

STATE COUNCIL  
CONSULTATION ROOM AND CIVIL SERVICE  
Speaker consultant: César Hoyos Salazar

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Reference: INTERNET Domain names. Does the domain ".co" have a public nature? Does the Colombian State have the authority to regulate it?

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The Ministry of Communications, Mrs. Angela Montoya Holguín, asks the Room about the legal nature of the so called "dot co", (written .co), used en the Internet addresses registered in Colombia and about the consequences of recognizing a public nature to it. In this vein, she addresses the audience the following consultation:

1. We ask your concept about the public nature of the so-called domain .co
2. Accepting that it is a resource of a public nature, we understand it is a subject intrinsically linked with telecommunications. We ask your concept about this subject.
3. In case of the so-called domain .co being linked with telecommunications, where the resources coming from its exploitation should go?

#### 1. BACKGROUND

The Minister of Communication explains the facts motivating the consultation, the first and main being: the domain .co is the code corresponding to Colombia to identify itself in the directory of countries in the network or Internet, the same as .ca for Canada, .br for Brazil, .fr for France, .it for Italy, .uk for United Kingdom, .us for United States, and so forth for the different countries in the world affiliated to Internet.

She adds that since December 1991, the University of Los Andes has acted as an administrator of the domain .co by virtue of the delegation given by the creating and administrating entities of domains of first level in the international arena, IANA (Internet Assigned Numbers Authority) and ICANN (Internet Corporation for Assigned Names and Numbers).

She notes that according to the regulations of such entities, the administrators of domains of country codes - case of the University in Colombia -, are trustees in favor of the nation and of the Internet global community.

She informs that the University of Los Andes, as an administrator of the domain .co, decided to develop a bidding process to look for an international operator for it. In this vein, and through national and international consultants, different Colombian and foreign enterprises have been invited to participate in the process. As a result, .co, as domain of first level, would no longer exclusively be used to identify Colombia and would become a generic domain, synonyme of company. Taking into account that the generic domain .com is getting used up, it must be attractive for many companies in the world to be able to identify themselves with .co.

The Department of Communications consider itself as having legal powers to intervene to impeach any negotiation given powers to others to commercially exploit the domain .co, restraining Colombia from its exclusive use for the assigned purposes.

The Ministry makes a summary of the main arguments of the Department's approach:

“The management of names of Internet domains and addresses is subject to the jurisdiction of the Ministry of Communications, according to the general terms of the section 1 of the Act 72, 1989, and the specific regulation of the Resolution 102 on Management of Names of Internet Domains and Addresses of the Plenipotentiary's Conference of the International Union of Telecommunications (IUT), of which Colombia is a member. In section 8, the above mentioned Act remits, for the regulation of telecommunications, to the regulations and recommendations of the IUT.

2. If the University completes the bidding process, Colombia loses the distinctiveness granted by the .co, which would stop being a country domain identifying only Colombia, to become a generic domain to identify companies.

It means that the nature of the resource itself would be transformed. It would go from being a special distinctiveness of a country to become a generic symbol.

3. The transformation of the resource domain .co in a generic domain involves an intrinsic modification; and the decision of transforming it represents an act of disposition. The condition of trustee does not allow the University to dispose of the property in trust without the consent of the trustor and the beneficiary. In addition, given the nature of property of general interest, its essential transformation requires the consent of the State, through the national Government – Department of Communications”.

Moreover, on the opinion of the Department, the University of Los Andes' does not want to recognize the authority of the Department's intervention in the matter, its arguments are as follows:

1. The domain .co, as a subject of Internet domains is a matter developed at an international private level, excluding the Colombian legislation, in general, and especially the Ministry of Communications specific legislation.
2. The bidding process put forward by the University does not convey the loss of domain administration.
3. The suspension of the bidding process could cause prejudice to the Internet community, to the country and to the University”.

The Communications Minister asked for an audience with the Consultation Room, which took place on September 13, 2001, from 10 a.m. Attended this meeting were: the Minister, the Vice-minister of Communications, Mr. Manuel Velasquez and the legal Secretary of the Department, Mr. Francisco Florez. With the invitation of the Minister attended on behalf of the University of Los Andes, the Dean Carlos Angulo Galvis and the engineer Ricardo Pedraza, Technological Director of Information. The attendees enlightened the audience about the diverse legal and technical aspects of the matter on consultation. Afterwards, the Department provided additional documents and official translations of some English documents; at the same time the University of Los Andes handed in a legal study prepared by Hugo Palacios Mejía.

## 2. CONSIDERATIONS

The problem on consultation is related to the Internet phenomenon”<sup>1</sup>, that since the end of the XX century is provoking deep changes in the lifestyle of contemporary societies. The reality is shown with a new dimension: the virtual; in this dimension time and space are different from reality. While in reality time passes without toil and is tabulated in years, months, days, hours and minutes; in a virtual world time goes by at high-speed and is counted in seconds or nanoseconds. The real space is delimited by what we can perceive with our natural vision, while the virtual space brings images and data located in faraway areas of the universe that can be selected freely and without shifting place. The space and the time have, then, a new meaning in Internet, because it has sensibly shortened the distances and the periods of access to the information sources. In addition Internet has allowed the transformation of the digital information into a good with an economical a social value, that places knowledge at the base of the modern economy. With Internet “The closed ring and the unique purpose of the telephonic networks has been replaced by the open structure and the multiple purpose of the networks based in the transfer of packets of data. As a result, the old architecture of information distribution, type “from one transmitter to several addressees” (such as television, radio, newspapers or books) has been complemented by another structure in which each person could hold office as her/his own chief-editor and publish anything she/he wants. People could communicate and associate in new fashions until then. The new space promised a type of society impossible to create in the real space – freedom without anarchy, control without a State, consensus without a power. The society in this new space would be an entity providing a self-order and free of Governments and intruders from the different political forces<sup>2</sup>”.

This space, so called virtual in opposition to real, has adopted its own denomination: the cyberspace”. According to Lessig the former is a term evoking control and not freedom. It originates, affirms Lessig from a novel written by William Gibson (The neuromante, publish in 1984) and its etymology links the world of “cybernetics”, that is to say, the study of control from distance. Cybernetics, has then a clear purpose: the perfect regulation, that is why its main motivation is to find better ways to lead”.

It has to be clear that Lessig, professor of the Faculty of Law at Harvard University, develops, in his books, a thesis pro regulation of the Code of the space

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<sup>1</sup> An internet ((with feminine article and) with lower case “i”) is an ensemble of local network facilities and/or of a network of an extended area, connected by routers. Internet ( (feminine article and) with capital “i”) is a very special internet connecting with thousands of networks.” FEIT, Sidnie. TCP/IP Architecture, protocols and implementation with IPV6 and security of IP. 1rst edition in Spanish, Madrid, 1999, p. XLIII. The Internet is a term formed with the English words “interconnect” and “network. Even though the Royal Academy of the Spanish Language has not formally accepted the term, it is used by some authors as a masculine name; by others as a feminine name because it originates from the word network. The dictionary of Spanish usages, from María Moliner Ruíz, records the term as a feminine name and that is the way we will use it here.

<sup>2</sup> LEESIG, Lawrence, El código y otras leyes del ciberespacio (Code and other cyberspace laws – Tr.). Translated by Ernesto Alberola. Madrid, Grupo Santillana de Ediciones, 2001, pp. 21-22.

applications because he believes that Governments are necessary to protect freedom, even though they could destroy it themselves”.

The above mentioned shows that the subject under study embodies economic, cultural, philosophical , legal, political, social and technological factors. Obviously, the questions asked by the consulting Department delimit the reflections on the subject and for this reason the Room will not deal with certain matters. Although these matters are part of the general subject, they are not essentials to find solutions.

Given the complexity and scope of the underlying issues to the questions asked, the problem stated in the background section will be broken down into its different constituent parts. In addition, it certain linked elements will be explained in order to analyze all the necessary elements to respond to the addressed questions.

