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A recent book by
Dr. Julio César Villano **“Environmental Law in Argentina”** published in July 2012 by
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NEWSLETTER EMPRESARIAL

ENERO 2013 – JANUARY 2013

Includes an International IP Law Section in English

I.- NORMAS LEGALES

1. **Marcas. Arreglo de Niza Décima Edición.**

II.-

**International IP Law
Section in English**

1. **Filing a Legal Rights Objection at WIPO: What you Need to Know.**

Source: www.wipo.org

I.- NORMAS LEGALES

- I. 1. **Marcas. Arreglo de Niza Décima Edición.**

Mediante Resolución 297/2011 del Instituto Nacional de la Propiedad Industrial (INPI) se establece que la Décima Edición del Arreglo de Niza entrará en vigor en ARGENTINA a partir del 01 de Enero de 2013. Publicado en el B.O. de fecha 06.12.12. En internet: www.boletinoficial.gov.ar

II.-

**International IP Law
Section in English**

II.1.

Filing a Legal Rights Objection at WIPO: What You Need to Know.

The WIPO Arbitration and Mediation Center has been appointed by ICANN as the exclusive provider of dispute resolution services for trademark based “pre-delegation” Legal Rights Objections under ICANN’s New gTLD Program. This mechanism forms part of the avail-

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able
[Trademark Rights Protection Mechanisms for New gTLDs.](#)

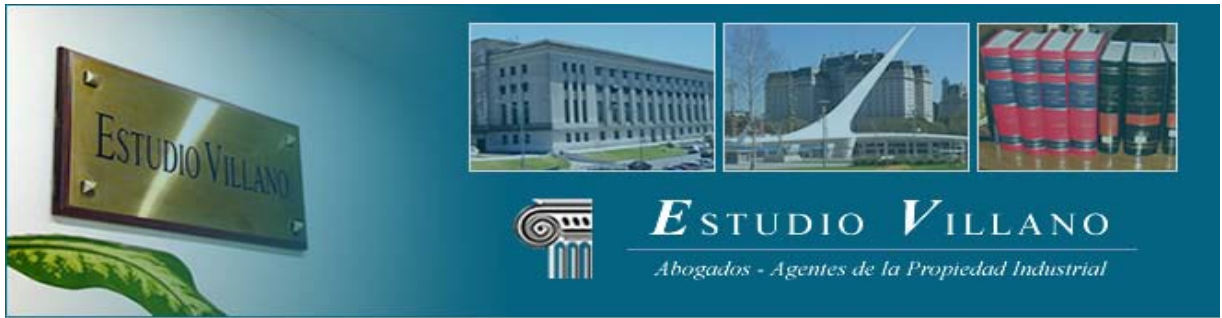
Below are responses to some frequently asked questions about Legal Rights Objections; these responses summarize information found in the authoritative [ICANN Applicant Guidebook](#). ICANN also separately provides an [Objection and Dispute Resolution Fact Sheet](#) and [webpage](#).

- [What is a Legal Rights Objection?](#)
- [Does ICANN offer other types of objection options?](#)

- [What criteria will a panel use to determine the outcome of a Legal Rights Objection?](#)
- [Until when can a Legal Rights Objection be filed?](#)
- [How does a rights owner submit a Legal Rights Objection?](#)
- [Is it necessary for an applicant to file a response to a Legal Rights Objection?](#)

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- [How much does it cost to file/defend a Legal Rights Objection?](#)
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- [Who are the experts available for appointment?](#)
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- [What happens if there is more than one Objection to an applied-for New gTLD?](#)

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What is a Legal Rights Objection?

Prior to ICANN’s approval of a New gTLD, third parties may file a formal objection to an application on several grounds, including, for trademark owners and Intergovernmental Organizations (IGOs), on the basis of a “Legal Rights Objection.”

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When such an objection is filed, an independent panel (comprised of one or three experts) will determine whether the applicant’s potential use of the applied-for gTLD would be likely to infringe (described below) the objector’s existing trademark, or IGO name or acronym.

Does ICANN offer other types of objection options?

To address potential disputes over new gTLD applications, ICANN offers three other types of pre-delegation objection-based dispute resolution procedures which are not administered by WIPO, namely, “String Confusion Objection,” “Limited Public Interest Objection,” and “Community Objection.” For the latter two types of objections, ICANN is also making available an “Independent Objector” by way of public service. ICANN has furthermore established a process for the ICANN Governmental Advisory Committee (GAC) to provide

“GAC Advice on New gTLDs” concerning applications identified by governments as problematic. For more detailed information on all ICANN objection options, see [Module 3](#) of the ICANN Applicant Guidebook.

What criteria will a panel use to determine the outcome of a Legal Rights Objection?

