
BARCELONA – A success story: Legal assistance for domain name end users in Latin America
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RODRIGO DE LA PARRA: ... For the Latin America and the Caribbean to have this project, this is a very interesting one. Margarita and Humberto will talk about this in detail. But these talks have been evolving since our meeting in Abu Dhabi and we had some presentations in smaller groups. However, due to the interest in the topic, we decided to create a new session in Barcelona, and of course the idea is that this project that has tangible benefits for the registrant could be replicated in other places.

So, without further ado, I would like to give the floor to Margarita Valdes and Humberto Carrasco. Margarita Valdes, as you already know, has been working in the community for quite a long time now. She works for the dot-CL registry and she has been working at the ccNSO Council and she's very active in all ICANN activities. Humberto Carrasco is also from Chile. He's the outgoing LACRALO chair and now he's the incoming ALAC member representing the LAC region. So, welcome Margarita and Humberto. You have the floor, please.

MARGARITA VALDES: Good morning, everyone. Thank you, Rodrigo, for the opportunity to show this project to you. This project was humbly created based on a need that we detected in dot-Chile, dot-CL for the end user community of dot-CL.

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In Chile, we have an expression that is to level the field. That is the name of the project and we are very fond of it because we want to create better conditions for end users for them to be able to develop their own ideas and projects with the domain names that they acquire and that is the presentation that we are going to speak about today. This is Leveling the Playing Field, Legal Assistance of Domain Name Users and Global Challenges.

The description of the project is this. Chile has local dispute resolution policy system based on the arbitration rules. This is an advantage because the arbitration system has a legal ground and then there is a sentence at the end of the system. The Chilean law provides legal validity, unlike the UDRP system which is an administrative system. The project has the objective to see how the end user might be able to access to these legal aid through the law schools when there is a controversy with domain names, when there is a dispute. The idea is to help people to defend their rights and interest within the arbitration process. This legal aid is supposed to be free of charge. This is for end users that cannot afford the legal aid of a lawyer.

So, the win-win situation of this project is this. The end user is able to access the law schools as an academic project, and at the same time, there is an academic and interest in terms of learning for [inaudible] students for these litigation systems that is particularly related to the domain name space.

Why do we have this? Well, because we discovered that there was a gap in the end user community when they faced domain name controversy

and they did not have the knowledge, not the ability, to obtain legal aid and that might be very expensive. And because the controversy in this case is between a company, a large company, or a [inaudible] company or a law firm and an end user. Usually, we have law firms for brand protection, and in this case, the end user believes he or she has no possibility to defend his or her rights and the end user is not part of this controversy.

So, how does this work? The [inaudible] law schools usually have in their curricula practical course, a clinical practice, where they act as a lawyer in different disputes. And in regular courses – for example, legal law, labor work, commercial or trade law. And we, in dot-CL, NIC Chile, we do this. We created or we started to manage the local dispute resolution system for dot-CL and we hired professors and lawyers involved in the legal practice and we invited them to define these end users in our litigation system. Nowadays, we have three law schools that are actively participating with us.

The arbitration system is based on the local dispute resolution system and this is a regulation to solve disputes working when an end user registers a domain name dot-CL, and in that case, we get the consent to access this dispute resolution system and this gives end users the possibility of having these surveys at their disposal in the country. Country is a large country, and although the population is concentrated in the capital system, since this is an online system, users can also access remotely in [other countries].

Basically, where there is revocation demand in the national dispute resolution system of dot NIC Chile, there is a notice being issued for the existence of these litigations which is sent to the registrant and the registrant is informed about this claim. And the end user is informed about these pro bono legal assistance or legal aid and they learn about all the alternatives available, the law schools that are working with us, and they can choose their advisory firm.

I know the font is not good, but when you read the slides after this session, you will see that we have the e-mail being sent to the end user informing the end user about the existence of a dispute and they already know about this because the system issues a communication or a notice before that but this is the format that we use to inform users about this legal aid possibility which is free of charge and the way in which they can contact the legal clinic with which they will work and we contact them so that they can go and ask for legal aid and then we have the contact info of the people working in the law schools. We have three of them to work with end users at dot-CL.

Now let me show you some of the figures or statistics of this. We are only two years old and we have a total arbitration, based on the universities, we have the Universidad Catolica, the University of [inaudible], University of Santisima Concepcion based in Concepcion City at the southern part of Santiago. The [inaudible] university is at the northern part of the country. And the most important thing to highlight here is that with this legal aid and the result of the arbitration awards, things are changing.

The end user can start defending his or her interest and the defendant has a different scenario or different landscape, because in the past, it used to have their own interest but when there is a problem or when there is a reply or an answer for this with bona fide rationale ... I mean, they are not cyber squatters. They have, for example, a business and they are also applying the first come, first served rule. The criteria in the end for the demand and for the [inaudible] is also different.

And since they have a voice within this arbitration system, we have certain results. We have a favorable sentence for the end users, and before the sentence, it is possible to reach an agreement in terms of the domain name holding or in terms of end users and domain names, and at the same time, we also see cases where the plaintiff does not want to reach the following stage because the rationale is enough so as to achieve an agreement. And we keep in a better way the possibility of retaining domain names with end users.

