The Battle for Critical Internet Resources: South America vs. Amazon.com, Inc.

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Abstract

Purpose – To analyze the controversy about the allocation of critical Internet resources generated by ICANN's new gTLD program with a particular focus on the .AMAZON TLD.

Methodology/approach/design – This article presents an exploratory case study about the .AMAZON controversy. The initial analysis of this ongoing research is based on data collected from various reports and media coverage on ICANN's new gTLD policy. The article draws from political economy theory to analyze disputes about critical Internet resources.

Findings – This article discusses preliminary findings of the .AMAZON case, a contested prime example in ICANN's efforts to extend the Internet's domain name space.

Practical implications – The findings may inform related controversies in the gTLD program and contribute to a differentiated understanding of CIR allocation in Internet governance, and respective policy-making.

Originality/value – The value of this article is the specific discussion of the .AMAZON case in the larger context of ICANN's new gTLD program, and its analysis that describes the controversy from a property rights perspective.

Keywords: ICANN, gTLD, Amazon.com, .AMAZON, Critical Internet Resources (CIR), Internet governance, property rights.

INTRODUCTION

Contentions about critical Internet resources (CIR) have been major forces in the formation and institutionalization of Internet governance. The Internet governance regime has evolved from these still ongoing debates and has received much attention in scholarly studies. As Mueller (2010) points out, Internet name and number resources represent a very important element within the technical Internet infrastructure over which governments have only limited control.

The Internet Corporation for Assigned Names and Numbers (ICANN) is a private non-profit organization, and has been under contract with the U.S. Department of Commerce to oversee and administer the Internet Assigned

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Numbers Authority (IANA) functions, including the management of the Domain Name System (DNS) (Mathiason, 2009; Raja, 2013). ICANN operates at the top of the DNS hierarchy, the "root zone" (Zhu, 2012). Those unique names and numbers associated with the root zone, including domain names, IP addresses, and AS numbers, are referred to as critical Internet resources (e.g., IGF, 2010; Mueller, 2010). The new generic Top-Level Domain (gTLD) program, which provides the context for this article, is a recent ICANN program that will lead to major changes in the Internet's address space and affect the allocation of critical Internet resources.

The program has raised a new round of debates on the allocation of Internet top-level domain names, such as .WINE and .BOOK, and has led to numerous filed objections against some applications in which various third parties saw their interests or material rights threatened or violated. This article addresses the political economy of critical Internet resources, particularly in regard to the creation of new gTLDs and the controversy that followed. For this purpose, we focus on the .AMAZON case, which received considerable attention. The U.S. Internet retail giant Amazon.com, Inc. filed an application for the new gTLD .AMAZON. This application has been disputed in a concerted effort by multiple South American governments who have territorial interests in the Amazon region. At the core of this controversy is a clash of interests between a private U.S. corporation to assert the brand that it built and has used over the last 19 years, and the governments of multiple South American nation-states, representing the interests of the South American people to preserve a name that reinforces the preservation of the Amazon region, and which has been used for the last 500 years (De Carbaxal, 1501).

The purpose of this article is to analyze the controversy over the .AMAZON gTLD. The article draws from earlier work in Internet governance that applied political economy theory to examine the Internet's domain name space. It examines the .AMAZON case with regard to the implications of assigning a TLD to a private corporation with a particular focus on geographical names, and draws insights from this controversy on dispute mechanisms and dynamics.

This article reports on an ongoing research effort to study the .AMAZON case; as such the analysis and findings stated here should be considered as preliminary. The analysis is based on data collected from GAC reports, ICANN policy reports, news articles, and relevant policy websites, and blogs, covering ICANN's new gTLD policy.

The structure of the article is as follows: It first introduces some key Internet governance entities and concepts to set the stage for discussing the new gTLD program and the .AMAZON case. Section 2 provides a brief overview of political economy as a theoretical lens to examine resource allocation in Internet

governance. Sections 3 and 4 discuss the new gTLD program and provide an analytical narrative of the .AMAZON controversy. The article ends with concluding thoughts.

1. BACKGROUND

This section presents an overview of ICANN's role as the administrator of the DNS root zone, and short descriptions of relevant entities and terms. It further includes a brief outline of ICANN's mechanisms for solving legal disputes related to domain names.

ICANN and the GAC

The Internet Corporation for Assigned Names and Numbers (ICANN) was created in 1998 as a private non-profit organization under the laws of the State of California (Take, 2012). Its multi-stakeholder governance model involves governments, the private sector, and civil society. As a matter of fact, the creation of ICANN was the result of negotiations between different stakeholders, including the technical community, U.S. government agencies, intellectual property rights holders, and private sector corporations (Mathiason, 2009).

As stipulated in its bylaws, ICANN's board of directors has no representation of national governments or intergovernmental entities. The Government Advisory Committee (GAC), representing governments and a few international governmental organizations, can advise ICANN's board of directors on public policy issues. Its advice, however, is nonbinding (ICANN, 2013a). Even though the board of directors is the highest authority, governments have the opportunity to influence ICANN's decision-making through the GAC, but only if ICANN's board of directors seeks comments from the GAC on a particular policy issue. The GAC only acts in matters where ICANN's policies, laws, and international agreements need to be "harmonized" or when ICANN's policies may affect public policy issues (Take, 2012).

