



Design and Operation of Dispute Resolution in the ccTLD space

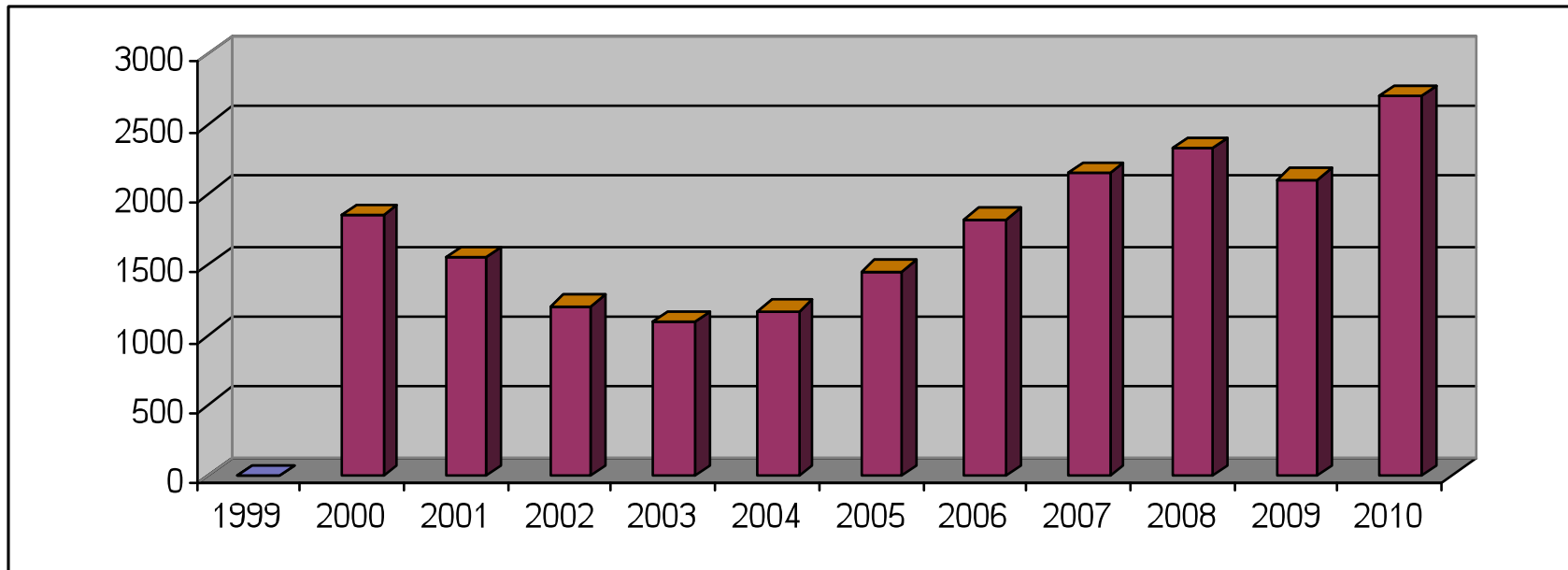
March 15, 2011

WIPO Arbitration and Mediation Center
San Francisco, USA

WIPO Arbitration and Mediation Center

- Established 1994 to promote time and cost-effective resolution of IP disputes through ADR
 - *International / cross-border*
 - *Specialized in IP*
 - *Not-for-profit*
- 2000: WIPO ccTLD Program: tailored ADR procedures
- ccTLD Best Practices: www.wipo.int/amc/en/domains/bestpractices/bestpractices.html

Annual WIPO UDRP-based Cases



2008: 2329 cases (3958 DDN)

2009: 2107 cases (4688 DDN, including 1529 in 1 case)

2010: 2696 cases (4370 DDN)

Filing parties from over 150 countries

WIPO Case Languages Used

Case Language	Number of Cases	Percentage of Cases
English	16739	89.03 %
Spanish	741	3.94 %
French	517	2.75 %
Korean	239	1.27 %
German	224	1.19 %
Dutch	143	0.76 %
Chinese	93	0.49 %
Italian	37	0.20 %
Japanese	20	0.11 %
Portuguese	11	0.06 %
Russian	10	0.05 %
Romanian	8	0.04 %
Swedish	6	0.03 %
Turkish	5	0.03 %
Danish	3	0.02 %
Hebrew	1	0.01 %
Norwegian	1	0.01 %
Polish	1	0.01 %

UDRP as a flexible model

Key Features

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



UDRP as a flexible model

Adjustable Elements (1)