From the perspective of our experience, Humberto will talk about this.

HUMBERTO CARRASCO:

Thank you very much, Margarita. I'm going to continue in Spanish. I'm very proud of being part of this project together with NIC Chile. Now I'm going to speak about the other side. I'm going to speak about the organization of these clinics. I'm going to speak about my experience. As you know, I am a LACRALO chair. I am the outgoing LACRALO chair. Tomorrow, I am going to be an ALAC member, but here I am wearing my hat of the academia. I am a professor of the law school and I do participate in a master course in the Universidad Catolina de Norte with

two venues. One which is 500 kilometers away from Santiago and the other venue is 1,000 kilometers away from Santiago so we can find different students and we work remotely with those students.

At the same time, we also have the help of those lawyers who are taking the master course and we have them or we give them a six-month course and the course is based on litigation. So, we train them in litigation. We provide some introduction about domain names. We also provide some of the arguments. Students, the undergrad students ... I mean, we [combine] undergraduate students with graduate students. Graduate students are lawyers. Undergraduate students are going to be lawyers. And undergraduate students have the role of legal assistance, if you will. They are legal technicians and lawyers play the role of lawyers. So, we create a kind of [inaudible] legal firm. We have Skype and Zoom meetings. We meet face-to-face.

And I want to be very honest. These statistics [shown] at the very beginning belong to the first semester but now we have more than 140 cases and 69% of those cases were solved in favor of domain name users against 31% of cases that are against domain name users.

So, this gives us the opportunity – and this is something interesting to see because none of our customers or clients come from the schools of law. Chile is a very long country and the same applies for Argentina, as you know. We have 8,000 kilometers long and we have people from Arica to Puntarenas because Arica is the northern most part of the country. This is just for you to have an idea of the extension that our country has.

So, the benefit for the university in this particular case is to start working on a topic that is not being addressed in the regions because Chile has a very concentrated city. I mean, we are a very small country. We only have seven million inhabitants and seven million inhabitants [inaudible] live in the capital city and the rest of the inhabitants are placed in different regions all around the country.

So, this helps us to see different areas that otherwise were not going to be able to analyze and this of course helps us in terms of intellectual property because here we can see distinctive signs. For example, we have brands on one hand but for me, domain names are also different or distinctive signs.

In terms of benefits, I see the master course. In the master course, we have experienced people, they have graduated from this master course and they have created their own thesis based on domain names and there we see the quality of the papers that we issue and the quality of new theories that are appearing in favor of bona fide domain name holders. And this is a great academic achievement, if you will.

We also have undergraduate students who are perfectly trained to start working in the capital city and they can, for example, start working in law firms that are specialized in branding.

So, Margarita, I think that we now should go to the conclusions.

MARGARITA VALDES:

Well, in terms of conclusions, we have concluded, if you will, the following. End users defend their interests in terms of domain names.

This is not just a trademark issue. It is very important to have good faith criteria and a way to solve these disputes and these good faith conditions should be enough to assign or to allot a domain name.

There is substantial improvement in the quality of the arguments and judgments because the arbitrator has [inaudible] positions or points of view to consider. We also value the possibility of having these balanced situations and we have now the possibility of reaching agreements before the [judge].

Something important to mention is that trademark rights or trademark [inaudible] taking into account the situation gives the possibility of having agreements within one specific aspect within trademark issues and there is no controversy on dispute in other issues. And of course there is the possibility of coexistence of good faith domain name holder and trademark holder issues. There is no [correlation] between end users and the Internet world.

The other important thing is the [inaudible] coexistence of domain name holders and trademark owners. When it comes to expectations, in terms of the number of complaints, the figure has not changed. There was an improvement in terms of quality and there are more favorable sentences for end users and there is an improvement in the arguments for judgments.

When it comes to our global challenge, our proposal is this. In order to spread the word of this model, we need to have school of laws willing to start learning about the online litigation system. The dot-CL is just an example, but we can also have future lawyers and future professionals

to be trained about this. For example, we want to learn and train about UDRP and the idea would be to train people to learn about UDRP and WIPO with particular rules in order to defend registrants. That is to say, end users, in domain name disputes.

Today we have 77 ccTLDs using the WIPO and the UDRP systems, and since gTLDs are commercialized by registrars and they are contractually bound by the UDRP, they have to use the providers listed for this. And among the five that are widely used, we have WIPO.

HUMBERTO CARRASCO:

So, we believe that it is possible to globalize a model. We also need to take into account the different possibilities of a country and we also need to see if we have a ccTLD of a TLD. But we do need a pro bono organization, law schools, end user organizations interested in training and learning about this model because we can teach them how to defend end users. We, as a law school, can use arguments taken from the ICANN UDRP in order to solve our disputes in Chile, so we know how to expand, how to extrapolate this information at different levels. But we also need to inform. We also need to provide information to the domain name holder that they can get or obtain help.

If the dispute resolution provider is able to send an e-mail informing them that there are institutions offering pro bono help, that is the key for our success because if there is an e-mail being circulated where the user is informed about the help that he can have in different languages, I believe that they are going to resort to that help because usually they cannot afford the system or the process. This is a very expensive

process. Knowing about intellectual property or domain names is really expensive. So, that's the idea. That is our description of the project and we would like to finish, to conclude our presentation with this. Thank you very much for your patience, and if you want to contact us, of course there you have our e-mail addresses.