Today, ICANN works as a global multi-stakeholder organization, whose function is to oversee a number of Internet-related functions, such as the domain name registration procedure (Raja, 2013). The IANA contract grants ICANN the authority to create policies to regulate the DNS root zone and keep track of the Top-Level Domains (TLD), the subordinate level of name space within the root (Zhu, 2012). In this condition, ICANN was charged by the U.S. Department of Commerce to address the problem of the scarcity of domain names since domain names are limited, contrary to popular believes (Mathiason, 2009).

Critical Internet Resources (CIR)

ICANN operates at the top of the DNS hierarchy, the root zone (Mathiason, 2009; Mueller, 2002) which is a key area for Internet governance and critical Internet resources (CIR) (IGF, 2010). During the 2007 Internet Governance Forum in Rio de Janeiro, the term "critical Internet resources" dominated a significant part of the discussion. In the Internet policy realm, this term refers to the governance debate about ICANN's role and the administration of the Internet's naming and addressing domains (Huston, 2007).

According to the Working Group of Internet Governance (WGIG), CIR refers to the:

> "… administration of the domain name system and Internet protocol addresses (IP addresses), administration of the root server system, technical standards, peering and interconnection, telecommunications infrastructure, including innovative and convergent technologies, as well as multilingualization. These issues are matters of direct relevance to Internet governance and fall within the ambit of existing organizations with responsibility for these matters." (WGIG, 2005)

In this scenario, the term "critical Internet resources" refers to specific issues, such as the "governance of Internet standards, domain names, and IP addresses, and to the interconnection and routing arrangements among Internet service providers" (Mueller, 2010, p. 215). As it can be inferred from the WGIG statement above, this is the reason why the role of ICANN has become so important: ICANN is the entity that controls these valuable resources.

Domain Name System (DNS)

The Internet is considered the biggest directory service, and in that way, each point in the network needs a name (Mathiason, 2009). In the Internet infrastructure, that name is called a "domain name", and it is identified by a text-based URL, known as a "host name", such as www.syr.edu, to visit the website of Syracuse University in the United States (Mathiason, 2009; Mueller, 2002). Every domain name is associated with a number, an "Internet Protocol (IP) address", and the whole picture is known as the "Domain Name System (DNS)". The DNS is called an "association number", it translates host names, such as www.syr.edu, into an IP addresses, such as 123.4567.891.011 (Wang, 2003).

Top-Level Domains (TLDs)

Multiple activities on the Internet, like email or the World Wide Web (www), use domain names instead of Internet Protocol (IP) numbers as addresses. When Internet packets flow across the network, the domain names are

translated into IP addresses. Both kinds of addresses – domain names and IP numbers – are valuable resources, "a kind of virtual real estate that can be bought and sold" (Mueller, 2002, p.6).

Top-level domains (TLDs) are part of an Internet address; they (were originally intended to) tell Internet users what sort of site they are visiting, such as ".COM" for a commercial or business website (Lipton & Wong, 2012). By June 2012, there were about 250 country code top-level domains (ccTLDs), which represent the identity of each nation-state on the Internet, such as .CH (for Switzerland) and .PE (for Peru). There were also 21 generic top-level domains (gTLDs), such as .COM, .ORG, or .EDU. The only entity that can create new TLDs is ICANN. Only ICANN has the authority to make changes in the root zone.[1] From a technical point of view, the root zone can be defined as the computer file that authorizes TLDs, but the root zone is more than that (Arthur, 2012). As Mueller (2002) explains, the root zone is the point of centralization in the Internet's decentralized architecture and "stands at the top of the hierarchical distribution of responsibility that makes the Internet work". It further represents the start point in a "long chain of contracts and cooperation" between Internet service providers and users who use theses addresses and names to surf the web and for data packets to arrive at their correct destinations (Mueller, 2002).

Uniform Domain Name Resolution Policy (UDRP)

In 1999, ICANN created the Uniform Domain Name Resolution Policy (UDRP) to address problems related to cybersquatting and protect intellectual property rights. According to the UDRP policy, a domain name held by a domainer[2] will be transferred, deleted, or modified in the following circumstances (ICANN, 1999):

> 1) The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.
>
> 2) The domainer does not have rights or legitimate interests in respect of the domain name.
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> 3) The domain name in question has been registered and is being used in bad faith.

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[1]The root zone is the most authoritative telephone directory for the Internet. If a top-level domain is not in the directory, it does not exist.
[2]A domainer is a person or an entity that buys or sells domain names for the purpose of generating profits through speculation or advertising related to popular or sought-after domain names.

2. POLITICAL ECONOMY OF DOMAIN NAMES

The battle between South America and Amazon.com, Inc. for the .AMAZON gTLD can be described by using property rights, a common concept in political economy. For Gilpin (1987) the term 'political economy' is constructed through the parallel existence of and the interaction between the 'state' and the 'market':

> "(…) almost all political economists assume that markets are embedded in larger sociopolitical structures that determine to a considerable extent the role and functioning of markets in social and political affairs and that the social, political, and cultural environment significantly influences the purpose of economic activities and determines the boundaries within which markets necessarily must function (Gilpin, 1987, p.74)."

The modern definition of the term includes the relationship between economics and politics in nation-states and across different nation-states; depending upon the case, private and public institutions may be included (Timimi, 2010). As a theory, political economy focuses on the explanation of how political institutions, the political environment, and the economic system influence each other (e.g., Weingast & Wittman, 2008). This is important because the analysis of the interaction between political economy forces and the potential outcome can generate a set of policies to help policy makers find an equilibrium while addressing concrete problems (Hoekman & Kostecki, 2009).