As provided for in section 3.5.2 of the ICANN Applicant Guidebook, the independent panel will determine whether the potential use of the applied-for gTLD by the applicant:

(i) takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym, or
(ii) unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or

(iii) otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

The panel will ordinarily determine the merits of the objection based solely on the parties’ pleadings, and may make reference to a range of non-exclusive consideration factors listed below.

For an objection based on trademark rights, the panel will consider the following non exclusive consideration factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector’s existing mark.
2. Whether the objector’s acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the

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gTLD, as the mark of the objector, of the applicant or of a third party.

4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.

6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the pur-

ported or likely use of the gTLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

For an objection based on rights in the name or acronym of an IGO, the panel will consider the following non-exclusive consideration factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO.
2. Historical coexistence of the IGO and the applicant's use of a similar name or

acronym. Factors considered may include: a. Level of global recognition of both entities; b. Length of time the entities have been in existence; c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6ter of the Paris Convention for the Protection of Industrial Property.

3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym.

4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

5. Whether the applicant's intended use of the applied-for gTLD would create a

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likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

Until when can a Legal Rights Objection be filed?

Subsequent to ICANN's closing of its new gTLD application window (which ran from January 12 to May 30, 2012), and announcement/posting of all applications, the objection filing window commenced on June 13, 2012.

Currently, the objection filing window is anticipated to be nine months, i.e., from June 13, 2012 to March 13, 2013.

(Concurrent with the objection filing window, ICANN is undertaking so-called Initial Evaluation of applications for compliance with ICANN Applicant Guidebook formalities; ICANN has confirmed in [a webinar](#) that Initial Evaluations are expected to conclude in June

or July 2013, but that the objection filing window will close on January 12, 2013.)

How does a rights owner submit a Legal Rights Objection?

All Legal Rights Objections must be submitted electronically to the WIPO Center by email tolro@wipo.int using the WIPO Center's [LRO Model Objection](#) with a copy of the objection to ICANN and the applicant. The objection filing fee must be submitted at the time of filing.

An objection must contain at least the following: (i) the names and full contact information of the objector; (ii) a statement of the objector's basis for standing under the procedure; and (iii) a confirmation of the basis for the objection (i.e., "Legal Rights Objection") including "an explanation of the validity of the

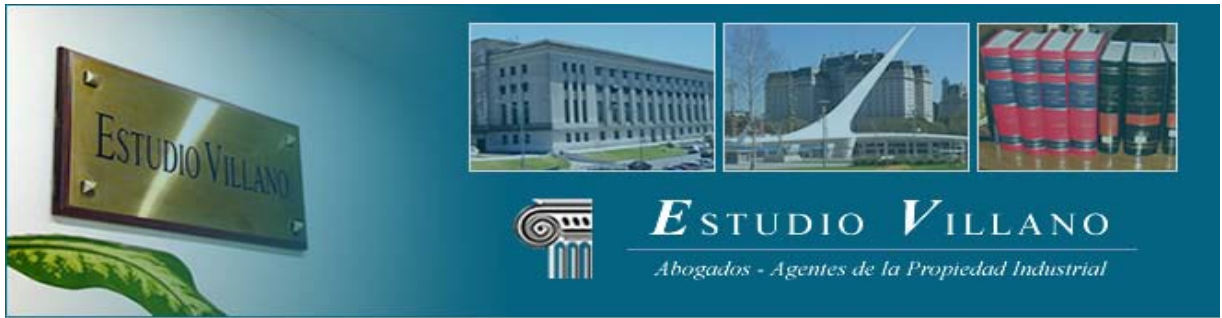
objection and why the objection should be upheld."

Is it necessary for an applicant to file a response to a Legal Rights Objection?

Responses must be submitted electronically to the WIPO Center by email to lro@wipo.int using the WIPO Center's [LRO Model Response](#) with a copy to ICANN and the objector. The response filing fee must be submitted at the time of filing of the response.

A response must contain at least the following: (i) the names and full contact information of the applicant; and (ii) a "point-by-point response to the statements made in the objection." An applicant's failure to reply to an objection would be considered a "default" and would result in the objection being deemed successful.

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What are the main stages of a Legal Rights Objection?

On receipt of an objection or response, the WIPO Center will conduct an administrative compliance review and process the case filing fee. Any administrative deficiencies must be corrected within five (5) days of notification by the Center. Within 30 days of the close of the objection window, ICANN will publish a "Dispute Announcement" listing all administratively compliant objections. The WIPO Center will then notify applicants of any objections; applicants will then have 30 days to file a response. Within 30 days of receiving a response, the WIPO Center will appoint the expert panel. Normally the panel will render its determination within 45 days of appointment.

