be inaccurate, NIC Argentina will take the appropriate steps to correct the inaccuracy if the inaccuracy has not violated any rule, which in this case NIC

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[21] http://www.nic.ar/en/normativa.html

Argentina will refuse the application or revoke the domain name. NIC Argentina may revoke registration of a domain name when deemed convenient for technical or service reasons and will notify the registrant by e-mail[22].

In case one claims for the cancellation of a domain name, NIC Argentina will review such claim and, if deemed credible, will communicate via-email the registering entity of the domain name in dispute and send detailed documentation attached. The domain registering entity shall acknowledge the receipt of such communication by the same route and emit their discharge in a period not to exceed ten days.

The Argentine administrative proceeding occurs by sending three e-mails to the owner of the domain name, requiring that same presents the due documentation proving its legitimate interest in registering the respective domain name. In case the owner of the domain name does not present a satisfactory documentation, the Argentine registrar may cancel the registration of the domain name.

<u>Chile:</u>

In Chile, the entity in charge of the administration of .cl ccTLDs is the Network Information Center Chile - Nic Chile. The register of .cl ccTLDs is made by an electronic solicitation to such Center.

Furthermore, in Chile is also in force the "first come, first served" policy regarding domain names registrations. Therefore, an application of a domain name must be rejected if an identical domain name already exists. At first, this is the only limitation for registering a domain name under the .cl. However, the applicant is responsible regarding his records. Same must not conflict with existing rules regarding abusive advertising, the principles of fair competition and ethical market, nor the rights of others.

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[22] http://www.nic.ar/en/normativa.html

Once the application is received at Nic Chile, same shall publish said application so that interested parties may submit their own applications in order to register the referred domain name. In this case, as in the case of a domain name dispute, a mediation and arbitration proceeding under the rules of Nic Chile shall be settled. In case there is no other application regarding the referred domain name and the applicant has paid the due official fees, Nic Chile shall proceed to that domain name registration.

According to the Nic Chile regulation, in case there is any infringement to the rights of third parties by using a domain name, an administrative proceeding shall be established. In a first step, there will be a mediation procedure. In such procedure, a mediator designated by Nic Chile will urge to the parts to reach an agreement. In case the mediation fails, an arbitration proceeding will be set and a final decision shall be rendered regarding the domain name dispute.

It is transcribed below the rules regarding the procedure of mediation and arbitration concerning the registry of domain names in Chile:

"Procedure of Mediation and Arbitration

1.   The conflicts that are provoked in the inscription, procedure and revocation of names of dominion in dominion CL will solve according to a procedure of mediation and arbitration. In one first stage, the conflicts will be put under the mediation procedure, and to be this one unfruitful one, will be followed with the procedure of arbitration, case in which the parts will be able to designate a referee in common agreement, or in its defect, NIC Chile will designate a referee of a list that will be published in the page Web of NIC Chile.

Of the mediation procedure

2.   Once the existence of a dispute by the inscription or the revocation of a dominion name is credited, NIC Chile will come to notify to the parts by electronic mail. This notification will include:

> *a. The existence of the conflict and the name of dominion in dispute.*
>
> *b. The identification of the involved parts, including all the information for its contact.*

c. A reference to the present regulation and the founded request of revocation, if so.

d. Citation to a mediation hearing, with day, determined hour and place for its celebration.

The parts will have to appear personally, but in described cases, the participation of some of them via videophone conference will be able to be authorized. It will be understood that one has not reached agreement by only caused that some of the parts does not attend the hearing.

The hearing will be moderate by a mediator designated by NIC Chile, that will urge to the parts to reach an agreement, without it affects no type to him of incapacity that can be demanded by the parts.

Of the acted thing in the hearing a act will rise that will brief place, attending date, hour, parts, obtained agreement or absence in agreement. This act will have to be signed by all the presents. In case some participates via videophone conference, the act will be sent him by mail certificate, which will have to be given back signed, within ten working days, those that will be counted from the third day of issued the act. If the result of the hearing were the solution of the controversy, the act will constitute sufficient written communication so that NIC Chile comes to carry out the definitive allocation of the dominion that originated the conflict.

Of the arbitration procedure

3.　　If in the mediation hearing the resolution of the conflict were not obtained, in the act it will be consulted to the parts if they decide the designation a referee. In case agreement or in the case of absence of one of them does not exist on the matter, NIC Chile will come to send a list of referees so that the applicants can erase to a maximum of three members of her within the term of five working days.

4.　　Having itself carried out the fault or, overcome the term for it, it will be come then to designate to a referee by drawing between which they have not been erased.

5.　　If later the designated referee will not accept or resigned to this designation, he will be come to designate to another one by drawing.

6.　　The list of referees will be elaborated annually by NIC Chile and will be at the disposal of the public in the page Web of NIC Chile.

7.　　The referees will have the character of "arbitrador", and against its resolutions resource will not come some. The referee is especially authorized to

solve all subject related to his competition and jurisdiction including the fixation of the coasts of the arbitration and the mode of payment of them, notwithstanding arranged in the article 8°, final paragraph.

8. NIC Chile will notify by electronic mail the designated referee and will send along with the notification all the antecedents for its knowledge of the case, having this one of accepting or of rejecting the designation within the tenth working day since it receives the notification. If the referee rejects the designation, or he does not communicate his acceptance to the Secretariat within the term before referred, this one will come to designate a new referee by drawing.