The academic literature covers a variety of meanings for the term 'political economy'. In this article, we refer to it as the application of an economic rationale to explain the contentions over the assignment and allocation of resources in the new gTLD program, which constitutes an extension of the domain name space.

Mueller (2002) pioneered the use of political economy in Internet governance. In his book "Ruling the Root – Internet governance and taming of cyberspace", he draws from institutional economic theory to analyze the institutionalization of Internet governance, which culminated in the formation of a new governance regime. The Internet's infrastructure is beyond the control of a single entity. Its ability to connect information and people all over the world transformed the political economy of communication and information (Mueller, 2010).

In a similar vein, Park (2008) analyzed the political economy of country code top-level domains (ccTLDs) using regime theory. In the Internet, "names and numbers" are scarce, valuable resources. While the Internet's domain space provides, in theory, superabundant combinations for names, in practice, it is a

particular instance of a name, such as www.syr.edu, that is a rivalrous and excludable resource. The development of Internet governance is closely intertwined with the battle over the appropriation of these resources and the institutionalization of norms, rules, and regimes to govern them (e.g., the Uniform Domain-Name Dispute-Resolution Policy to resolve trademark conflicts related to domain names).

Property rights provide a tool to conceptualize the conflict over the allocation of resources, such as domain names. Mueller (2002, p. 60) defines property rights as rights that "… assign decision-making authority over resources to individuals or groups. They are defined by formal laws and regulations as well as by informal customs and norms that affect the way the formal specifications are put into practice". Property rights provide the authority to use, sell or transfer a resource or allow others to use or exclude others from using it. In practice, however, property rights do not provide absolute control, but may be restricted, for instance, through contractual agreements.

With regard to the new gTLD program as described in the following section, it extends the domain space and generates conflicts around competing applications, interests and objections. From a property rights perspective, acquiring a TLD under this program does not establish "ownership" over a particular gTLD. The agreement between ICANN and the registrar gives the latter the right to use the gTLD, but the property rights are limited (e.g., see 7.11 'Ownership Rights' in draft for a new gTLD registry agreement (ICANN, 2012a)). Further, the registrar is contractually bound not to transfer the TLD to others and needs to follow certain policies that restrict names and character strings used in domains (e.g., see 2.6 'Reserved Names' in draft for a new gTLD registry agreement (ICANN, 2012a)). While the gTLD program builds upon existing regimes, the adaption of existing institutions to establish the gTLD program was significant and required considerable efforts.

3. THE NEW gTLD PROGRAM

The new generic top-level domain (gTLD) program was launched in June 2011. However, preparatory steps for the new program, informed by previous experiences with introducing new TLDs, go back further. From 2005 to 2007 ICANN's Generic Names Supporting Organization (GNSO) conducted a policy development process, assessing the creation of the new gTLD program. During its 32nd International Public Meeting, held in Paris in 2008, the ICANN board passed 19 policy recommendations concerning new gTLDs. The purpose of the new gTLD program is to extend the domain name space and to enhance competition, increase innovation, and widen the choice in Internet domain names (ICANN, 2013b). The domain name space has been extended in previous

years, to include top-level domains such as .AERO, .BIZ, .COOP, .INFO, .MUSEUM, .NAME, and .PRO in 2000; and .ASIA, .CAT, .JOBS, .MOBI, .POST, .TEL, .XXX, and .TRAVEL in 2004. These extensions were not free of controversies either. The .XXX gTLD, designating adult content, for instance, led to particular sharp debates about moral and content regulation, delaying approval and actual operation until spring 2011. Thus, it is not astonishing that experts foresaw that the new gTLD program would cause trademark issues and litigations (Schonfeld, 2011).

ICANN has to evaluate the questions of when, how, and under what circumstances new gTLDs would be added, since only ICANN is responsible for this particular function under the current regime (Weinberg, 2002). The new gTLD program was open to anybody with sufficient financial means to file an application for a new gTLD from January to May 2012. At the beginning of the 2012 expansion, ICANN declared that it was not possible to estimate how many applications would be received, but initial expectations from 2011 estimated between 300 and 1,000 new gTLDs (Warren, 2011). However, by June 13, 2012, ICANN had received 1,930 gTLD applications, the most popular being .APP, .HOME, .INC, and .ART. (ICANN, 2012d; INTA, 2012). Out of the submissions received within the 2012 application window, 230 are directly contested strings with more than one applicant (e.g., .APP submitted by 13 separate entities; .HOME, applied for by 11 different parties) (ICANN, 2012d). The gTLD .AMAZON was one of the applications that ICANN received.

The resolution process proposed by ICANN to address multiple registrations for the same gTLD was through an auction mechanism. Applicants would resolve the conflict themselves, and the new gTLD would go to the highest bidder (Nazzaro, 2014; Warren, 2011). As of April 3, 2015, from the 1,930 applications, 583 applications completed the gTLD registration, 482 were withdrawn, 65 were not approved and 800 were still being processed. (ICANN, 2015).

Registering a new gTLD comes with significantly high costs, and the commitment lasts for a ten-year period. The initial registration costs approximately USD 185,000 with an estimated cost, including operational costs and legal fees, over a one to two year time period of up to USD 2 million (Angeles, Bagley, Müller, Pinaire, & Vayra, 2010). Organizations that can afford the USD 185,000 registration fee and further costs will be able to register a new gTLD. Table 1 breaks down the various fees, payable to ICANN.