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

UDRP as a flexible model

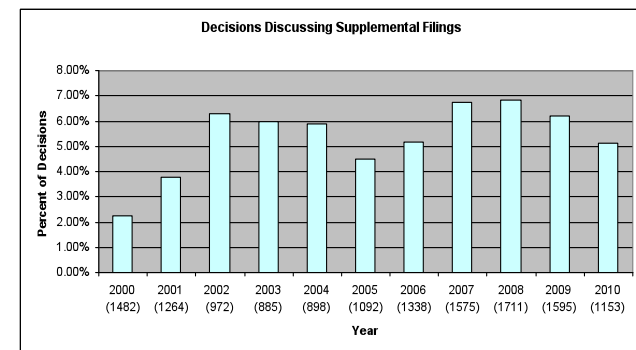
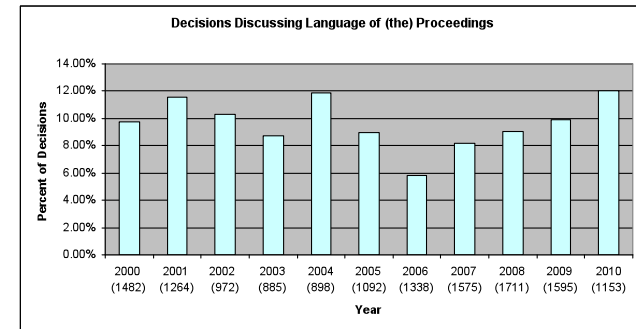
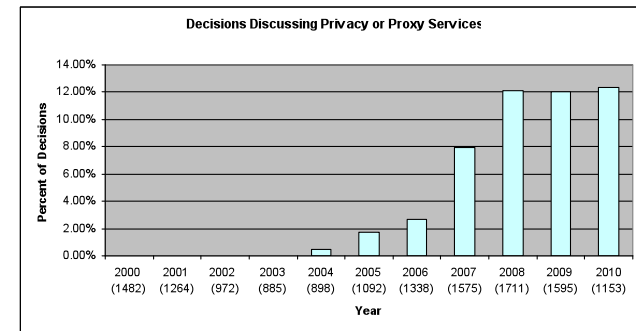
Adjustable elements (2)

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



WIPO Procedure and Practice

- **Respondent Identity**
 - Privacy and proxies
 - Appearing in 18% filed / 12% decisions
 - Disclosures and option to amend
- **Language** of proceedings (in approx 12% decisions)
 - Panel discretion under Rules 11
 - WIPO pre-appointment request mechanism
- **Supplemental** filings (in approx 6-7% decisions)
 - Preserve panel discretion under Rules 12
- **Settlement** and suspension mechanism
 - At WIPO, some 25% of cases settle pre-panel appointment
- **Consolidation** (approx 3% decisions) and Multi-DNs
- WIPO-recommended **eUDRP**
 - Paperless filing by simple email or online
 - Notification by email with full annexes
 - Wholly benign procedural improvement



Role of Precedent and Consistency

- Decisions not binding *per se*, but consensus and majority panel positions on many common issues have developed
- Substance and Procedure, Panels and Providers, Building on Experience, Fostering Predictability
- **WIPO Overview** of WIPO Panel Views on Selected UDRP Questions
www.wipo.int/amc/en/domains/search/overview/index.html
- **Index** of WIPO UDRP Panel Decisions www.wipo.int/amc/en/domains/search/legalindex.jsp
- **Full Text Search** of WIPO Panel Decisions
www.wipo.int/amc/en/domains/search/fulltext_decisions.jsp

ccTLD Registration Models

- “Open” vs. “Restricted”
- Restricted eligibility criteria
(Types of Restrictions: Location requirement, Nationality/Address, Verification, Entity vs. Individuals, (Numerical) Application limits)
- Open commercialization models
(adopted by many registries today, e.g., .me, .de, .es, .fr)
- Trend towards open models (+ ADR)



ccTLD Dispute Models

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

WIPO ccTLD Experience

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

WIPO ccTLD cases:

Dec. 1999 to Feb. 2011: 1771

2010: 401

WIPO ccTLD Experience

Types of Policies

- UDRP: 39
 - .ag, .am, .as, .bm, .bs, .bz, .cc, .cd, .co, .cy, .dj,, .e
c, .fj, .gt, .ki, .ky, .la, .lc, .md, .me, .mw, .na, .nr, .nu,
.pa, .pk, .pn, .pr, .ro, .sc, .sl, .so, .tj, .tk, .tt, .tv, .ug, .
ve, .ws
- Variations of UDRP: 16
 - .ae, .ao, .au, .bo, .cr, .do, .es, .ie, .ir, .hn, .nl, .mp, .
mx, .pe, .ph, .tm
- Other (UDRP - inspired) administrative procedure: 6
 - .br, .ch, .fr, .li, .ma, .re
- Arbitration: 4
 - .ac, .io, .pl, .sh

Additional Information

- Email: arbiter.mail@wipo.int

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CharlotteSpencer@wipo.int

ClaudiaMacMaster@wipo.int

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