The different elements of the problem that require a solution could be set forth as questioning subject to analysis as follows:

- a) What is Internet, when and how did it appear, how does the system operate?
- b) What are the domain names?
- c) C) What are the domains? Kind of domains.
- d) Who and how it is managed the administration of the domain names?
- e) What is the domain .co? What is its legal nature?
- f) Has the University of Los Andes rights on the domain .co?  
What kind of rights does she have and do these rights allow the University to bid for the selection of an international operator for .co?
- g) Does the Colombian State have any right on the domain .co?  
Is there any legal foundation allowing the Colombian State to intervene in the management of the domain .co?

There are other elements linked to the problem at hand such as:

- a) Whether or not the regulations of the foreign private organisms coordinating Internet prevail on the Colombian legal provisions as regards to subjects, objects of rights and legal relations?
- b) Whether or not, there are legal regulations allowing the establishment of a collection tax system for the registry of names under the domain .co?

The Room proceeds to the analysis of each of the elements set out in order to answer the questions formulated by the Minister of Communications.

2.1 The Internet<sup>3</sup>. What is it, when and how did it appear, how does the system operate? From the concepts presented by various experts in the field, it can be said that, in a technical sense, the Internet is a huge ensemble of world networks connected between them in such a manner that it is possible to communicate almost instantly from any computer of the network to other computers located in other networks of the ensemble, in order to interact or share information or resources.

The Federal Networking Council or FNC<sup>4</sup> set forth the following definition on October 24, 1995: “Internet refers to a global system of information logically related by a unique space of global addresses based on a Internet protocol (IP) or its extensions. The Internet is capable of supporting communications using an ensemble of protocols TCP/IP or its extensions or other protocols compatibles with IP and uses, provides or makes accessible, private or publicly, services of a high level in layers of communications and other related infrastructures above mentioned”.

Nevertheless, some authors think that the definition of Internet is still in the process of development. For that reason, the above mentioned concepts are just mere descriptions, only valid from the technical point of view. In the legal field, a concept or a notion of the Internet has not been structured because it is a technological phenomenon, hardly starting to be taken into account in Law due to its unleashing effects on legal relations.

The General Assembly of the French State Council in a vast study called “Internet and the numerical network”, requested by the Prime Minister, sets forth the followings:

“Internet and the numerical network are, above else, a new space of human expression, a new international space going beyond the borders, a decentralized space without complete control from any operator or State, a heterogeneous space where every one can act, express oneself and work, a space captivating for its freedom.

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<sup>3</sup> To know more about the origins and evolution of the Internet you can go to <ftp://ftp.isi.edu/in-notes/rfc1462.txt> and <http://www.isoc.org/internet/history/brief.htm> . To consult the first judicial resolution dealing with the concept of the Internet, in a broad and systematic manner, see the ruling of the Tribunal of the East District of Pennsylvania, issued on June 11, 1996, in the recourse raised against the “Communications Decency Act” CDA. See <http://www.deaf-magazine.org/free-speech.html> .

<sup>4</sup> Organism originally called FRICC (Federal Research Internet Coordinating Committee), and created by the North American Authorities to coordinate the federal agencies sharing the costs of the infrastructure and to participate in international organizations. Cited by MAESTRE, Javier A. El derecho al nombre de dominio, s. 1, Dominiuris.com, 2001, p. 14.

This space is not naturally of the Law, which has territorial jurisdiction and relies on behaviors, homogeneous and stable categories, all elements missing in an Internet environment. This antagonism with the Law, according to some, would favor the network initial progress, free of obligations, except the ones fixed by the research community participating in its creation.

Nevertheless, this situation cannot last longer”.

In this vein, further, when explaining the general philosophy of the report, it points out:

... “contrary to what is sometimes heard, the ensemble of the existing legislation applies to Internet actors, mainly the laws concerning consumer protection and those vouching for the respect of public. It does not exist and there is no need for an Internet and networks specific law: these are spaces where any type of activity can be done and where all the rules regulating a particular field (publicity, taxation, intellectual property...) call for its application”<sup>5</sup> (Underlined in italics in the original text).

The Internet origin goes back to the sixties. Indeed, on August 1962, J.C.R. Licklider, chief of the computer research program at the Advanced Research Projects Agency (ARPA)<sup>6</sup> wrote about the “galactic network” that would be formed by the ensemble of computers mutually connected. This would make possible a fast access to data and program from any place. Before, in July 1961, Leonard Kleinrock, researcher at the Massachusetts Institute of Technology (MIT), had circulated a first document about the theory of the packet commutation, which, in his criterion, would be more efficient than the circuit commutation. After, in 1965, Lorenzo Roberts and Thomas Merrill connected the computer TX-2, located in Massachusetts, to the computer Q-32, located in California. This was done through a telephone line with manual dialing and low speed. With that, they succeeded to establish a dialogue between those computers. The two backgrounds above mentioned represent the most important milestone in the research to finally consolidate the Network or Internet.

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<sup>5</sup> Conseil d’État. Section du rapport et des études. Internet et les réseaux numériques. Le 2 Juillet 1998. The summary can be consulted at <http://internet.gouv.fr/francais/textesref/rapce98/synthese.htm>

<sup>6</sup> In 1971, ARPA changed the name to “Defense Advanced Research Projects Agency” and adopted the acronym DARPA, the in 1993 took up again the first name; then, since 1996, became DARPA.

Then, in 1966, Roberts went to DARPA to develop the concept of computers network and rapidly organize a plan for ARPANET. This Agency was created in 1969 and it became an experimental network designed in a research advanced by the U.S. Defense Department. The purpose was to establish a computing communication network having the capacity to automatically redirect information (divided in packets to secure it) to the right path to reach its destination, avoiding jammed parts of the network”<sup>7</sup>. ARPANET experimental version started to function with four nodes<sup>8</sup> and the experiment success allowed the evolution to cover United States from coast to coast.

ARPANET initial protocols were slow and had frequent problems. This lead Vinton G. Cerf and Robert E. Kahn to propose a new design of protocols and their proposal set up the base for the subsequent development of Internet and transmission control protocols, later explained. In 1980 ARPANET reconverted to the new protocols and in 1984 separated in two branches: one keeping the name ARPANET and devoted to research and development, and another one called “MILNET”, that became a no classified military network.

Taking ARPANET as a model and overcoming the initial military objective, other similar networks<sup>9</sup> originated. These networks were very useful for sending data and information between universities and institutions for scientific and technological research, for that reason some of them located in the United States started to make use of it.

The packet commutation is the principle sustaining the Internet operation. It means that the data sent to the network is divided in pieces ranging from 1 to 1,500 characters in length (this is to say, long lists of zeros and ones which is called binary format); and each piece is designated packet.

Internet performs its activities through common protocols used by an enormous amount of network and computing system operators. A protocol is an ensemble of conventions and rules, for the transfer of data between computers that allows the exchange of digital information free of mistakes.

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<sup>7</sup> DE MIGUEL ASENSIO, Pedro Alberto. Derecho Privado de Internet. 2 ed., Madrid, Civitas, 2001, p. 27.

<sup>8</sup> According to Sidnie Feit (cited in footnote 1): “The terms network node, network and element system are used to refer to the communications entity in a network without specifying if it is a host, a router or other devise such as a bridge. For example: The objective of the network administration is to control and monitor all the network nodes”.

<sup>9</sup> In the Tribunal of the East District of Pennsylvania’ s decision, mentioned earlier, are cited the BITNET, CSNET, FIDONET and USENET networks.