Fee	Description
Initial Registration Fee: USD 185,000	Per initial registration
Fixed Fee: USD 6,250	Per calendar quarter
Registry-Level Transaction Fee: USD 0.25	per domain name and year after 50,000 domain names have been registered

Source: instar CORPORATION, 2014

Table 1 – gTLD Fees

According to Esther Dyson, founding chairwoman of ICANN, the new ICANN program allows the creation of new domains for almost any word or brand someone wants to register. Successful registrants can use the whole new gTLD just for themselves in a closed model. Alternatively, they can open it up to others who can then register a domain under the new TLD. For Dyson, this is a "way for registries and registrars to make money" and recoup their costs (Schonfeld, 2011).

Disputes, Legal Controversies, and Grounds for Objection

If an applicant has the technical, financial, and operational capacity to become the operator of a new gTLD, then the applicant will be granted the registration for that new gTLD, consisting of a string of alpha-numeric characters (Lipton & Wong, 2012). The applicant then becomes the registrar, a single authority, who is responsible for keeping order in that portion of the Internet's domain name space, including solving controversies about ownership and making sure that sites are visible to the rest of the Internet users (Arthur, 2012). However, after a new gTLD is approved and its management delegated to the registrar, it is unclear what kinds of rules should be adopted to ensure appropriate balancing of trademark rights and other interests within that newly created space (Mahler, 2014).

According to Lipton and Wong (2012), empirical evidence shows that "the areas of dispute resolution in the existing domain space have involved: 1) disputes where free expression is heavily implicated (…); and 2) disputes that do not involve trademark interests". Although in the past, ICANN tried to resolve these disputes in the domain space, some scholars argue that mechanisms implemented for that purpose, such as UDRP, are "too heavily weighted" in favor of protecting the interests of trademark holders. However, other important interests are not equally considered. Reasons for this high protection lie in "the power international trademark lobby wielded in the development process" (Lipton & Wong, 2012).

ICANN has established a procedure to object gTLD applications. Table 2 lists four grounds upon which an individual or entity may file a formal objection regarding a new gTLD application (ICANN, 2012a).

Objection Ground	Description
String Confusion Objection	The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.
Legal Rights Objection	The applied-for gTLD string infringes the existing legal rights of the objector.
Limited Public Interest Objection (formerly the Morality and Public Order Objection)	The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.
Community Objections	There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

Source: instar CORPORATION, 2014

Table 2 – Objection Grounds

According to Mahler (2014), legal rights objections are most directly relevant to brand owners. We must remember, however, that in an international context and also in the Internet domain name space, there is no universal legal or economic definition of 'property right' across all legal systems. Although labeled as covering generic "legal rights", ICANN's definition of the grounds for objection makes clear that protecting trademark rights is ICANN's central concern. This is the reason why conflicts within the new gTLD program exist. As currently implemented, the new program leans heavily toward protecting trademark over other interests.

The legal rights objection procedure can be based on common law trademark rights. It involves an assessment of eight factors similar to the "Polaroid factors"[3] (Raja, 2013). Objectors and respondents base their pleadings on Module 3 of ICANN's Applicant Guidebook, and they have objections resolved by a panel of one to three experts appointed by the United Nations' World Intellectual Property Organization (WIPO) (Stanford, 2013).

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[3]When determining the likelihood of confusion over a trademark, courts apply the "Polaroid Factors"; these are used as guidelines, but not all factors may be considered in a given case. The factors are derived from and named after the 1961 case Polaroid Corp. *v.* Polarad Elecs. Corp.

Critiques to the ICANN policy and the gTLD program

The new gTLD program has led to considerable disputes within ICANN's multistakeholder community. Major actors and their positions against the program include: (Froomkin, 2011):

1.Intellectual property rights-holders, who are concerned that the new gTLDs will increase trademark infringement opportunities and monitoring costs.

2.Governments, which argue about the semantic content of potential new gTLDs on public order grounds.

3.Non-governmental actors, who expressed technical or aesthetic objections to the program itself.

ICANN was criticized by some stakeholders for "policy mistakes" within the new program. Main issues included:

1. Allowing new gTLDs to be run as a "closed registry":

This means that one company, the applicant and registrar in this case (if the gTLD is granted) keeps the benefit of using the gTLD on a closed basis for its own and sole benefit. This means that, for instance, if Google is granted the TLDs .EARTH, or .CAR, no one other than Google is entitled to register domains, such as SOMETHING.EARTH or SOMETHING.CAR (Alleman, 2014b).

On this matter, it is important to remember the provisions of ICANN's Applicant Guidebook which states that the "beneficiary to whom the new gTLD is reserved is the only one permitted to exploit, or to authorize others to exploit, worldwide the domain names associated with the applicants suffix consisting of this gTLD" (Passa, 2014, p.1).

2. ICANN did not limit the number of applications per company:

Part of the civil society showed concerns because ICANN did not limit the number of applications per company. Reasons for this lie in the fact that one company and its partners would be able to apply, and eventually control, a substantial part of the market (Berkens, 2012).