A graphic overview is provided by the respective "[Objection and Dispute Resolution](#)" and "[Evaluation Process](#)"

flow charts found in the ICANN Applicant Guidebook.

How many rounds of pleadings are involved?

While the panel has discretion to order or admit additional written statements, the ICANN dispute resolution procedure typically contemplates a single round of pleadings.

Are there hearings?

Only in exceptional cases may a panel hold a hearing (by videoconference if possible).

Can the parties mediate/settle their dispute?

In the event the parties wish to participate in mediation/settlement negotiations, at any point during the proceedings, they may jointly request a 30-day suspension. The WIPO Center can assist the parties in finding an appropriately qualified mediator to help the parties in seeking to reach a mutually satisfactory settlement of their dispute, under the [WIPO Mediation Rules](#). In such event, the WIPO Center will not charge any additional fee for its mediation case administration services.

How much does it cost to file/defend a Legal Rights Objection?

For a case involving an objection to one application (i.e., for one gTLD) to be

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decided by one expert, the fee payable upon filing will be USD 10,000 for each party (this includes a non-refundable USD 2,000 case administration fee), subject to a refund of the expert fee (USD 8,000) to the prevailing party. Different fee arrangements apply to three-member panels and to possible consolidation scenarios; full details are provided in the [WIPO Schedule of Fees for New gTLD Dispute Resolution](#).

For all objections and responses filed with WIPO, the initial fee to be paid at the time of filing of the objection or response is 10,000 (which covers the WIPO DRSP fee and Panel fee). Any applicable reduced Panel fees specified below (i.e. where a consolidation scenario is applied by WIPO in accordance with the WIPO Rules for New gTLD Dispute Resolution), would be refunded to the appropriate party from the initial filing fee, after the close of proceedings.

Payments may be made by any of the following means: bank transfer, credit

card, WIPO Account. Please see the [Schedule of Fees and Costs: New gTLD Pre-Delegation Legal Rights Objection Procedure](#) for more details.

Non-payment of fees by an objector will result in rejection of the objection, without panel appointment. Non payment of response fees by an applicant will result in the objection being deemed successful.

Are there language requirements?

In all cases, the language of proceedings is English. According to the ICANN Applicant Guidebook, "Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text."

Are there word/page limits?

The substantive portion of an objection or response is limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The objector or applicant must also list, describe and provide copies of any attached supporting evidence.

Who are the experts available for appointment?

The WIPO Center has posted a [list of experts](#) available for appointment prior to the start of the objection filing period. This list takes into account requirements of professional expertise and may be subject to additional development by the WIPO Center in light of case needs. As part of the process of appointment to an actual case, experts are required to affirm their neutrality by signing the WIPO Center's [LRO Statement of](#)

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[Acceptance and Declaration of Impartiality and Independence.](#)

How is the expert panel appointed?

Unless the parties agree on a three-member expert panel, for a single-member expert panel the WIPO Center will appoint the expert in its sole discretion. Where the parties agree on a three member expert panel, each party may submit a list of three candidates from the WIPO Center’s list of experts, one of whom would be appointed as the respective party-elected expert co-panelist; the WIPO Center will then provide the parties with a list of five candidates from the WIPO Center’s list of experts for the parties’ respective ranking, with a view to the WIPO Center’s appointment of the third (presiding) expert panelist.

What are the remedies available?

The remedies are limited to the success or dismissal of the objection. There are no monetary damages, but the prevailing party is entitled to a partial refund of the panel fee (as described above). According to the ICANN Applicant Guidebook, a panel determination is “considered an expert determination and advice that ICANN will accept within the dispute resolution process.” Such determination is independent of any determination under either of the other types of ICANN objection options available.

What happens if there is more than one Objection to an applied-for New gTLD?

In certain scenarios, such as where multiple objections are filed against the

same application, to streamline costs and for procedural efficiency, the WIPO Center will endeavor where appropriate to consolidate such objections for determination by a single panel; in such consolidated cases, a separate determination would be rendered for each objection. Within seven days of the WIPO Center’s notification of the commencement of the response filing period to the applicant, the parties themselves may also propose, for the WIPO Center’s determination, in its discretion, that objections be consolidated. The WIPO Center may take into account factors such as whether the same or similar application is at issue; any request/opposition of the parties; the trademarks/evidence relied-upon; or expert availability.

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What level of Objection-related information is made publicly available?

Upon registering an objection for processing, the WIPO Center will post on its [website](#) the following information about the objection: the proposed string to which the objection is directed; the names of the objector and applicant; the grounds for objection (i.e., "Legal Rights Objection"); and the date of the WIPO Center's receipt of the objection.