MARGARITA VALDES: We are available and we are open to start working at the global level, so [have fun].

RODRIGO DE LA PARRA: Thank you very much, Humberto and Margarita for this fantastic teamwork and for this presentation. We have some comments and we have several guests that will be sharing their viewpoints, and after that, we will open the floor for further comments and questions.

First of all, I would like to introduce Ernesto Bojorquez. He is the executive director of dot-MX, the ccTLD in Mexico, and he is here in his capacity as the chair of LAC TLD, the regional organization in Latin America and the Caribbean that is in charge of ccTLDs in our region. He is here to update us on how we can replicate this project in neighboring areas or countries and in ccTLDs in Latin America. Ernesto, you have the floor.

ERNESTO BOJORQUEZ: Good morning, everyone. Thank you for your invitation. First of all, I would like to congratulate Margarita and Humberto on their initiative.

We are aware of differences on a regional level in terms of ccTLD operation and policy but we are also aware of these shared needs in terms of domain name disputes.

We believe these projects bring about important benefits. In our view, capacity building is one of the most important of these benefits and I listed other benefits that we can clearly derive from these initiatives, such as further equality and further opportunity to file claims and to go through these disputes. So, we are seeing that we are leveling the field, as Margarita and Humberto just said, in order to defend a registrant or an end user when somebody tries to use the system to deprive them of their legitimate rights.

Although there are users [inaudible] do the same when it comes to trademarks and the rights of certain organizations. However, our aim is to accomplish justice, to achieve equality, and I think this project accomplishes this goal by leveling the field among the name holders and registrants, and also ccTLD registry has to empower their users, and that will, in turn, trigger the replication of this project.

If registry operators can really see the added value that we can deliver to our users and if we can make a better ccTLD environment, then that is going to come to fruition.

We also see that we have more law schools that are becoming engaged and this is something we need in our organizations. That is, to further engage with the academia and encourage their participation in our industry so that we see a higher level of interest in the Internet and in

domain names in general. We will have more professional activities and operations as a result.

Finally, we developed and built capacities in the region in order to contribute to the development of the Internet. For us in the industry, the idea of a domain name may seem something very simple but for somebody that is giving their first steps online and who has a website but does not handle all the DNS related terminology, well, for these users it is of great help to have these tools that will help them when they find any issue with their domain names.

So, at the end of the day, I think this is a win-win situation for registries and the academia and also for the practitioners in the field. It is worth promoting this initiative and spreading the word. I repeat, there will be differences among registries but at the end of the day, we share the same core values and the same DNA. What we can do in every ccTLD in the region and what we, especially, can do as LAC TLD, the ccTLD Association, will pave the way to what we can do in the field of gTLDs which, at least in terms of process, are quite similar to the ccTLDs.

Hence, we are building capacities in order to improve and increase participation in these types of disputes. So, once again, congratulations Humberto and Margarita.

RODRIGO DE LA PARRA:

Thank you, Ernesto, for your comments and we now give the floor to Michele Neylon who is the CEO of Blacknight. It's a registrar based in Ireland but it operates on a global scale. Michele will be sharing his

perspective in terms of how we can replicate this project, not only in the ccTLD universe but also among gTLDs.

MICHELE NEYLON:

Thank you, Rodrigo. Good morning, everyone. If you don't mind, I am sorry, but I will speak in English especially at this time in the morning because I was up until late last night.

Thanks for the introduction, Rodrigo. Thanks to you guys for inviting me along. I enjoy coming to the LAC space sessions at ICANN. They're always interesting.

My company, we are a registrar. We are a registrar for both country codes and generic top-level domains. We're an ICANN-accredited registrar. And our core business is mostly around hosting and providing services to small businesses. Of course, we do have large businesses as clients as well. Very welcome. I'll take your cash any day. Thank you.

So, when I learned of this project, I think it was in Panama maybe, I was actually excited for one of the first times I've been excited about something in the ICANN space in a long time.

UNIDENTIFIED FEMALE:

Thank you.

MICHELE NEYLON:

No, I was genuine. I was like, "This is really cool." And why is it so cool? It's because this solves a fundamental issue that we see in our day-to-

day business. As a registrar and hosting provider, we have thousands of clients coming from all over the place. For many of these small businesses, they just simply want some kind of digital identity. They want to set up e-mail, set up a blog, set up some kind of online shop. Who knows? And to be perfectly frank, who cares? They're free to do whatever they want to do.

And sometimes they may register a domain name or do something that a brand holders somewhere feels is a problem and sometimes some of our clients are doing things which they shouldn't be doing and I totally get that. But, other times, it's over reach.

So, we see situations where somebody has registered a domain name for perfectly normal purposes and a big brand holder sends them a scary letter or initiates a UDRP or DRS or some other kind of alternative dispute. I'm [inaudible] both for ccTLDs and gTLDs because ultimately they're just domain names, as far as I'm concerned. And this small business is like, "Oh, my God. I've got this really nasty letter. What do I do? What do I do?" Sometimes, they just hand over the domain straight away. They don't question it. And the reason they don't question it – and the other speakers have touched on this – lack knowledge, fear, and cost.