3. Unclear ICANN policy on similar strings:

One of the main problems is that if a similar string for a new gTLD is chosen by multiple applicants, this may lead to confusion. On this matter, ICANN's Applicant Guidebook established a string contention procedure (ICANN, 2012a):

> "Module 4 - String Contention Procedures
>
> This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.
>
> 4.1 String Contention
> String contention occurs when either:
>
> 1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
>
> 2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.
>
> ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. (…)"

To resolve the matter of string contention, ICANN applies an algorithm to compare gTLD strings in order to test for "similarity". Eventually, however, human judgment will make the final call (Berkens, 2012). For instance, how confusing can .NGO, .NG (Nigeria's ccTLD), and .NO (Norway's ccTLD) be? The critics of the program argue that ICANN lacks detailed standards for the examiners to decide about confusingly similar strings (Berkens, 2012).

4. THE .AMAZON CONTROVERSY

In early 2012, the private company Amazon EU S.à r.l. applied for 76 top-level domains, and the cost of those applications was around USD 14 million. Among the applications, there were 11 internationalized domain names, which include brand-related terms like .AUDIBLE, .KINDLE, and the controversial .AMAZON. Other applications include generic terms, such as .WOW, .GAME, .FREE, .LIKE, .SHOP, and .MAIL. In the case of .AMAZON, the company's purpose was to exclusively use the top-level domain for its various online services (Watts, 2013). According to the registration rules, the

board of ICANN should evaluate the multiple requests of Amazon EU S.à r.l. and grant or deny the registration (ICANN, 2012c). According to the applicant guidebook, a company can reserve its own name, its trademark, or one of its trademarks as a new gTLD. On this subject, geographical names and purely generic product or service names can also be reserved (Passa, 2014). Despite the gTLD rules, observers argued that if Amazon EU S.à r.l. succeeds with its registration, the world of Internet commerce would be significantly reshaped (Nazzaro, 2014).

With similar intentions, Google applied for 101 gTLDs, including 23 strings similar to Amazon's applications, a situation that led to a direct conflict between these two large Internet corporations (Nazzaro, 2014; Sloan, 2012). At the same time, a group of businesses and organizations, such as Nokia, Microsoft, Oracle, Expedia, TripAdvisor, Hotwire, and Kayak, lobbied against Google's and Amazon's gTLD applications (Alleman, 2014b).

As established by the applicant guidebook, the registry operator of a new string (the beneficiary of a new gTLD reservation) is legally entitled to run a gTLD as a "closed registry". The registry operator has two options: 1) to keep the new gTLD for its own use, or 2) to open its gTLD and allow third parties to reserve domain names associated with this string, which are known as second-level registrations in this gTLD. In the second case, the applicant becomes the registrar of these third-party domain names and is entitled to set its naming conventions and create the conditions under which third parties can reserve these domain names (Passa, 2014). In the specific case of .AMAZON, Amazon EU S.à. r.l. chose the first option and decided to keep a closed registry policy (Alleman, 2014a). The company did not plan to offer any second-level domain registrations to the public. That is, for every gTLD Amazon is awarded, only this company and its partners could register domains, such as SOMETHING.AMAZON or SOMETHING.KINDLE (Alleman, 2014a, 2014b).

After the .AMAZON filing took place, the governments of eight South American nation-states, led by Brazil and Peru[4], which share sovereignty over the geographical Amazon region, raised objections to the .AMAZON gTLD application (RPP, 2013). It is crucial to understand that the South American governments are not claiming a .AMAZON gTLD in any form. They claim that the words "Amazon", "Amazonas", "Amazonia", and "Amazonía" (with accent mark) and their variants refer to a geographic region that covers several nation-states in South America. Peru's Minister for Foreign Affairs, Mr. Miguel Palomino, stated that the South American governments do not question the

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[4]Several Latin American nation-states protested against the Amazon EU S.à r.l. application, including Brazil and Peru. The Amazon River flows through the territories of those two nation-states, and it covers 2/3 of the river's 5.5 million km^2 plain, known as Amazonia (Passa, 2014).

brand, but he pointed out that "a geographic name that is the heritage of the Amazonian countries cannot be an object of an Internet domain" (Mitnick, 2013).

The main concern of South American governments is based on the fact that where a name or cultural indicator is protected as a trademark, the holder of the rights in the market could take full advantage of all of the protections granted by the trademark-focused domain name regulations (Lipton & Wong, 2012). As a result, the shared perspective of the South American governments is that the U.S. Internet retail company should not obtain, appropriate, or commercialize the .AMAZON gTLD. The South American governments base their objections on the need to protect and create awareness about one of the largest bio-systems on the planet (Watts, 2013).

On December 17, 2012, Amazon EU S.à. r.l. communicated to the Brazilian and Peruvian governments that the company was not going to withdraw its application for the new .AMAZON TLD (RPP, 2013). Shortly before that, the Latin American governments tried to change the company's mind. They used a procedure known as "early warning" to present an objection to ICANN's Governmental Advisory Committee (GAC) (ICANN, 2012b). The GAC advises ICANN, but its conclusions are not binding (ICANN, 2013a). In its advisory opinion, the GAC favored the South American governments' position and advised against the registration of .AMAZON (ICANN, 2012b).

The early warning recommends that the applicant withdraw its application because the string also refers to an important region of South America, part of the sovereign space of eight nation-states and also coincides with the name of an international organization, the "Amazon Cooperation Treaty Organization", from which many of these nation-states are members (ICANN, 2013c).