The network and computers integrated in Internet use the TCP/IP protocols<sup>10</sup>. The protocol TCP (Transmission Control Protocol) makes possible the division and numbering of information in packets to be united in the proper order in the destination computer. At the same time, it incorporates the necessary data for the transmission and the decoding of packets. The protocol IP (Internet Protocol) takes care of giving the proper address labels - or IP numbers - to each packet. Destination of transmitted information from a computer connected to the Network could be another computer connected in any place in the world. The packets, where the TCP divides all the information for its transmission, will circulate to get to its destination through a set of computers and an ensemble of devices called routers. This system allows the connection between two or more networks and chooses the routes to send information packets. There is not only one route to transfer information from one computer to another. The path taken in each case depends on circumstantial elements, such as traffic density or failure somewhere in the network or in intermediate computers”.<sup>11</sup>

Finally, because of potential benefits in the economic and commercial area, the U. S. Department of Commerce took charge of the Internet administration. Naturally, the appearance of communication nodes in other different countries, not only in U. S., required the adoption of specific technical solutions, starting by an addressee identification system.

Internet facilitated the offer of various services: messages from person to person, such as the e-mail; a message from a sender to several addressees, such as mail listing servers; distribution of data bases, such as “news” from USENET; communication in real time, such as “CHAT”; remote use of a computer in real time (TELNET); access to information and files such as ftp, gopher and the World Wide Web (www) or world web; and transfer of music, images and video.

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<sup>10</sup> For more information about the technical aspects, see: FEIT, Sidnie. TCP/IP Arquitectura, protocolos e implementación con IPV6 y seguridad de IP. 1a edición en español, Madrid, 1999, p. XLII.

<sup>11</sup> DE MIGUEL ASENSIO, Pedro Alberto, Ibid. p. 28.

Given the significance of the WWW in the Internet, because the former facilitates the benefits of the latter, it is important to emphasize Javier A. Maestre's<sup>12</sup> comments about the web: “ ... was originally created by the European Laboratories of Particle Physics (CERN), mainly in Sweden by the scientists R. Carillau and T. Berners-Le. These scientists named it ‘World Wide Web’ to serve as a platform for a global and interconnected knowledge storage system. This would contain information from various sources which would be accessible to Internet users throughout the world. The participation in this system of computers connected to the Internet, makes them a part of a unique body or knowledge system, stated the U.S. Tribunal, which declared the unconstitutionality of the Communications Decency Act”.

“The WWW information and services are always found in HTML document format. Most importantly, they include links to other documents of the WWW. Through these links, it is possible to jump from one document to another, independently of its concrete physical location.

Needless to say that to respond to the original purpose, the WWW links have to be stable. If links are mistaken, the advantages of the hyper-textual system cannot be of any use. Indeed, the stability of the Internet and the domain names system is used as an argument or a pretext by the U.S. authorities to justify their excessive intervention in the system”.

In this grand Network of network field, which started with non-commercial applications, opens up an increasing and extensive use for the trade of goods and services. This situation has far-reaching repercussions in the legal world, which faces a strong demand for solutions. A questioning of some assumptions and traditional institutions becomes inescapable. It is then necessary to adapt, create new criteria and institutions in order to find solutions to the question arising from technological innovations and its ambitious applications.

The French State Council highlighted these changes, on July 2, 1998, in a long speech, which was mentioned earlier. In this regard the Council affirms the following:

“Internet is often presented as an archetype of a new phenomenon: the convergence between worlds, separated until now, of information networks, audio-visual and telecommunications. Internet is not, indeed, a network properly speaking, either a service: it is accessible by all the networks and offers an access to services and transnational contents of a vast variety.

“Until recently, each type of network was exclusively or mainly destined to a service: for example, the cable to the audiovisual services, the telephonic network

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<sup>12</sup> El derecho al nombre de dominio (The right to a domain name – Tr.), s. 1, Dominiuris.com, 2001, pp. 21-22.

to vocal telephony and to minitel, etc. From now on, because of the effects of the technological convergence phenomenon, networks are no longer destined to particular services. They allow the transmission of any type of content and services (audiovisual programs, vocal telephony, interactive commercial services)”.

The Council concludes: “Therefore, the traditional distinction between, on one hand, the regulation of services and audiovisual networks and, on the other hand, the regulation of services and telecommunication networks loose their pertinence. A new distinction should operate now between the two types of regulations: those regarding the telecommunications network and those concerning the content and the services”.

**2.2. Domain names.** Internet is, as stated before, a world framework of interconnected network making possible a quasi-instant communication from any of the network computers to others located in another network of the group. Because of this, it necessary that each site be fully identified for the communication to be obtained. This process is done through the IP (Internet Protocol), which consists of a numeric address, traditionally based in number of 32 bits of length; even though presently to increase the addresses available space, an enlarged version with numbers of 128 bits is being introduced. However, Sidnie Feit states that “the regulation of Internet names allows each label to have up to 63 characters, and a name to have up to 255 characters”<sup>13</sup>.

According to Daniel Peña Valenzuela<sup>14</sup> each Internet protocol address is integrated in four groups with two to three digits. Each group is separated by a period. Example: 125.99.76.127. In this example, the four parts can be demonstrated. The number 125 corresponds to the network part, number 99 and 76 represent the Internet protocol network address and, number 127 indicates the local address”.

To facilitate memorization of addresses and their association with the corresponding activity or entity, a Domain Names System has been created. The purpose of this system is to assign distinctive names to identify equipments connected to the Network, which are equivalents to the IP numbers and, which identify the transmission’s destination. Consequently, users do not need to know the corresponding numeric address but the domain name formed by letters, which gives place to the use of public and private organizations names, trademarks and trading style.

The expression “nombre de dominio” corresponds in English to “domain name” and in French to “nom de domaine”. Domain, according to the Diccionario Internacional Simon and Schuster, means: 1. Domain, imperium, sovereignty. 2. Domain, territory (upon which sovereignty is exercised); heredity, property, land.

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<sup>13</sup> Ob cit., note 1, p. 73.

<sup>14</sup> Aspectos legales de Internet y comercio electrónico (Internet legal aspects and electronic commerce – Tr.), Dupré editores, 2001

3. Domain, field of activity, sphere of influence”. According to the Diccionario de la Real Academia de la Lengua Española [Dictionary of the Royal Academy of the Spanish Language – Tr.] one of the meanings of “Nombre” is, “Word to designate physical, psychics or ideal objects”, and “Dominio” among other connotations the following are found: “4. Territory subject to a State, 5. Territory of a language or dialect are spoken, 6. Imaginary or real field of activity”.

Therefore, in general, “domain” in the Internet area, is a field of activity in cyberspace, and the expression “domain name” indicates that forming words designate the address of the site in that space.

Technically, the domain name has been defined in different ways: as “an alphanumeric address to have access to Internet”<sup>15</sup>, as “a unique alphanumeric name used to identify a web site in the Internet” and, as “an easy way to identify a computer or server connected to Internet”. Each computer connected to Internet has its own numeric address (an I.P, address, for example 123.34.32.34) something similar to a telephone number. The domain name is a series of letters pointing to a numeric address of the computer. When you write a domain name in your computer browser, this asks the Internet for the numeric address corresponding to the domain name. Because each name is assigned to a number, and each site has only one number, a name is unique and can only be registered once”<sup>16</sup>.

The system of domain names was preceded by a listing contained in one record (host.txt), kept by each of the big computers connected to the network and, which had to be renovated each time a new equipment was connected. This way, the IP addresses and the names were associated. This method became hardly practical and efficient as the number of computers connected to the network increased. For this reason, the generic first level domains were created, later explained in this text, and under which names started to be registered.

According to author Sidnie Feit<sup>17</sup> “The domain name system (DNS) was created in order to provide a better method track down names and addresses in Internet. The DNS’s databases offer automatic services of conversion from name to address. This system operates well and many organizations not connected to Internet use the DNS database software to internally track down names from their own computers.

DNS is a distributed database. The Internet names and addresses are stocked in servers around the world. The organization having a domain name, as yale.edu, is responsible for the operation and maintenance of name servers, which translate

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<sup>15</sup> CARDENAS, Manuel José. La nueva economía del conocimiento [The new economy of knowledge – Tr.]. Bogotá, Ediciones Jurídicas Gustavo Ibáñez, 2001, p. 180.