By lack of knowledge, I mean you talk to your average solicitor, lawyer, out there. You can talk to them about commercial contracts. You can talk to them about conveyancing, buying property, that kind of thing. They know this stuff inside and out, back to front. You mention anything involving digital, oh boy.

We get letters from lawyers sometimes where I think they're trying to ask us to do something with a website but they actually refer to the name of the website, not the actual domain name. They often refer to laws that don't actually apply. It's kind of entertaining in a sort of smack your head against the wall kind of scenario.

But this kind of thing where if I was able to say to my clients, "Okay, you've received this threat. It might be legitimate. It might not." Here's a few law students who might be able to help you untangle that and potentially defend it. That would be amazing. That would be absolutely fantastic.

If you get sucked into any of these disputes, you are dealing with a very specialized area of law when it comes to intellectual property rights. It's very specialized. It's not something that the average lawyer is comfortable dealing with.

I use multiple law firms for our own business. I would never ... And I love my external counsels. They're awesome. But I would never use them for trademarks because it's not their area of business. They outsource that to somebody else who probably outsources it to somebody else. So, I end up going to a very, very large law firm. They're very, very good but they're very, very expensive.

My clients don't often have that ability and they wouldn't be in a position to defend themselves when they ... And sometimes, sure, they don't deserve to be defended. Of course they don't. That's also the case. But I think this idea of ... I think you put on your slides, Margarita, leveling the playing field, bringing some balance. Because if you look at

disputes, be that for ccTLDs or gTLDs, the number of times that there is a response from the registrant, in many cases, is significantly lower. And in some cases, it's not clear.

Sometimes, the arbitrator will neutrally go, "No, you can't really do that," and will defend that registrant's right to hold on to the domain name, but a lot of the time, it's going to mean that the domain is going to be transferred, deleted, suspended or whatever.

So, I think this kind of model is fantastic. How can we see about expanding it? If there's any European lawyers or law departments in any universities that want to work with my company, I'd be happy to talk to you about it. I think this makes a lot of sense. Well done. It's [great]. It's what we should see more of.

RODRIGO DE LA PARRA:

Thank you very much, Michele, for your comments. Thank you. I think Margarita and Humberto will take them on board and surely follow-up on them. Finally, we have our next speaker. We have the privilege of having Kathy Kleiman with us. She's from the Princeton Center for Information, Technology, Policy and she is an ICANN pioneer, a lifelong ICANN pioneer. She has cofounded the NCUC. I think she doesn't need any further introduction. She has been here forever. Kathy, thank you. Thank you very much for joining us.

KATHY KLEIMAN:

I apologize but I will be speaking in English as well. I wish I didn't have to. So, I am Kathy Keliman. I am associated with Princeton Center for

Information Technology Policy and I promised them that I would assure everyone I was speaking for myself.

Because I've been here so long, I'm going to take the privilege of looking backwards to look forwards. I'm going to talk a little bit about why we created the UDRP, how unusual a system it was, what we thought would happen, what actually happened, and why what you're doing is so important. I'll try to do that in under ten minutes.

So, I can talk about what we created on the UDRP because I was on the final drafting team. It was the very first consensus policy of ICANN. We're reviewing it now in the Rights Protection Mechanism Working Group of the GNSO.

We created the UDRP and we created it out of [whole cloth]. The World Intellectual Property Organization led the effort and then it came to ICANN and we actually said, "Stop. There are no rights for registrants." We'll talk about that in a little bit. There was no 4c of the original UDRP.

But the larger problem was that we were dealing in a global environment in the gTLDs. The registrant was in one country, the registrar was in another country, the registry was in another country and the trademark owner was in another country. So, where do you go to create a complaint?

There were certain solutions nationally, but as the first priority of ICANN, it was actually given to us in the green paper and the white paper of the Department of Commerce to come up with a solution for trademark domain name disputes at the second level. We're not talking

about content on the website. Just in the second-level domain name of the dot-com, dot-org, dot-net.

So, we created the UDRP. You know it as well I do but I'll recite some of the language, that the trademark owner has to prove that the domain name is identical or confusingly similar to the domain name and that the domain name is being used in bad faith. I'm summarizing here.

The registrant then has the opportunity to show – and we fought for this [inaudible] – that he/she/it has the rights to and legitimate interest in the domain name. That means for non-competing commercial use as well as legitimate non-commercial use. It could be someone's name or just another use of a dictionary word.

To make matters even easier, the complainant pays the filing fee. They choose the [forum], too, at least in the gTLDs. So, all the registrant has to do is show up. And we tried to make it easy for them to show up, that they just kind of had to show up and present some rationales and they don't. They don't show up. That really surprised us because we tried really hard and that was one of our great hopes.

So, we don't know. And we'll be looking at this in the review of all rights protection mechanisms when we get to the UDRP in phase two. We're still in phase one.