The GAC members Brazil and Peru provided the following rationales in the early warning:

> "The Amazon region constitutes an important part of the territory of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, due to its extensive biodiversity and incalculable natural resources. Granting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for purposes of public interest related to the protection, promotion and awareness rising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." (ICANN, 2012b)

Observers speculated that the U.S. government may lobby in favor of Amazon EU S.à. r.l. (Mitnick, 2013). As a matter of fact, initially, the U.S. government opposed the GAC objection to geographic strings, such as

.AMAZON. However, on July 5, 2013, the National Telecommunications & Information Administration (NTIA), the U.S. government's representative to the GAC, announced that the U.S. government would remain neutral in controversies related to specific geographic strings, such as .SHENZEN (IDN in Chinese), .PERSIANGULF,.GUANGZHOU (IDN in Chinese), .AMAZON (and IDNs in Japanese and Chinese), .PATAGONIA, .YUN, and .THAI (NTIA, 2013). Nevertheless, the U.S. government position was that "sovereignty" is not a valid argument for objecting to the use of terms because there is no "international consensus that recognizes inherent governmental rights in geographic terms" (NTIA, 2013). Finally, the U.S. government clarified that its position in reference to these specific gTLD applications "does not prejudice future United States positions within the ICANN model or beyond" (NTIA, 2013).

After the U.S. government declared itself neutral, the GAC presented a consensus objection regarding the .AMAZON string and all its internationalized domain names in various scripts (Murphy, 2013). From that moment, the controversy was limited to two positions:

> "whether the rules and principles cited in support of these objections and reiterated in the unfavourable advice issued by the GAC are of such nature as to oblige ICANN to reject the application filed by Amazon (A) or, to the contrary, whether the rules and principles cited by Amazon in its response of 23 August 2013 to the GAC's advice oblige it to reserve the new gTLD '.amazon' (B) (Passa, 2014, p.3)".

The legal issue to resolve was whether a geographical name not recognized by any statute or by registration should have some level of legal protection, when the products from the geographical area in question are known to have special characteristics or qualities. Facing this problem, at the beginning of 2014, ICANN commissioned an independent, third party expert to provide additional advice on the specific legal issues, focusing on legal norms or treaty conventions with regards to the .AMAZON case (ICANN, 2014b). In March 2014, during its Singapore meeting, the GAC encouraged ICANN's board to make a decision about this subject because of the long time that had passed since the early warning was issued (ICANN, 2014a).

By May 2014, ICANN rejected the .AMAZON application, including the Chinese and Japanese translation of the name:

> "Resolved (2014.05.14.NG03), the NGPC accepts the GAC advice identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon, and directs the President and CEO, or his designee, that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5581) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC

advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues. (As cited by Murphy, 2014, para.4)" (Griswold, 2014)

The three applications, in English, Chinese, and Japanese, to register the gTLD .AMAZON would remain "frozen" until Amazon.com, Inc. withdraws them (Murphy, 2014) or until it manages to break the arbitration agreement and find a way to appeal ICANN's decision. The timeline in figure 1 summarizes major events of the .AMAZON controversy.
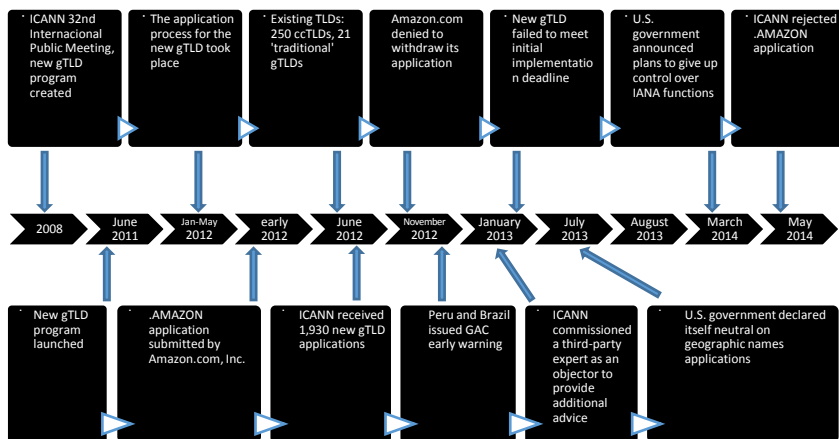

Figure 1 – *Timeline new gTLD program and the .AMAZON controversy*

5. CONCLUDING THOUGHTS

The gTLD program, conceptualized as an extension of the existing namespace within the Domain Name System, can be analyzed from a property rights perspective, including the conflicts that arose from competing applications for a particular gTLD. From an economic perspective, applicants likely consider the gTLD as a significant investment in an Internet-related asset. An application for a gTLD is very costly, but if successful, the gTLD will offer a potentially valuable advantage to private companies who are willing to invest in the visibility of their brand names. The gTLD provides them with property rights the registrar did not have before. Although there is not a universal understanding of the concept of property rights, it helps to solve conflicts over the allocation of 'names and numbers' in the Internet namespace. Property rights provide an individual or groups the authority over an asset. However, the control over the property rights also has limits. In the particular case of the new gTLD program,

it does not establish 'ownership' over a particular gTLD. As mentioned above, the contractual relationship between ICANN and the registrar is not legally clear (Mahler, 2014). The gTLD agreement gives the registrar the right to use the gTLD, but at the same time requires the registrar to fulfill ICANN's technical and legal requirements (ICANN, 2014c). It makes clear that the registrar does not have the capacity to dispose of the gTLD as a property owner could.