<sup>16</sup> Renombre .com. El nombre lo es todo en el Internet [Name is everything in Internet – Tr.]. See: [http://renombre.com/preguntas\\_frecuentes\\_nombres\\_dominio\\_domain\\_names.htm](http://renombre.com/preguntas_frecuentes_nombres_dominio_domain_names.htm)

<sup>17</sup> Work cited in note 1, p. 284.

their own names to addresses. The local staff introduces highs, lows and changes of nodes, in an expeditious and precise manner, in the domain's primary server.

Because the translation from name to address is so important, information is doubled in one or several secondary servers”.

According to Manuel José Cárdenas, to establish a domain name, two steps should be fulfilled: to choose a radical and an extension. The radical corresponds to the natural person or body corporate name and; the extension represents the type of activity or geographical zone where the activities are carried out. The radical for natural persons is constituted with the initial letter of the given name and with the complete surname. The radical for corporate bodies is formed with their corresponding denomination.<sup>18</sup>

In this sense, Peña Valenzuela points out and illustrates with examples this notion:

“The domain name is compound of two elements: the first that forms the identifying segment or domain properly speaking and the second that consists of the designation of different levels, mainly first and second.

First case: [www.cocacola.com](http://www.cocacola.com)

Second case: [www.museedulouvre.fr](http://www.museedulouvre.fr)

The identifying segment, or domain properly speaking, in these two cases would be cocacola and museedulouvre. The other segments indicate the following: www is the presence and location of the respective page in the world wide web. The following parts denote that it is a domain of high or first level in the .com case; that is to say that it represents a commercial activity and in the second example .fr it is the domain of second level or local, implying that the domain was registered in France”<sup>19</sup>.

The domain name system divides the management charge of the main administrator, distributing it among different sub-administrators. The latter, at the same time, can repeat the process if the domain dimension to be administered advises it. This way, different levels of delegated domains can be created. Therefore each administrator assigns unanimous names at its level, guarantying thus the uniqueness of any name.

**2.3 Domains. What they are and their classification.** In the previous point, it was stated that in a domain name a root and an extension, or the identifying segment and other segments must exist. While the former is destined to identify a

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<sup>18</sup> Ibidem, p. 181.

<sup>19</sup> PEÑA VALENZUELA, Daniel. Aspectos legales de Internet y comercio electrónico [Internet legal aspects and electronic commerce – Tr.] Dupré Editores Ltda. 2001, pp. 30-31.

specific user, the latter identifies an activity field or country under which the former is registered.

In the higher level of hierarchy two types of domains are found; those of first or higher level (TLD, top level domain):

- 1) The generic or global (gTLD), used throughout the world and found after the company's name or the institution to identify the type of activity or service is, for general use: .com (companies or business), .net (communication), .org (organization), and for restraint use: .gov (governmental), .mil (militar), .int (international), .edu (education).

On November 16, 2000, ICANN (Internet Corporation for Assigned Names and Numbers) approved seven other generic domains to be operative in the year 2001. These new gTLD are divided in two categories: I) "non-sponsored" TLD. It is expected that these TLD be broad and operate according to the policies directly established by the "Internet world community through the ICANN process". These non-sponsored TLD'S are: .biz (companies or businesses, with activation on October 23), .info (means of information), .name (digital identity for personal pages), .pro (professionals: initially for doctors, lawyers), and ii) "sponsored" TLD. It is intended that these TLD's be specialized and that the sponsoring organization represent the segment of the community more affected by the matters related to that TLD." These TLD's are: .coop (cooperatives), .aero (airlines, travel), and .museum (museos).

- 2) The country codes (ccTLD) used to identify the domain of each country and, formed of two letters preceded by a period. They are at the end, after the generic domain which indicates the type of activity or service, or the name or designation of the person or enterprise. These two letters are taken from the list of countries or territories ISO-3166. ISO (International Standardization Organization) is a non-governmental entity created in 1947, and regroups entities, from 140 countries, working on standard norms.

The ISO-3166-1 norm takes into account geographic or political names identifying countries and territories. Indeed, we can cite, among others, the following<sup>20</sup>: Argentina: .ar, Australia: .au, Belgium: .be, Bolivia: .bo, Brazil: .br, Canada: .ca, Colombia: .co, Costa Rica: .cr, Cuba: .cu, Germany: .de, Ecuador: .ec, Spain: .es, France: .fr, Italy: .it, India: .in, Japan: .jp, Morocco: .ma, Mexico: .mx, Nicaragua: .ni, Norway: .no, Panama: .pa, Peru: .pe, United Kingdom: .uk.

In the second process of the WIPO related to Internet domain names<sup>21</sup>, it is stated:

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<sup>20</sup> For more information, consult: <http://www.iana.org> or [www.iso.ch/iso/en/aboutiso/introduction/whatisISO.html](http://www.iso.ch/iso/en/aboutiso/introduction/whatisISO.html)

<sup>21</sup> El reconocimiento de los derechos y el uso de nombres en el sistema de nombres de dominio de Internet [The recognition of rights and the use of names in the Internet domain system – Tr.]. Informe del Segundo Proceso de la OMPI relativo a los nombres de dominio Internet [Report on the OMPI Second

**“Country names.**

250. United Nations have an official terminological bulletin presenting a list with the names of the member States. The entry corresponding to each State includes its usual name or “short name” (e.g. “Rwanda”), in addition to the formal or complete name (e.g. “Rwanda Republic). The usual name is used in the United Nations for any ordinary purpose. The complete name, that could be the same, is used in formal documents such as treaties and official communications”.

According to Javier A. Maestre<sup>22</sup> the ISO standard was created mainly to typify in a universal manner the origins and destination of international transportation means. The same author states that, presently, this standard has three parts (3166-1, -2 and – 3) and provides three codes for territory, one with two letters (used for the territorial domains) another one with three letters and finally, another code, numeric this time, with three numerals. The code chosen by IANA for the country domain names is alpha-2 from the ISO-3166-1 standard.

The same author adds: ISO-3166-2 corresponds to a geographical sub-division of territories contained in the 31-66-1 standard. ISO031-66-3 makes a link between territories that, for different reasons, have been, excluded of ISO-3166-1 standard, since its creation in 1974.

It is worth mentioning that the ISO-3166-1 standard was created in 1974, while the first document in the process of creation of the domain name system, the RFC (Request For Comments) 799, was elaborated in 1981 by D.L. Mills.

The previous statement leads to the conclusion that IANA, certainly, did not create the country codes appearing on the list ISO-3166-1 alpha 2. It is also reasonable to conclude that the reason for the establishment of those codes was linked to the international means of transportation and other usage of United Nations in its communications process, record registry and elaboration of databases. Therefore, what IANA did was to recognize the status of State or territories to the countries appearing on that list. IANA also respected their “name” as States notoriously carrying it in their foreign relations, or as territories geographically recognized.

Under the code of each country the second level domain names are registered. These names correspond to the trading style or to the people or institutions wishing to have a page or an Internet site in the respective country.

Presently, such registry is carried by an administrator designated by an ICANN corporation for each country.

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Process related to Internet domain names – Tr.J. September 3, 2001. It can be consulted at <http://wipo2.wipo.int>

<sup>22</sup> Op. Cit., pp. 56-57.

Several millions of domain names are registered around the world and more than 8,000 in Colombia, according to information provided by the University of Los Andes in the audience of this Room, celebrated on September 13 2001.

2.4 The administration of domain names. Department of Defense Network Information Center (DDN NIC) was founded when Internet was sponsored by the U.S. Defense Department (DOD). This organism was responsible for the administration and registry of names and addresses.

Then, in 1993, the National Science Foundation (NSF) took in charge the responsibility for no-military names and addresses, while the DDN NIC had responsibility for military names and addresses.