But we don't know if the registrant didn't receive the notice. Michele was talking about some of this. Didn't understand the notice. Maybe English isn't their primary language or just didn't know what to do. In my experience, as others have said on the panel, they just don't know

what to do. We tried but it didn't work. They just don't know what to do. This is a form they've never heard of with funny legal terms and funny technical terms.

Then they go to their uncle down the street who's been helping them with the incorporation papers or the corporate lawyer in their town who's also never heard of it. So, you really have to find a lawyer who knows domain names and Internet law and that is expensive and that is hard in many places.

So, it makes what Margarita and Humberto is doing so wonderful is helping people demonstrate their legitimate interest and their domain name if they have it. And what you're showing is that the legitimate interest is there but people need help. They need a translator and you're giving them a translator.

So, to the questions Rodrigo asked me, in reverse order, though, how does this improve and balance conditions for registrants of domain names with limited resources? Well, it levels the playing field. It gives them a chance to express themselves and to participate. I love the fact that it gives students and young lawyers an insight into this amazing world that they're coming into that they can help us grow, legally. It's just a good, productive, wonderful advance that kind of achieves the goals, that both sides do have arguments and we want to hear them.

So, what lessons can be derived from this project in terms of encouraging people to register domain names? The lessons in general are ... You can create a [inaudible] and it can work and you can work with professors and students and professors and students are excited

to work with you and NIC Chile. You've created the wheel. I hope we can recreate the wheel at the ccTLD and gTLD level.

I think it also gives stability to the market, the assurance that if you have a product or service, it won't be arbitrarily taken away. I think that's good for the business of domain names. I also think it helps us with a free and open Internet, in terms of protecting legitimate commercial and non-commercial speech and putting out the reasons why you should keep your domain names, your listservs, your e-mail, and your websites. So, from a human rights perspective, I think you're furthering free expression and I think you're furthering due process.

So, now, I'm going to ask the audience a question, which is can we do this? Can we expand it? You've heard us speak, but we'd certainly love to hear you speak. I look forward to the discussion ahead and we've got plenty of time for it. I put it back to Rodrigo.

RODRIGO DE LA PARRA: [inaudible] answering Kathy's question. Yes, please?

RICHARD HILL: Thank you. I understand Spanish fine, but I prefer to speak in English. Thank you for this. This is great. My name is Richard Hill. I've been a UDRP arbitrator since the inception of the [inaudible] in 2000. I just checked. I think my first case was number 78 with WIPO. Right now I'm doing well over 100 cases a year.

What I've seen ... So, I'm only doing dot-org and dot-com cases, primarily. In the beginning, my rate of finding for one of the other was about 50% and I had cases where there was no response and I still found in favor of the registrant. I try to be very conscientious about that.

And slowly the percentage has shifted. Right now I'm doing practically only non-response cases but they're really exactly the kind of cyber squatting for which we invented the UDRP. It's like 99% now. They're just completely obvious cyber squatting cases with fake WHOIS information and so on.

But I want to go back a little bit even before what you mentioned, Kathy, for the original origin of all this. Why does this thing exist at all? The original case I think everybody knows was mcdonalds.com which a guy did actually as a joke to prove there was a problem. Some guy figured, "Well, if I register mcdonalds.com that's going to wake everybody up to the fact that there's an issue here." Which some people thought of but many people had not.

Well, you can go to court and the early cases did go to court. The problem is the trademark owners said, "Oh, that's too long and expensive, so give us something that's quicker and easier."

So, this whole scheme is deliberately a scheme which is in favor of the trademark owners, so I think it's very legitimate to say, "Well, wait a minute, you have to kind of balance that." So, I would strongly support the idea of having a legal clinic like you do for legitimate cases. And Kathy, something for you to think about. Maybe that should also be the case for the new IRP because the new IRP is real full-fledged formal

arbitration and that's [inaudible] expensive and you have to go to very specialized law firms to do that. So, basically, if somebody wants to bring a case under the new IRP, if they don't have \$100,000 minimum, you can't even think about it. That's kind of the entry level. We can talk more offline if you want.

And there, if you lose, you might have to pay the other fees as well as the arbitrator fees, etc. This is real big money. So, that's a very high barrier of entry, much higher than we're talking about here in UDRP.

So, I think this is a great idea. Now, I had a couple of questions. If I understood the Chile case correctly, what you're doing is actual binding arbitration under Chilean law and it's a replacement of the UDRP. You don't have actually a UDRP [yet]. So, to extend this then to the other cases where you're not using a regular scheme but the UDRP, with the law students I just have one caveat.

Again, Kathy, remember that the UDRP is deliberately not any known trademark law. It's its own law. So, I think you'd have to give some training to the law students before they go in, because to your point, Michele, it's not just specialized law, it's sub-specialized law within sub-specialized law. So, if they don't know the UDRP law and case law, they're going to actually wind up giving bad advice to the registrant. So, you have to give them ... It's not a big deal, but they'd have to have a two-hour pre-clinic on UDRP precedence and so on before they could be effective. You'd have foresee that. But I think that would be a great idea for the legitimate ones.

Then, when we reform the UDRP, maybe we should think of ways of really weeding out these obvious fake cases. I'll just mention one, aldi.wales. Not by Aldi. And it wasn't a guy called Aldi. Like I said, I get 100 of these a year. There should be a better, more efficient scheme than doing that. Anyway, thank you very much. Great presentations and great project.