The .AMAZON case reveals that the U.S. online retailer's commercial interests in the gTLD are further grounded in an increased level of brand protection. The South American governments, on the other hand, do not want to have .AMAZON registered or even used for any kind of purposes. Their interest is to keep a .AMAZON gTLD non-existent. The analysis of the .AMAZON controversy provides insights into how the processes around the new gTLD program unfolded, which took considerable effort in its institutional preparation. Further, it makes visible the underlying competing values and interests that various stakeholders bring to the Internet governance discussion. While .AMAZON is one of the most prominent controversies about the new gTLD program, many other debates are currently being played out, including .HOME, .APP, .ART, .BLOG, and .LLC (Holly, 2013). The preliminary findings presented in this article may help to inform other controversies related to the new gTLD program and CIR more broadly.

REFERENCES

Alleman, A. (2014a). Amazon.com won't offer domain names to the public. DNW. Retrieved from http://domainnamewire.com/2012/06/14/amazon-com-wont-offer-domain-names-to-the-public/

Alleman, A. (2014b). If .amazon is killed, will Amazon bail on the new TLD program? DNW. Retrieved from http://domainnamewire.com/2013/08/02/if-amazon-is-killed-will-amazon-bail-on-the-new-tld-program/

Angeles, J., Bagley, M., Müller, K., Pinaire, J., & Vayra, F. (2010). To TLD or Not to TLD, That Is the Question. Retrieved from http://www.inta.org/INTABulletin/Pages/ToTLDorNottoTLD,ThatIstheQuestion.aspx

Arthur, C. (2012, June 13). Icann, top-level domains and their expansion. The Guardian. Retrieved from http://www.theguardian.com/technology/2012/jun/13/icann-top-level-domains-explained

Berkens, M. (2012). The Top Policy Mistakes ICANN Made In The New gTLD Program. The Domains. Retrieved July 30, 2014, from http://www.thedomains.com/2012/07/24/the-top-policy-mistakes-icann-made-in-the-new-gtld-program/

De Carbaxal, G. (1501). Descubrimiento del Río de las Amazonas Título Relación del descubrimiento del famoso río grande que, desde su nacimiento hasta el mar, descubrió el Capitán Orellana en unión de 56 hombres Tipo de Documento Manuscrito Materia Orellana, Francisco de Amaz.

Froomkin, A. M. (2011). Almost Free: An Analysis of ICANN's "Affirmation of Commitments." Retrieved from http://papers.ssrn.com/abstract=1744086

Gilpin, R. (1987). The Political Economy of International Relations. Princeton University Press.

Weingast, B. R., & Wittman, D. A. (Eds.) (2008). The Oxford Handbook of Political Economy. Oxford University Press, United Kingdom.

Griswold, A. (2014). Amazon domain: The online retailer lost a bid for the .amazon domain amid South and Latin American protests. Slate. Retrieved May 29, 2014, from http://www.slate.com/blogs/moneybox/2014/05/21/amazon_domain_the_online_retailer_lost_a_bid_for_the_amazon_domain_amid.html

Hoekman, B. M., & Kostecki, M. M. (2009). The Political Economy of the World Trading System. OUP, Oxford.

Holly, R. (2013). The six most contested gTLDs. GEEK. Retrieved from http://www.geek.com/news/the-six-most-hotly-contested-gtlds-1496209/

Huston, G. (2007). On the Hunt for "Critical Internet Resources." CircleID - Internet infrastructure. Retrieved April 12, 2014, from http://www.circleid.com/posts/critical_internet_resources/

ICANN. (1999). Uniform Domain Name Dispute Resolution Policy. ICANN ARCHIVES. Retrieved from http://archive.icann.org/en/udrp/udrp-policy-29sept99.htm

ICANN. (2012a). gTLD Applicant Guidebook. Retrieved from http://newgtlds.icann.org/en/applicants/agb

ICANN. (2012b). GAC Early Warning-Submittal Amazon-BR-PE-58086. Retrieved from https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000&api=v2

ICANN. (2012c). New gTLD Application Submitted to ICANN by: Amazon EU S.ar.l. ICANN. Retrieved from https://community.icann.org/download/attachments/35520774/ICANN+New+gTLD+Application+-+AMAZON.pdf?version=1&modificationDate=1343595148000

ICANN. (2012d). At a Glance By the Numbers - ICANN New gTLDs. Retrieved from http://newgtlds.icann.org/en/program-status/statistics/applications-quick-facts-13jun12-en.pdf

ICANN. (2013a). About The GAC - GAC Website (Main). Retrieved from https://gacweb.icann.org/display/gacweb/About+The+GAC

ICANN. (2013b). Internet Domain Name Expansion Now Underway. Retrieved from http://www.icann.org/en/news/press/releases/release-23oct13-en

ICANN. (2013c). GAC Communique. Durban, South Africa.

ICANN. (2014a). GAC Communique. Singapore.