InterNIC was in charge of the ordinary system management, through determination of numeric addresses block for IP addresses regional registries (ARIN, in North America, RIPE NCC in Europe and APNIC in Asia and the Pacific). At that time, the IP (Internet Protocol) addresses assignment and the administration of domain names system was carried out by the Internet Assigned Numbers Authority – IANA -. Users addresses were assigned by different Internet local registries.

On July 1 1997, the U.S. president issued a Reference Framework for Global Electronic Commerce. He demanded the Secretary of Commerce to privatize the management of domain names system (DNS) in order to increase competition and facilitate international participation in its management. After an extensive public consultation, on June 8, 1998, U.S. Department of Commerce issued a statement policy called ‘Management of Internet names and addresses’, also called ‘Blank Document’. This organism urged the private sector to create a not-for-profit corporation that would later take in charge the responsibility on the management of certain aspects of the domain name system”<sup>23</sup>.

According to the same document cited in the previous paragraph, in November 1998, the Department of Commerce subscribed (NOT THE RIGHT VERB I THINK REGISTERED) an article of agreement with ICANN. The purpose of this was to develop collaboration and put into action the necessary mechanisms and procedures for the transfer of the responsibility of the management of specific operations from DNS to the private sector.

The Corporation for Assigned Names and Numbers (ICANN), is a not-for-profit entity constituted according to the Nonprofit Public Benefit Corporation Law of

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<sup>23</sup> Document NSI-ICANN-DOC-NSI. Text presented by the Ministry of Communications, in English and translated into Spanish by Anita Escobar de Tamayo, official translator, Res. 2177 from the Ministry of Justice.

California (U.S.A.). The purpose of ICANN is to administer the space of IP addresses and the domain name system. However, IANA is still the general authority for daily administration of Internet domain name system (DNS).

According to information provided by the Universidad de Los Andes, on December 24, 1991, IANA delegated on this University, the responsibility of administration of the domain name registry service for Colombia under the designation .co. Then ICANN, in 1998, reiterated such delegation with the responsibilities mentioned in document RFC-1591 of March 1994. The delegation does not appear in any document signed by the parties, or at least, such document was not brought forward for this consultation either by the Ministry, or the University of Los Andes.

However, the Room in the thickness of information )COMPREND PAS THICKNESS OF INFO) on the matter under study has found the following official letter:

Ministry of National Education Office  
Bogota, D.E. – May 4, 1989

0529

MARCO PALACIOS

General Director

Instituto Colombiano para el Fomento de la Education Superior, ICFES  
(Colombian Institute of the promotion of Superior Education – Tr.)  
Bogota

Mr. Palacios,

In order for the Government to link the activity of the Superior Education System to scientific information sources, this Ministry has decided to participate in the RED BITNET. The Central Node will be directed and coordinated by the ICFES according to the terms of the letter dated April 14, 1989.

The operation of this Central Node will be under the responsibility, for a one (1) year period, of the University Nacional and University of Los Andes, commencing by the latter.

Please communicate with the Deans of those Universities and the Ministry of Communications in order to inform them about the respective regulations, so that the participation and the network BINET take place without delay.

Truly yours,

(Signed)

MANUEL FRANCISCO BECERRA  
Ministry of Education

c.c. Mr. Carlos Lemos Simmons, Minister of Communications  
c.c. Mr. Ricardo Mosquera, Dean University Nacional  
c.c. Mr. Arturo Infante V., Dean University of Los Andes”

Therefore, it is possible that other documents exist, among them the letter of April 14, 1989 mentioned in this communication. Those documents could shed light on the conditions leading to the participation of the country in the Network. However, the transcript itself illustrates the direct intervention of the State in the process of incorporation of Colombia to Internet, since 1989. Naturally, this fact could lay the foundations to demand an expansion, addition or clarification of this concept, if the national government deems so advisable.

The document RFC-1591, related to the structure and delegation of the domain name system, annexed to the document of consultation<sup>24</sup>, states, among other things, the following:

“Each generic TLD was created for a general category of organizations. The country code domains (e.g., FR, NL, KR, US) are organized by an administrator for that country. Those administrators could delegate the management of parts of the tree giving the names. They perform a public service on behalf of the Internet community ...

The main concern when selecting an administrator designated for a domain is that it be able to perform the necessary responsibilities. In addition, the administrator needs to have the ability to do a competent, honest, fair and impartial job.

The main requirement is that each domain has an administrator designated to supervise domain name's space. In the case of the higher level domains that are country codes, an administrator has to supervise the domain names and operate the domain name system in that country. The administrator has, of course, to be ON Internet. Two types of connection must exist: a connection of Internet Protocols (IP) for the name servers as well as a connection of electronic mail (e-mail) with the management and administrator staff.

Each domain must have an administrative and technical contact. For the higher level domain that are country codes, at least the administrative contact must reside in the country involved.

2) These designated authorities are representatives for the delegated domain and they have the duty to serve the community.

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<sup>24</sup> Brought in English, with a Spanish official translation made by Anita Escobar de Tamayo.

The delegated administrator is a representative of the higher level domain as well as for the nation, in the country code, as for the Internet global community.

The concerns about domain “rights” and “property” are inappropriate. It is appropriate to be concerned about “responsibilities” and “service” to the community.

- 3) The designated administrator must be impartial to all groups in the domain requiring domain names. That means that the same rules apply to all applications and all applications have to be treated without discrimination. Academic and commercial users (and others) are treated on an equal basis. Preferences cannot be shown in relation with the application arising from clients from other business related with the administrator – v.g., no preferential service to clients of a specific network data provider. No requirement to use a particular mail system (or other application), protocol or product can be demanded.

There is no further requirement in sub-domain of higher level domains than the requirements related to domains of an even higher level. That is to say, the requirements in this memo are applied in a recursive manner. In particular, all sub-domains must be allowed to operate its own domain name servers, by providing them any information that the sub-domain administrator deems advisable (provided that this information is truthful and correct).

- 4) The parties interested in a significant manner in a domain must agree that the designated administrator is an appropriate party.

IANA tries to bring the parties in conflict to an agreement . In general, IANA does not perform any action to change things unless all parties in conflict agree. Only in cases where the designated administrator had substantially acted in an improper manner IANA will intervene.

However, it is appropriate for interested parties to have a vote when choosing the designated administrator.

There are two cases where IANA and central IR can establish a new domain level and delegate only part of it: 1) when there are parties in conflict having trouble to find a solution, or 2) when the applicant party cannot represent or serve the whole country. The latter case applies in general when a party outside the country is trying to help to get a network connection in that country – this is generally called a DNS “delegated” service.

The Junta de Revisión de Nombre DNS de la Internet (Internet DNS Names Review Board – IDNB), a committee established by IANA, will act as a review

panel for cases where the parties cannot reach an agreement. The IDNB decisions are final.

- 5) The designated administrator has to do a satisfactory job when operating the domain DNS service. That is to say, the present management needs to possess technical capabilities to assign domain names, delegate sub-domains and operate name servers. These tasks include warning the central IR (in the case of higher level domain) or other domain administrators of even higher level of the domain about the domain status; responding to applications in a suitable manner and; managing the database with accuracy, strength and flexibility.

A server of primary and secondary level must exist. They must have IP connection with Internet. The accuracy of the operational status and database has to be easily verified by IR and IANA.

In case of persistent problems with the proper operation of a domain, the delegation can be revoked and, possibly delegated to another designated administrator.

- 6) For the transfer of delegate of a designated administrator from an organization to another, the higher domain level administrator (IANA in the case of higher domain levels) has to receive communication from the former organization as well as from the new one. The purpose of this is to assure IANA that the transfer has been on the basis of mutual agreement and that the new organization understands its responsibilities.

It is also useful for IANA to receive communications from other parties interested or affected by the transfer.

## Rights to names

- 1) Names and registered trademarks

In case of dispute between those registered in the domain name concerning rights to a particular name, the registering authority will not play any role or have any responsibility except to provide information to keep both parties in touch.

The domain name registry does not have the status of a trademark. The applicant must make sure that another trademark is not being violated.