On conclusion of a case the WIPO Center will post the determination in full on its website, unless in exceptional circumstances the panel has deemed it appropriate to redact portions of its determination.

Do parties retain their court options?

The availability of the Legal Rights Objection as an administrative dispute resolution option does not preclude court options which either party may have to submit the dispute to court.

What is the WIPO Center's role in Legal Rights Objections?

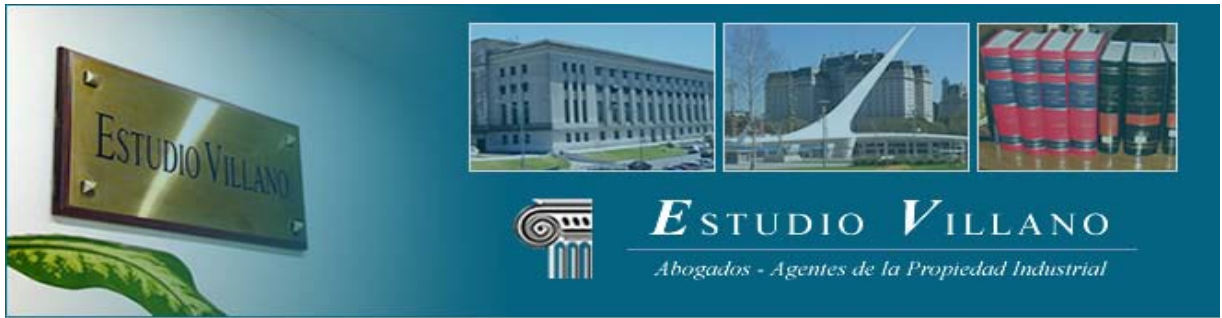
The WIPO Center's role is limited to case administration, including verifying that the objection and response satisfy the relevant filing requirements, issuing case related notifications, appointment of the panel of experts, coordinating communications between the parties and panel, and otherwise facilitating efficient case resolution. The WIPO Center is independent and impartial in this case

administration role; the merits of an objection are determined by the appointed expert.

Background on WIPO's involvement in Legal Rights Objections

In December 2007, ICANN sought "Expressions of Interest from Potential Dispute Resolution Service Providers for [its] New gTLD Program." In January 2008, the WIPO Center signaled its readiness to assist ICANN in devising and applying appropriate trademark-based dispute resolution procedures for New gTLDs. From that time, using the WIPO "[Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet](#)" as a foundation, the WIPO Center has collaborated with ICANN on the development of substantive criteria and procedural rules for pre-(TLD) delegation

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dispute resolution for trademark-based Legal Rights Objections as set out in [module 3.5.2 of the ICANN Applicant Guidebook](#). The WIPO Center subsequently accepted to administer disputes under the ICANN [Legal Rights Objection Procedure](#); the ICANN Applicant Guidebook includes the resulting [WIPO Rules for New gTLD Dispute Resolution](#) including a [Schedule of Fees and Costs](#).

What trademark protection mechanisms are available after new gTLDs are approved?

Beyond the above-described pre-delegation objection procedures (available prior to any new gTLD being approved and becoming operational), ICANN has established a range of “Rights Protection Mechanisms” (RPMs). These include a Trademark

Clearinghouse (for use in connection with Sunrise periods and Trademark Claims services), a Uniform Rapid Suspension system (URS), and a Post-Delegation Dispute Resolution Procedure (PDDRP). In addition, the existing Uniform Domain Name Dispute Resolution Policy (UDRP) will be applicable to all new gTLDs. More information on these RPMs can be found in the WIPO Center’s overview of [Trademark Rights Protection Mechanisms for New gTLDs](#).

Additional information on WIPO’s involvement in the Domain Name System

WIPO has been engaging with Alternative Dispute Resolution (ADR) for the Domain Name System (DNS) since it conducted the [First WIPO Internet Domain Name Process](#) in 1998 and 1999, which provided the blueprint for ICANN’s adoption of the UDRP. With a globally unique range of jurisprudential

[resources](#), the WIPO Arbitration and Mediation Center is the leading provider of UDRP case administration services; through 2011, it has processed over 22,000 such cases. The Center furthermore has engaged in a range of further activities such as [Sunrises](#), [ccTLD policy advice and case administration](#), and [policy input for New gTLDs](#).

- [WIPO Observations on New gTLD Dispute Resolution Mechanisms](#)
- [Selected WIPO correspondence with ICANN](#)
- [Domain Name Disputes \(including UDRP\)](#)

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Questions?

For more information about the Legal Rights Objection procedure, please direct any inquiries by email to lro@wipo.int, or by telephone to +41 22 338 8247 or (toll free) 0800 888 549 .

More detailed information can be found in the ICANN [Applicant Guidebook](#).

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Estudio Villano

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