RODRIGO DE LA PARRA: Thank you very much. Do you want to react to this?

HUMBERTO CARRASCO: I'm going to reply in Spanish because it's easier for me but I think Kathy wants to say something?

KATHY KLEIMAN: No, no, no.

HUMBERTO CARRASCO: It's okay? I did understand your point and the data in terms of percentage of cases. But let me give you an example for the Chile case because we were obliged to improve the argumentation and this is based on freedom of speech. I'm going to name two domain names.

We have a multi-millionaire, [Ronnie Galuchi]. He's within the richest people in the world. One of our clients registered the domain name [inaudible]2022.CL because he was a fan of him. That person wanted [Luchi] to be the president. That person also registered the

[LuchidPresidente.CL]. There were two institutions against it, the [Luchid] Institution and the [Luchid] Real Estate Agency. That is to say the company dealing with real estate issues and the [Luchid] foundation for charity actions.

So, we asked ourselves if it was okay to defend the holder and he told me, “I registered the name because I believe this guy is a good man and I would like to see him to be a candidate for the presidency to run for the election.” So, I believe that this is a question of freedom of speech. So, we had to create a theory, to [inaudible] a theory, to explain why we should protect that domain name.

So, what happens if we do not defend that person? I might say that the trademark right, because the [Luchid] Real Estate Agency and [Luchid] Foundation were registered. Well, in that case, the [inaudible] of the domain name would have been accepted according to the Chilean rule. In this case, we would have a [great] situation. We, as lawyers, and my students as well, are trained to create a theory on distinctive signs. If you wouldn't mind, [Merike], would you like to add something else?

RODRIGO DE LA PARRA: Martin is next and then Salvador. Would you like to introduce yourself?

MARTIN SILVA VALENT: Hello. My name is Silva from Argentina. I am a GNSO Councilor. I also work with Kathy in the Rights Protection Mechanism Review Working Group. In order to reply to Kathy, yes, I agree on the fact that this is a need for the space and this is very viable because when you spoke

about the resources and the implementation, I believe that in our ecosystem in Argentina, we have this, we can implement this and we lawyers, the ones who are working on the ecosystem, I believe that we could find all the resources to us to be able to start with this project.

We have a very collaborative community, so we can start thinking about our community in Argentina and we will materialize this. We can do it.

My only question – and we’re discussing this with Salvador. This was a question by Salvador but it is also my concern – and sorry, Salvador, for taking your question. I would like to ask about resources. The university can provide students and professors, they can provide the intellectual part or the intellectual cost of these because we have the university knowledge. The administrative call can be provided by an NGO, for example, but what happens if there are fees that are to be paid, for example, in the case of some ccTLDs which might have related costs that are usually quite high? Sometimes, if you don’t have thousands of dollars, it makes no sense to start a proceeding. Thank you.

MARGARITA VALDES:

Thank you very much, Martin, for your comment. In order to reply to your comment, in terms of cost, in the case of Chile and in the case of the UDRP system, the funding of the litigation or the burden of the cost is for the claimant. The end user is supported by the academic project because this model replicates what we call in Chile the benefit for poor people, for the poor. If we have the [inaudible] and then you may [inaudible] a certificate where you prove that you don’t have the means to defend yourself, we believe that, due to the fees, the end user does

not have the necessary means to afford all their proceedings. This is the way in which the process is framed under the legal clinic, for the legal practice as well.

So far, we haven't detected any other cost that is not supported by the dispute resolution system because it is the complainant or the claimant, the one paying the fees and the legal costs.

RODRIGO DE LA PARRA: Please introduce yourself.

HUMBERTO CARRASCO: Humberto Carrasco for the records. Let me give you another example. We also provide help to the revocation party, so in the case of Chile, we have to pay, for example, \$1000 to the arbitrator and we have two alternatives, to ask the arbitrator to [inaudible] from the payment of that money but the arbitrator will decide if it is yes or no.

If they say no, well, we can say that a traditional law firm will charge a certain amount of money if you want to revoke the domain name. So, in that case, that person will have to pay \$1000. So, if the domain name is really important for that person, the person will have to pay that amount of money. And if not, we have to be creative enough so as to obtain the money in order to pay that amount of money. And we have to be creative, for example, by creating legal clinics.

RODRIGO DE LA PARRA: We have Salvador and Richard. Salvador, I don't know if you have any other question because Martin already explained your point.

SALVADOR CAMACHO: I am Salvador Camacho from Mexico, member of IPC, but I am here in my personal capacity. I believe that this is really important what Margarita and Humberto created in Chile is really important. I believe that capacity building is of key importance for the ecosystem.

This reminds me of my thesis because I wanted to implement an arbitration model for dot-MX. So, this reminds me of that. I started to research and I was able to draw some conclusions from that.

In practical terms, what I have detected throughout my activity in terms of domain name dispute, there is a lack of agreement around domain names for trademark holders and for domain name holders. Perhaps it has to do with fees, with costs. Sometimes we have a domain name and the price \$8 or \$9. This is not important up until you face a real problem. This is something, of course, that on many occasions, we have social media such as Facebook and Facebook is a great competitor, so they start using Facebook pages and they will have better engagement with a Facebook page. However, that is something that we need to take into account.