- 2) Country codes

IANA does not have to decide what is a country and what is not.

ISO 3166 was selected as a base for the country code higher level domain names. This list was chosen because ISO has a procedure to determine which entities have to be and which should not be on the list”.

The previous statement is reaffirmed, with some preciseness in the IANA’s ICP-1 document of May 21, 1999, called “Prácticas de delegación para los dominios de primer nivel de código de país” [Delegation practices for country code top level domain – Tr.].

2.5 Domain .co. Legal nature. The domain .co has the following characteristics:

- a) Two consecutive letters, preceded by a period.
- b) These letters were taken from “ISO-3166-1 table, which is maintained by a United Nations agency” (ICP-1 Document, p. 2), to identify countries and territories.
- c) In the above mentioned table ISO-3166-1, “.co” identifies only Colombia, as it appears in the IANA list annexed to the consultation document (Root-Zone Whois Information – Index by TLD Code)
- d) .co is a country code higher level domain.

In one of the legal concepts sustaining the University of Los Andes position, it is stated that: “ ... there are no any international treaty, contract or legal text, by which it can be stated that a State had or has a right to have a country code assigned by IANA. This institution created country codes because, in its opinion, it was important for the Internet development”. Later, this same study says: “When creating “domains” for countries and assigning codes to them, IANA restricted itself to apply “standards” created by the International Standardization Organization, private entity established in 1947: the so-called 3166 ISO standard”.

Each country or territory appearing on the ISO-3166 list, has an assigned domain. They are individually distinguished with two letters taken from the name appearing on the list. The purpose was to have available a means of directing communications in Internet because its creators understood that the success of Internet was in its global reach and they also knew they could not hold back its expansion. Indeed, Internet was not exclusively confined to military or academic networks in United States. Its expansion could not be stopped from reaching different countries and territories in the world. The commercial impetus started to lead its diffusion and development as a strategic means to consolidate the global economy. Consequently, a need to define addressing protocol became obvious with the establishment of network nodes in different places throughout the world.

According to previous statements, our country appears in ISO-3166 as: “Republic of Colombia, as a formal or complete name; “Colombia”, as a short or usual name. From that name originated “.co” as an acronym or identification symbol to the purposes of standardization that IANA accepted to identify country domains in

Internet. An acronym is a word formed by initials, and sometimes adding more letters from other words.

If the acronym of the “.co” symbol does not identify Colombia, why does “.fr”, “.es”, “.uk”, “.us”, “.it” identify France, Spain, United Kingdom, United States and Italy? In general, why do other acronyms or symbols appearing on the ISO-3166-1 list identify the countries and territories they refer to? This is simply because these acronyms were elaborated from a word or words coming from the territory and country of the names appearing in the United Nations Official terminological bulletin, where a list of names of member States is presented.

If the background described in the ISO-3166 standard did not exist, the hypothesis explaining the origin of “.co” as IANA’s simple free will or as a simple coincidence with the first two letters of the name could become more persuasive. This is because those two letters can also be found in the name of Costa Rica and Congo. They could have referred to one of these countries. Another even more exotic hypothesis could be tried out: “.co” is simply a “coda” [wedge – Tr.] symbol, which is a consonant or group of consonants following the “cima” [summit – Tr.] (symbol Ci), vocalic element of a syllable, in its turn preceded by the consonant or group of consonants denominated “cabeza” [head – Tr.]<sup>25</sup>. Exemple: CiCo, or CaCiCo.

But it is not possible to ignore that in the first level or higher level domains (gTLD and ccTLD) there is a common denominator. Those were established with a clear and firm intention: design a field or space corresponding to a group of activities or territory, set up as a State or not, but within which communities of people are rooted. We come to this conclusion by induction from the reality indicated by these domains; thereby, general use domains: .com (corporations and businesses), .net (communication), .org (organization); restrain use domains: gov (governmental), .mil (military), .int (international), .edu (education), and country or territory domains, according to the concordance of the ISO-3166-1 alpha 2 list, with the UN Official country members bulletin.

Colombia is a name or denomination that the 1991 Political Constitution sets down in its title and preamble to identify the population. This entity represented in the National Constituent Assembly decree, sanction and proclaim this fundamental Chart. In article 1 of this document the State is identified as Colombia. This same name is used in articles 2, 4, 9, 10, 24, 44, 93, 97, 100 and 101 of the Constitution and from it is originated the gentile “Colombian” which distinguishes the inhabitants that, according with the dispositions of article 96, have the citizenship that establishes their link with the State of Colombia.

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<sup>25</sup> REAL ACADEMIA DE LA LENGUA ESPAÑOLA, Esbozo de una nueva gramática de la lengua española. 14a reimpresión, Madrid, Espasa, 1995, pp. 13 y 40 a 43. Coda comes from the latin word “cauda” meaning “cola”. In music it is the brilliant addition to the final bars of a piece of music.

The name of Colombia dates back from Francisco de Miranda, who in his liberating dreams imagine that the ensemble of future nations would be called Colombia as a homage to amend Colón. The XVI century cartographers disregarded the fact that Colón was the discoverer when they prepared the map of that territory.<sup>26</sup> Similarly, Simón Bolívar in his famous Carta de Jamaica [Jamaica Letter – Tr.], referring to the potential union of Nueva Granada with Venezuela to form a central republic, points out: “This nation will be called Colombia as a fair tribute and gratitude to the creator of our hemisphere”<sup>27</sup>.

The name of Colombia is used in various Political Constitutions issued after the national independence. It is so in the Constitutions of 1821 and 1830 to distinguish the Republic of Colombia, consisting of provinces that made up the Viceroyalty of Nueva Granada from the Capitanía General de Venezuela [General Capitancy of Venezuela – Tr.]. Afterwards, that name was incorporated to the Political Constitution of the United States of Colombia, proclaimed on May 8, 1863, and finally it was consolidated in the 1866 Political Constitution. The name of Republic of Colombia is preserved in the 1991 Constitution, as previously mentioned, to distinguish inside the concert of nations the Republic delimited according to provisions of article 101 of the Political Constitution.

Therefore, IANA, ICANN or ISO did not give to our country the name Colombia, from which the acronym “.co” is originated to identify Colombia in the UN documents.

CO is therefore an acronym from the word “Colombia”, name upon which the State of Colombia has a right, for having adopted it in its Political Constitution. This name has been used to identify this country in front of the community of nations for 180 years when Internet did not exist yet and any slight possibility was seen to create domains or domain names.

Letters that form domains, as much gTLD as ccTLD, are of common use for all names registered under each domain. And the words and expressions used as sub-domains serve as distinctive characteristic. In despite of their registry under a domain, those names do not have yet an international or national legal protection established.

Can a country domain be considered as a “property” in a legal sense? To state that it is a property, it is necessary to establish that a notion contains the following: it is a thing, it is useful and it is susceptible of appropriation.

Assuming the first two elements are met - for which definition we remit to the extensive jurisprudence and doctrine elaborated following the Civil Code regulations – we consider that the last element is not met. In fact, domain names

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<sup>26</sup> Enciclopedia Thema, Colombia, Símbolos patrios, p. 147.

<sup>27</sup> BOLÍVAR, Simón, Obras completas, 2 edición, Bogotá, 1979, Ecoe Ediciones, t. I, p. 167.

inasmuch as they have “the same ending” used to form all domain names registered under it, example .co for Colombia, they are not susceptible of appropriation. If they were, the first to register a domain name would have appropriated that ending. This is not the case. A domain name is of common use for all citizens and people, whether Colombian or not, who decide to register a name under that domain.

The doctrine distinguishes between appropriable or non-appropriable things. The latter are those not susceptible to be appropriated. As classic examples of those things, the authors mention high sea, atmospheric air and sun light. Nowadays, we could add as examples: words of a language, numbers, music notes. Such things, that some designate as common to all men (*res communes omnium*), are withdrawn from private property. Their use is common to all; they are not susceptible of dominion. Therefore, no corporation or individual has a right to appropriate them. Their use and enjoyment are determined among the people of a nation, by its laws and among different nations by International Law.