ICANN. (2014b). NGPC Meeting of 5 February 2014. Retrieved from http://www.icann.org/en/groups/board/governance/reconsideration/14-4/request-annex-uojca-19feb14-en.pdf

ICANN (2015, April 3). Announcement: 03 April 2015 – New Contracting Statistics Released. ICANN new gTLD Updates. Retrieved from http://newgtlds.icann.org/en/announcements-and-media/announcement-03apr15-en

IGF. (2010). Internet Governance Forum. Managing Critical Internet Resources. Retrieved from http://www.intgovforum.org/cms/component/content/article/102-transcripts2010/643-resources

instra CORPORATION. (2014). New gTLDs Pricing. instraCorporation. Retrieved from http://www.instra.com/en/new-gtlds/pricing

Lipton, J., & Wong, M. (2012). Trademarks and freedom of expression in ICANN's new gTLD process. Monash University Law Review, 38(1), 188. Retrieved from http://search.informit.com.au/documentSummary;dn=127843371817386;res=IELHSS

Mahler, T. (2014). A gTLD right? Conceptual challenges in the expanding internet domain namespace. International Journal of Law and Information Technology, 22(1), 27–48. Retrieved from http://ijlit.oxfordjournals.org/content/22/1/27.short

Mathiason, J. (2009). Internet governance: the new frontier of global institutions. London; New York: Routledge.

Mitnick, D. (2013, July 18). Is The GAC Objection To .AMAZON An Abuse Of Power? domainSkate blog. Retrieved from https://domainskate.com/is-gac-objection-to-amazon-and-patagonia-an-abuse-of-power/

Mueller, M. (2002). Ruling the root Internet governance and the taming of cyberspace. Cambridge, Mass.: MIT Press.

Mueller, M. (2010). Networks and states: the global politics of Internet governance. Cambridge, Mass.: MIT Press.

Murphy, K. (2013). Amazon's dot-brand likely doomed as US withdraws geo objection. DomainIncite. Retrieved from http://domainincite.com/13637-amazons-dot-brand-likely-doomed-as-us-withdraws-geo-objection?goback=%2Egde_1840166_member_255992449

Murphy, K. (2014). Amazon's bid for .amazon is dead. DomainIncite. Retrieved from http://domainincite.com/16688-amazons-bid-for-amazon-is-dead

Nazzaro, E. (2014). "Welcome to the New Internet The Great gTLD Experiment" Edward C. Nazzaro Mr. Indonesian Journal of International and Comparative Law, 1(1), 37–71. Retrieved from http://works.bepress.com/edward_c_nazzaro/2/

NTIA (2013, July). U.S. Statement on Geographic Names in Advance of ICANN Durban Meeting. National Telecommunications & Information Administration. Retrieved from http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf

Park, Y.J. (2008). The political economy of country code top level domains. Dissertation. Retrieved from http://surface.syr.edu/it_etd/9

Passa, J. (2014). Governmental Advisory Committee (GAC) Advice – .AMAZON (and related IDNs). ICANN. Retrieved from https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf

Raja, A. (2013). ICANN's New Generic Top-Level Domain Program and Application Results. Intellectual Property Brief, 4(2). Retrieved from http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1079&context=ipbrief

RPP. (2013). Solicitan defender dominio ´amazon´ en internet para países amazónicos | RPP NOTICIAS. RPP Noticias. Retrieved from

http://www.rpp.com.pe/2013-06-25-solicitan-defender-dominio-amazon-en-internet-para-paises-amazonicos-noticia_607669.html

Schonfeld, E. (2011). Esther Dyson On New Top-Level Domains: "There Are Huge Trademark Issues." Tech CrunchBase. Retrieved from http://techcrunch.com/2011/07/21/esther-dyson-top-level-domains/

Sloan, P. (2012). Amazon.com's domain power play: We want to control them all. CNET. Retrieved from http://www.cnet.com/news/amazon-coms-domain-power-play-we-want-to-control-them-all/

Stanford, V. (2013). WIPO panel dismisses objection to Amazon's application for ".tunes" gTLD. Journal of Intellectual Property Law & Practice, 8(11), 826–827. doi:10.1093/jiplp/jpt184

Take, I. (2012). Regulating the Internet infrastructure: A comparative appraisal of the legitimacy of ICANN, ITU, and the WSIS. Regulation & Governance, 6(4), 499–523. doi:10.1111/j.1748-5991.2012.01151.x

Timimi, K. (2010). Political Economy Theory. Economy Watch. Retrieved from http://www.economywatch.com/political-economy/political-economy-theory.html

Wang, L. (2003). Protecting BGP Routes to Top-Level DNS Servers. IEEE Transactions on Parallel and Distributed Systems, 14, 851 – 860.

Warren, C. (2011). 9 Things You Need to Know About ICANN's New Top Level Domains. mashable. Retrieved from http://mashable.com/2011/06/20/new-gtld-faq/

Watts, J. (2013). Amazon v the Amazon: internet retailer in domain name battle. The Guardian. Retrieved from http://www.theguardian.com/environment/2013/apr/25/amazon-domain-name-battle-brazil

Weinberg, J. (2002). "ICANN, 'Internet Stability,' and New Top Level Domains." In L. Cranor & S. Greenstein (Eds.), Communications Policy and Information Technology: Promises, Problems, Prospects 3. MIT Press.

WGIG. (2005). Report of the Working Group on Internet Governance. WGIG. Retrieved from http://www.wgig.org/docs/WGIGREPORT.pdf

Zhu, H. (2012). A Global Network for Scholars of Internet Governance 2012 Annual Symposium. In The Impact of the New gTLD Program on the Internet Governance Regimes of Emerging Economies. Baku,

Azerbaijan.   Retrieved   from   http://giga-net.org/page/2012-annual-symposium