Now, going back to the MX domain names, as Ernesto said before, this is something different. Why? Because we have the [inaudible] provider through the UDRP for dot-MX. The [inaudible] provider is the WIPO. So,

perhaps we can have a similar process so that we can avoid paying fees. I believe that is the main obstacle that we face.

However, NIC MX does not have the necessary powers for arbitration, so it would be interesting to see some other possibility. Perhaps we might create our own process or we stick to the UDRP, the WIPO or the UDRP as we know it today.

There is something else that I want to mention. UDRP cases are not more than 50 cases. In 2018, we have 22 cases [inaudible] and last year we have 38. So, this is an example of the lack of awareness by the trademark owners and domain name holders.

Two out of these 22 cases that were filed in 2018 had a legitimate interest. So, we have to see this balance between good faith and the trademark owner. I only have information about one registrant who owns more than 10,000 domain names, more than 1,000 domain names are trademark names.

We have to level the playing field but we also have to analyze the context, and in some cases, I saw fake evidence and this is something that we need to take into account, the UDRP, for example. I had a case with [inaudible]. Evidence was [inaudible]. The arbitrator decided to give the domain name holder the right.

And finally, let me say this. In Mexico, we have lack of awareness. The domain name issue is not well-developed. So, if we happen to decide, for example, if we take the dispute resolution system, how are we going to work if we're so few. So, we need more people.

But let me congratulate you on this initiative and let me tell you that I am at your disposal to see how we can extrapolate this to other places. I believe that when there is good faith, this should be defended, so I am at your disposal. Thank you very much.

RODRIGO DE LA PARRA: Thank you, [inaudible]. Richard, you have the floor.

RICHARD HILL: A comment and then maybe an idea of how we could implement something like this generally, including for the case of Mexico which is under the UDRP.

So, first the comment. Yeah. The free speech is definitely an issue. As I'm sure you know, the dot-sucks cases, the panelists are evenly divided. If you want to know how I feel, you can go look it up. I've done several of those cases. But I think, Kathy, this definitely needs to be clarified so that we're very clear in the future UDRP whether this kind of free speech is allowed or not. Here putting on my civil society hat, obviously I think it should be allowed. But that should be made clearer to them than it is now.

Then, how we could implement this. Let me describe how this works in Switzerland. In Switzerland, like many countries, you are awarded costs if you win the case and the loser pays. That's one scheme. Forget that because we don't have that here.

Then, there's a completely different scheme which is legal aid. If you want to do your own case, you can't get it. But if you don't have any money and you go to a lawyer, you can go to the lawyer and say, "Look, I don't have any money. Would you take the case?" They're not going to do it pro bono very much in Switzerland but they can actually apply for legal fees from the court system itself.

So, the lawyer kind of takes it on speculation, runs the case, and at the end of the case, in the [inaudible] for relief, the lawyer says, "And I want legal assistance." It's very highly used in the criminal system. A lot of the criminal cases do that. Then it's actually the judge who decides the case which will award the legal fees which comes out of a pool from the state to the party and sometimes even if they lose.

So, there are actually cases where the person requesting legal assistance lost the case but the judge anyway gives them legal fees because they said, "Well, yeah, you had an arguable case, so it was legitimate to bring it up, even though it turns out that you lose." It wasn't some [inaudible]. This actually can be very large numbers and in complicated cases, it can be hundreds of thousands. Typically, of course, it's much less.

So, the idea here would be, we could – and this even could be done for WIPO – create a fund. Sorry, I'm going to wait because I wanted Kathy to hear this. No, no. It's okay. But I think, Kathy, this is an idea we could incorporate.

Create a fund which logically would be, the money would come from the main beneficiaries of the scheme and we know who they are, which

is there. Well, it's balance the playing field. We gave them something which is good for them and I think it's good. I'm not a critic of UDRP. I think it's a very good idea. But then there are people who get caught ... I did one case where basically I had to be the lawyer for the other guy as arbitrator and the guy on the other side got really nasty with me and sent me some private e-mails saying, "Why are you helping the guy?" Obviously the guy ... It was a legitimate case and he was a poor guy trying to ... Anyway.

So, we have a fund there and then the arbitrators would decide this guy had a legitimate case, so the lawyers fees are paid of that. Not to replace what you're doing which is the volunteer legal assistance but in addition to that, that's something that we could somehow think about doing in the future. Thanks.

RODRIGO DE LA PARRA: Thank you, Richard. Humberto, would you like to comment on that? We have five minutes more and then we have to close the session with Michele [inaudible].

HUMBERTO CARRASCO: I don't know if this is the same for other countries, but in Chile, if we create a consumer organization, the state gives you money for litigation. I don't know if that is the case in Argentina or in Mexico. But if we as users get together and we create and organization for litigation to defend domain names, we can get funds to do that. I believe that we need to research.

RODRIGO DE LA PARRA: We're going to give the floor to Kathy. Kathy, you have the floor.