“Common things are non-appropriables considered as a whole. However, nothing is opposed to the exclusive use and enjoyment of the thing in a partial and innocuous manner by all individual. This statement explains why, for example, oxygen is freely extracted from the air and is sold in tubes”<sup>28</sup>.

Concerning the “domain name”, formed as mentioned in point 2.2, there is no legal recognition, in the national or international order, on its nature of legally protected property.

Indeed, the allegation of right of property on domain names dissipates when the trademark and trading style protection and intellectual property rights prevail. As it is accepted in the RFC-1591 document “Registry of domain names has no status of registered trademark. It depends on the applicant to make sure that someone else’s registered trademark is not being violated”.

However, this statement does not rule out that in the evolution experienced by the concept of property, which now includes rights on “personal image”, a right on domain names can be institutionalized; inasmuch this right does not come into conflict with other rights individually acquired and recognized. Naturally, this goes without prejudice of the “domain names” as they are of common use.

The database made out with the names registered under a country domain is possible thanks to the administration of that domain registry. Therefore, without the administration of domain registry a database would not exist, and without country domains the registry would lose meaning.

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<sup>28</sup> ALESSANDRI R., Arturo y SOMARRIVA U., Manuel. Curso de derecho civil. Los bienes y los derechos reales. 3 edición, Editorial Nascimento, 1974, Santiago, Chile, p. 92

Now, as stated in the WIPO document of September 3, 2001, on number 278 – an international legal order protecting, in express terms, country domains does not exist. In the national legal order and in the historical and cultural tradition, the name of Colombia is recognized as a nation. When, this name is used as part of some commercial names or trademarks, it is to indicate the appurtenance to the country. For example Café de Colombia, is used around the world as a commercialization strategy by the Fondo Nacional del Café [National Coffee Fund – Tr.] that is nourished by the tax contributions paid by the producers of the bean.

If some dietrology is applied, that is, if we speculate about what is really behind the problem presented for consultation, we find that the dispute is not as much about the use of the Republic of Colombia name as an acronym but rather the meaning and scope of the allocation of domain to the country and; hence, the conditions to administrate the name registry of country domain.

The fact that the assignation has been made in favor of the “country” and not of the “State”, leads to think that the expression “country” has an unequivocal conceptual content: the community or people residing in the country. In favor of this thesis the following arguments militate: a) domain names were also assigned to “territories” which are not “State” but which have a community residing in them; b) in the RFC-1591 it is expressly and repeatedly consigned that the domain is to “the service of the community”.

The domain .co, even though it is administrated by a private entity, as the University of Los Andes, has a notorious public interest. To support this argument, it is important to specify what is the meaning of public interest, which our 1991 Political Constitution calls interchangeably “general interest” or “public interest”.

Héctor José Escoba builds a notion of public interest from the etymological meaning of the words forming that term. Interest, he affirms, comes from the Latin verbal form interest that derives, in his turn, from the words “inter” and “esse” – inter-esse – that literally mean “estar entre” [be between – Tr.]. Later on, this verbal form was used as a noun, in Romance languages, and came to mean “what matters”, what is important. Public, on the other hand, and in opposition to private, is all that concerns or is of interest to the State or to the community.

“Interest supposes the existence of something, that can be a thing or property, which is important to a person, because it has a value, provides a benefit, is useful in the moral or material order. In addition, this person appreciates the thing and desires to acquire, keep, increase or maintain for its own value range. Such interest, understood in this manner, becomes public when it is not exclusive or belongs to one or to a few people. Otherwise, when a number of people of a specific community participate or make use of that interest, then it comes to be identified as belonging to a group, including those that, individually, can or not share it”<sup>29</sup>.

Naturally, it is indispensable a conscious and free valuation of the thing or property over which relapses the interest. This valuation allows to establish the existence of the interest and for that the thing or property is reasonably desired.

In addition, that interest can be represented “in the preservation and development of society and government as important elements for the satisfaction of different and more specific interests”, as pointed out by Ronald Dworkin.<sup>30</sup> Likewise, in the benefit brought by this valuable interest are included not only the present members of the community, but also those members to be incorporated in the future, that is, the future generations.

“From a legal perspective, the reference to a general interest fulfils a double function: legitimate the restriction of individual rights and freedom by the public power and act as an element of control of such limiting power”<sup>31</sup>.

The nature of public interest of the .co domain is appreciated in the following statements:

- a) The RFC-1591 document, which has been transcribed deserves to be repeated, indicates: “The country domain names (such as FR, NL, KR, US) are organized by an administrator for that country... Those administrators perform a public service on behalf of the Internet community...”

IANA and ICANN expressly recognize the interest as much to the country community as the Internet global community in the administration of domain names registry.

- b) The same document points out: “The designated administrator is the delegate of the domain of higher level as much for the nation, in the country code, as the Internet global community”.

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<sup>29</sup> El interés público como fundamento del derecho administrativo [Public interest as a foundation for Administrative Law – Tr.], Buenos Aires, Depalma, 1989, pp. 237-238.

<sup>30</sup> Los derechos en serio. Translated by Marta Guastavino, ed. Ariel, Barcelona, 1984, p. 196.

<sup>31</sup> DE JUAN ASENJO, Oscar. La constitución económica española. Centro de Estudios Constitucionales. Madrid, 1984, pp. 81-83. [EST-CE TRADUIT?]

The concerns about domain “rights” and “property” are inappropriate. It is appropriate to be concerned about “responsibilities” and “service” to the community.

- c) The domain .co has been assigned to the country, that is, to the Colombian community. Therefore, individual interests of those who apply or endeavor to apply for the registry of a domain name in Colombia, will only be satisfied if the Colombian society or community has available, as a country, this valuable resource which is the domain on Internet.
- d) On May 4, 1989, the Ministry of Education determines the participation of the Sistema de Educación Superior [Higher Education System – Tr.] in the RED BITNET [BINET Network – Tr.]. For this purpose, the Ministry of Education assigned the ICFES control, management and coordination of the Central Node, for a period of (1) one year, to the Universities Nacional and Los Andes, starting with University of Los Andes.
- e) Article 70 of the Political Constitution provides: “The State has the duty of promoting and developing the access to culture to all Colombians in equality of opportunities, through permanent education and the scientific, technical, artistic and professional teachings in all the steps of the process of creation of national identity.

**Culture in its diverse manifestations is the foundation of nationality.** The State recognizes the equity and dignity to all cultures in the country. The State shall promote research, science and development and diffusion of the Nation cultural values (Section in bold type face is not in the original text).

- f) Article 71 of the Political Constitution states: The search for knowledge and artistic expression are free. The plans for economic and social development shall include the development of sciences and, in general, of the culture. The State shall create incentives to people and institutions developing and promoting science and technology and all other cultural manifestations and, offer special incentives to people and institutions exercising these activities”.

To develop the two above-cited constitutional regulations, the Congress issued Law 397 of 1997, called “ley de la cultura” [Culture Law – Tr.], in which article 1, culture is defined in the following terms:

“Culture is an ensemble of spiritual, material intellectual and emotional distinctive features that characterize human groups and that include, more than the arts and learning, way of life, human rights, value systems, traditions and beliefs” (num. 1).

“Culture, in its diverse manifestations, is the foundation of nationality and typical activities of Colombian society as a whole, as a process generated individually and

collectively by Colombians. Those manifestations constitute an integral part of the Colombian identity and culture” (num. 2).

Numeral 5 of the cited regulation ratifies the following principle: “it is a duty of the State and people to value, protect, and diffuse the nation’s cultural heritage” and numeral 7 states “the State shall protect Castilian as the official language of Colombia”.