In case of accepting, the referee will mention to the parts by letter certified to a hearing whose date could not be, in no case, subsequent to 20 working days counted from the expedition of the letter. Also, he will have to send by electronic mail to NIC Chile and the parts he copies identical of the referred letter of acceptance. The hearing will be celebrated with the part that attends and in her the parts will establish altogether with the designated referee, the by arbitration procedure to follow. In case the parts do not reach an agreement as far as the procedure, or in case one or more of them does not concur to the hearing, the one will be the referee that determines the procedure.

For the case in that no of the parts in conflict appears to the hearing, the referee will emit a resolution that orders that the dominion in dispute is assigned to the first applicant, or that stays its present allocation, in case of revocation request.

The referee, notwithstanding the tests offered by the parts and of the decreed ones in the by arbitration judgment, will be able, of office or at the request of part, to celebrate to NIC Chile to ask for information concerning the dominion names of which she is applicant or to title anyone of the parts in conflict. The eliminated names of proceeding dominion.

The coasts of the arbitration will be shared by the parts that have participated in the same excepting of it to the first applicant in the case of a conflict by inscription, or the present legatee, in a conflict by revocation. Notwithstanding the previous thing, the referee will be able to condemn the payment of the totality of the coasts of the arbitration, to that one of the applicants whom the name of rejected dominion has requested to inscription in cases in that the existence of incompatible rights of third parties by any cause will be evident, in which such applicant has acted of bad faith, or in which the referee determines that some has not had reason to litigate.

9.   In case of death, disease or sobreviniente incapacity of the referee who is knowing a subject, NIC Chile will come with the designation of a new referee by drawing. The sobreviniente incapacity will be communicated by the own referee, or described by NIC Chile.

10.   The referee will have to notify the failure to the parts by certified letter the one that will be sent to the address that these have designated in the by arbitration procedure, unless they had asked for and the prepared referee their notification by other means. With respect to NIC Chile he will have to notify the resolution that orders to digitally give fulfillment to the resolute thing by means of the shipment of a message of signed electronic mail."

CONCLUSION:

As seen in this work, domain name ownership is big business. It is surprising, though, that Brazil, the fifth country in the world with highest number of internet users and the seventh regarding the top ccTLDs Registries by Domain Name Base, does not have any form of alternative resolution policy regarding domain names disputes.

An alternative to the expensive and lengthier Brazilian judicial proceeding should be adopted. Colombia, Peru, Venezuela, Bolivia and Ecuador agreed to abide by the UDRP. Argentina and Chile have their own systems of administrative proceedings to resolve domain name conflicts. Brazil should take its South American neighbors as an example and introduce as well an ADR process, in order to diminish the number of lawsuits brought to Brazilian overloaded courts and to solve a domain name conflict in a faster and less costly way.

-o-o-o-o-o-

DOMAIN NAME

Gabriel F. Leonardos

	Active	Deleted
.com	88,590,520	315,093,454
.net	13,210,122	33,891,692
.org	8,586,607	21,092,269

ICANN

Until 1993
Less than **10,000 domains**

Currently
Over than **121,000,000 domains**

MOMSEN
LEONARDOS
& CIA

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1. ccTDL   Country Code Top-Level Domain

.br: Brazil

.es: Spain

.it: Italy

.de: Germany

.pt: Portugal

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2. gTDL Generic Top-Level Domain

.com: commercial

.coop: cooperatives

.net: network

.int: international organizations

.org: organization

.jobs: companies

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www.2milliondomains.br

67 available TLDs under ccTLD

.com.br
90% of all Brazilian ccTLD

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TOP 10 LANGUAGES IN INTERNET
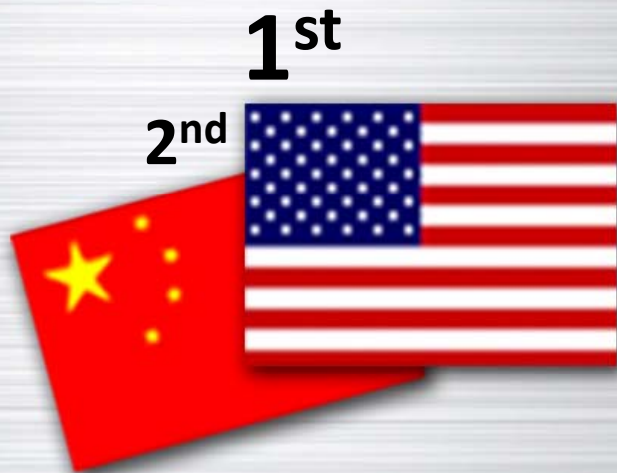
Gabriel F. Leonardos

Registration Agreement to register domain names in an ICANN Register. Domain names in several gTLDs and 62 ccTLDs.

UDRP Administrative Procedure:

- Trademark conflicts
- Decided by an Administrative Panel
- Panelists: imparcial experts

MOMSEN
LEONARDOS
& CIA

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

Most important International Organization for the protection of intellectual property rights

Decides 60% of the domain names disputes

Has decided more than 18,000 cases

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.ar |ccTLD

Entity responsible: NIC Argentina
Administrative Proceeding:
NIC Argentina sends three e-mails

MOMSEN
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Brazilian ccTLD

- There is no Administrative Proceeding
- Brazilian Court: lengthy and expensive
- Lawsuit in São Paulo: 9 years to be concluded

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Thank you

Gabriel F. Leonardos

September 10, 2010

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