



## **Intellectual Property Constituency (IPC) Comment on the Initial Draft of the “Latin American and Caribbean DNS Marketplace Study”**

1 November 2016

The GNSO Intellectual Property Constituency (“IPC”) appreciates this opportunity to comment on the initial draft of the “Latin American and Caribbean DNS Marketplace Study” published for public comment on 22 September 2016.<sup>1</sup> The IPC supports ICANN’s Latin America and the Caribbean Strategic Plan and believes that it can be furthered through this study’s investigation of the current state of the Internet and the domain name industry in Latin America and the Caribbean (“LAC”); identification of best practices that have made an impact in LAC domain name market growth; assessing the impact of the broader ecosystem of the Internet infrastructure and online services on the overall evolution of the LAC domain name industry; capturing the business potential in the domain name industry in the LAC; and finally providing recommendations on how to develop the industry in the LAC and what business models can be adopted in the entire industry chain. The study, while only an initial draft, demonstrates that the LAC, due to characteristics including relatively high penetration rates for Internet services, has great potential for growth and improved Internet for all stakeholders in the LAC region.

The IPC represents the views of the intellectual property community, and is focused on trademark, copyright, and related intellectual property rights and their effect and interaction with Domain Name Systems (“DNS”). These intellectual property rights issues are all foundational to competition and consumer trust in the DNS, and are key to the advancement of the domain name industry in the LAC. The IPC believes that it is vital that ICANN ensure that the intellectual property rights systems and related legal challenges affecting the DNS are evaluated and analyzed in this LAC study.

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<sup>1</sup> Request for Comments, Initial Draft of the *Latin American and Caribbean DNS Marketplace Study*, 22 September 2016, available at <https://www.icann.org/public-comments/lac-dns-marketplace-2016-09-22-en> (“Draft Study”).

The initial draft of this study does not adequately address – and largely omits – intellectual property rights issues as well as any corresponding analysis or recommendations related to them. While the IPC recognizes that the initial draft study does discuss how some ccTLDs in the LAC have implemented processes to solve contentious domain name registrations in Section 4.1.6,<sup>2</sup> we do not believe that this short section can be said to address the important intellectual property issues the IPC focuses on that are crucial to the success (or failure) of the DNS.

More specifically, the IPC recommends that the LAC study contain an analysis, on a country-by-country basis, of how domain name conflicts are currently resolved (including relevant law and precedent in each jurisdiction) and the level of certainty stakeholders have. The study may need to be expanded past the limited list of countries currently included.<sup>3</sup> Further, in collecting this information, the study would also create a valuable resource to the Internet stakeholder community at large as such a resource is not easily available for the LAC. The IPC stands ready to assist with regard to identifying and collecting the underlying information so that this analysis can be performed.

The LAC study should also incorporate intellectual property rights into its analysis and make recommendations consistent with the consensus goals of ICANN. For example, the IPC urges that the study recommend the adoption of UDRP and URS methods, which if adopted widely in the LAC would promote a dependable system for rights holders and other stakeholders.

Further, the IPC requests that once these additions have been made to the LAC study, further public comment be sought before the study is finalized.

In conclusion, this LAC study is a unique opportunity to address and evaluate the role of intellectual property's role in the DNS for this region that ICANN should not let pass. This study is incomplete if analysis and recommendations on this important topic are not included. These recommendations should be justified with data. The IPC urges that the consortium continue with its work on the LAC study consistent with the above in order to deliver a comprehensive assessment and path forward for the DNS industry in the LAC.

Respectfully submitted,

**Intellectual Property Constituency**

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<sup>2</sup> See Draft Study at pgs. 55-56.

<sup>3</sup> See Draft Study at pgs. 7-8.