KATHY KLEIMAN: Thank you. So, to Dr. Hill, what we were commenting on, and then you answered it, was you never want to compete with funds for public defense in criminal cases because people go to jail and that's... But you answered it. It would be a different fund. We're not competing with the same. Different fund. Kind of along the same lines of distribution which makes sense. I like that idea and I like that it's an addition to working with the law schools.

I wanted to point out there's actually precedent in the United States for this. I just found out a few weeks ago that the US Trademark Office, as of very recently, works with law schools and law school intellectual property clinics and if there are objections against your trademark and you're a small business or entrepreneur, they'll provide you with a list very similar to yours. I think that's wonderful and I think that's a precedent in the United States.

RODRIGO DE LA PARRA: Michele?

MICHELE NEYLON: Those are some interesting comments and interesting reactions. I do get a little bit uncomfortable about these kind of slam-dunk type scenarios. I appreciate what you're saying, but at the same time, I think

we need to be very careful because there are, and I've seen with my own clients this kind of thing where it's an "but, oh my God, that's my mark". In particular, a European online store – not Amazon – which was doing quite well up until a few years ago decided that it had a special right to the term "PIX" and was going after such domains as pixels.ieu, this kind of thing. So, I'm also a bit cautious.

But I think from the other comments you've made ... No, no, no. I'm not disagreeing. I think anything that we can do to tip the balance a little so we're on a more level playing field. And I also agree as well that it's also a case of educating smaller businesses so that they're also able to defend their rights.

One of the hats that I wear, and I wear several, is I'm on the Policy Advisory Committee for the dot-IE ccTLD. And as part of the ongoing policy changes that we're making within that space, we are currently working on a lighter version of the AGR. At the moment, dot-IE uses the [IE DRP] which is the UDRP with a couple of words changed but it's [inaudible] via WIPO, but [inaudible] \$1500 minimum and that's before you even hire somebody who actually knows how to turn on a computer and to actually deal with these things, whereas we're looking at something where it would be more affordable for smaller businesses to be able to help defend [inaudible] because we've also recently [liberalized] the registrations.

If anybody wants to help with these upcoming changes, I'm not hard to find. Anybody who says they can't find me, I do ask you to really get help, because if you can't me on the Internet, there's something

definitely wrong. I'm trying to get some people from outside the little bubble to provide a bit of input into this.

For this particular project, it be great to see how we could get more people interested in it and it would be fantastic if Margarita or anybody else who's involved with it was to socialize a little bit further within the gTLD space, within the GNSO, with registrars, registries and others there, because unfortunately, a lot of the time what happens in the ccTLD space is just totally ignored. Thanks.

RODRIGO DE LA PARRA: Thank you, Michele. Now I will give the floor to Ivy Contreras.

IVY CONTRERAS: Ivy Contreras from dot-GT, Guatemala. Hello. Thank you, everyone. First of all, I have to think about this as a registry, and as a registry, we need a non-biased approach because we have different types of cases. We've seen users, clients that say, "Okay, I used a third-party to register my domain name and that third party is the holder of the domain name and now they don't give me back my domain name. What can I do?" Well, that is unfair, but I cannot tell them, "Well, either their domain is yours or it's not." We have to be non-biased.

Now, as a user, I think this is a great initiative because users do need this type of assistance when they don't know what to do. They can go to WIPO and WIPO will issue a resolution that will be binding. Okay. They need to seek costly legal assistance. And in Guatemala, we lack plenty of knowledge on digital issues, online issues. So, I have mixed

feelings, let's say. As a registry, I know I cannot get involved because we still work according to first come, first served approach. We had several cases. For instance, a client told me, "I registered a domain name with my business partner but now we are not in business together. I run the business. He has another company but he doesn't want to give me his part of the domain. What do we do?" So, we cannot put everyone on the same level.

However, as a user, I do believe in these initiatives and I do believe in capacity building, in education, in outreach. My boss, [inaudible], speaks about domain names versus registered trademarks and that has been very helpful to the different users. It is not the same. One thing is to register a trademark, another thing is to register a domain name. Of course it protects your digital identity, your online identity, and we can help you, but as Salvador was saying, there is plenty of differences still but we need to go step-by-step and I do love this initiative and congratulations on it.

MARGARITA VALDES:

I would like to take the floor. I am Margarita Valdes from NIC Chile, for the record, from dot-CL. Dot-CL uses this model or is a liaison in this link. Dot-CL is not an arbitration panel. We are a registry. The arbitration panel is external to our registry. It's a dispute resolution center with 34 attorneys that act as arbitrators to resolve dispute. So, we have our neutral role as the dot-CL registry but we noticed that in our local Internet community, in our end users, we noted that they have this need. So, we have this link and we are the liaison, if you will. That is our

role. So, we connect the end user with the legal clinic and that is external to dot-CL as a registry, so we are still neutral. We take care of that. The registry is not a party in the dispute or in the controversy. We don't have a say in who gets the domain name, etc. But our interest is to address the situation and to level the playing field, still being neutral. Thank you.

RODRIGO DE LA PARRA: Thank you, Margarita, Humberto. Once again, congratulations. Ernesto, Michele, Kathy, thank you all very much for joining us. This has been a very nice and very engaging session. Thank you all very much for being here.

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