Article 2 of the cited Law establishes that the main objective of the State policy regarding culture is “to preserve the nation’s cultural heritage”. Furthermore, article 5 indicates that this same policy has a main objective, among others, the protection and preservation of the cultural heritage to “to be used as a testimony of the national cultural identity as much in the present as the future”.

Concerning the nation’s cultural heritage, the first sub-section of article 4 of the Culture Law sets forth the constitutive elements. This regulation states:

“Definition of cultural heritage of the nation. – The nation’s cultural heritage consists of all property and values that are an expression of Colombian nationality, such as tradition, customs, habits, as well as the ensemble of material and non-material property, movable and non-movable that are of special historic, artistic, aesthetic, plastic, architectural, urban, archeological, environmental, ecological, linguistic, audio, musical, audio-visual, film, scientific, testimonial, documentary, literary, bibliographical, museum and anthropological interest, as well as manifestations, products, representations of pop culture” (emphasized the Room).

- g) According to the transcribed regulations, the name “Colombia” has historical, linguistic and testimonial interest. Therefore, it is part of the nation’s cultural heritage. Furthermore, since 1989, the national government has intervened in activities specific to the RED [network – Tr.] through the Ministry of Education in order to “link the activity of the Sistema de Educación Superior [Higher Education System – Tr.] to scientific information sources.” This decision fully fits into the functions that the Political Constitution of 1991 assigns to the State, as it is enshrined in the previously issued quoted regulations”.
- h) Registration of names with the domain .co cannot affect the rights of third parties, particularly those of industrial and intellectual property. Violation of those rights generates conflict. The solution to such conflicts in lawsuits can require intervention from judicial authorities”.
- i) Registration of names under domain .co creates tributary obligation imposed by the Act. In fact, Article 91 of Act 633 of 2000 on taxation reform states:

“All Internet web pages and sites of Colombian origin that operate on Internet and whose economic activity is commercial, financial or provides a service must

register in the commercial registry and provide the Dirección de Impuestos y Aduanas Nacionales DIAN [Directory for National Taxes and Customs – Tr.], the information for economic transactions in terms in which this entity requires” (emphasized the Room).

The Constitutional Court in decision C-1147 of October 31, 2001 determined attainable article 91, in a conditional manner, concerning the charges filled in the application, inasmuch as the information required by DIAN is directly relevant and strictly necessary for the fulfillment of its functions exercised within its legal competency. The expressions in cursive writing “in the terms” and “lo” were determined unattainable.

Naturally, in the Room’s opinion, inscription of domain names as an address in the matriculation of merchants, does not create rights susceptible to oppose against those who hold trademark, commercial name or copy rights. In the assumption that a “domain name” has been previously registered and in force in the mercantile registry and, a similar commercial or commercial establishment name is endeavor to be registered, the Chamber of Commerce, shall abstain to register the new domain name, in accordance with provisions of article 35 of the Commercial Code.

Consequently, the domain .co is not “property”, because by its nature it is not a thing susceptible of appropriation by a person or particular group of persons, as it is a “branch of a tree of names comprised of a node and all the nodes under it”. In other words, a domain consists of all names with the same ending”. It is used as a database with all the names that are registered in order to ensure that all addresses are unique on Internet and in this way they make communication possible, as expressed in point 2.2.

2.6 Does the University of Los Andes have rights over the domain .co? What class of rights does it have and do they allow it to bid in order to select an international operator for .co? Certainly, the University of Los Andes does not claim property rights over the domain .co, as it only states its status as a delegate to administrate that domain. The legal representative so expressed in the audience and it was then reiterated in the legal studies brought to the Consultation.

Although there is not a written delegation, it is accepted that this delegation is destined to administrate the registration of this domain. The University feels that its rights legally emanate from an unwritten contract, and therefore, in our opinion, without a date or specified place of celebration.

For the Room, if the object of delegation of registry administration is the country code “.co”, corresponding to Colombia, it stands to reason that this delegation be exclusively exercised in Colombia, that is, in the territory which belongs to that country. In this sense, the RFC-1591 document requires that “an administrative and technical contact must exist for each domain. For the domain names of higher

level, that are country codes, at least the administrative contact must reside in the involved country”. The University of Los Andes is the administrative contact.

It is worth stating that the delegate entity cannot change the object of delegation, either spatially or territorially in terms of what it contracts, or in terms of the function attributed to the domain administered. This means that the registration of the domain cannot move to another country, nor can it lose its function as a higher country domain level to transform it into a domain or sub-domain identifier for other activities such as those of businesses. The reason for creating country domains and their assignation was that they were to serve a country.

What would be the object of the contract that the University of Los Andes celebrates with the person selected in the bidding process?

If the object of this contract is the operation of the domain .co by a commercial company, this means that the same University feels this domain is property, the nature of which it is denied. On the other hand, the RFC 1591 rejects the property issue as relevant to domain names. If on the contrary, the thesis is maintained that .co is not property, then what would be the property object of operation?

If the object of the contract is to assign the right that the University has, that is, the delegation to administrate the domain, the delegate shall not derive rights different from those of the delegator. Consequently, the delegate cannot mutate either its nature of domain names, or the ambit of administration delimited by the geographical space occupied by Colombia in the continent.

In addition, in the presumed negotiation, the University of Los Andes shall submit to Colombian laws, according to principles enshrined in Articles 4 sub-section 2 of the Political Constitution, and, 3 and 8 of the Civil Code, which have been replaced by Article 59 of Law 149 of 1888 and then included in Article 57 of the Código de Régimen Político y Municipal [Code of Political and Municipal Regime – Tr.].

From a merely pragmatic point of view, the eventual negotiation endeavored by the University of Los Andes, in the presumed case of effectively taking place, would bring about, among others, the following consequences:

- a) The persons, natural or legal, who decide for the first time to register a domain under .co, must submit to the conditions fixed by the administrator, who substitutes the University of Los Andes. Within those conditions there will undoubtedly be a tax that will be set by that new administrator at a quantity that will allow the greatest possible use, given the high cost that the transaction will involve. If this presumed new administrator has their business headquarters abroad, the user will accept the consequences that may result.

- b) Persons who already have their domain name registry, completed before the University, must submit to the conditions of the new administrator, at least as of the expiration date of their current registration.
- c) The use of the domain .co for purposes other than country domains will stop distinguishing the Republic of Colombia. Consequently, users of the domain, the Colombian community, will lose national identity that that domain attributes to it.
- d) All Internet web pages and sites of Colombian origin that operate on Internet and whose economic activity is commercial or financial or offers services will be withdrawn, for the purposes of the private business or agreement between the University of Los Andes and the contractor, from the obligations imposed by Article 91 of Act 633 of 2000 regarding taxation reform.

Since the domain .co is of public interest, the University of Los Andes shall submit to legal provisions that the Congress and the national Government issue. The University cannot define conditions under which the domain .co is administered, or change its nature of country domain to transform it into a generic domain identifier of activities. The State of Colombia must regulate conditions that favor and protect the domain .co, as it is of public interest, in order to ensure that all Colombians and the Internet community benefit and avoid actions that monopolize them”.

## 2.7 Legal bases that allow the Colombian State to intervene in the field of the domain .co

### Regulation of telecommunications in Colombia.

2.7.1 The notions of telecommunications and operator. Law 72 of 1989 concerning the telecommunications organization in Colombia enshrines the following definition of the term:

“Telecommunications is understood as all transmission, emission or reception of signs, signals, writings and sounds, data or information of any nature, through wire, radio, visual means or other electromagnetic systems”.

Article 2 of the Decree Law 1900 of 1990 added images as an object of transmissions that could be done through optic systems.

The national definition practically accepts the definition given in the international arena, by the International Telecommunications Union, to which Colombia is a member. This definition is enshrined in section 1012 of the Annex of Term Definitions, jointly approved with the Constitution, the convention and other instruments of the above mentioned organization, by Law 252 of 1995 which states:

“Telecommunications: All transmission, emission or reception of signs, signals, writings, images, sounds or information of any nature through wire, radio-electricity, optic means or other electromagnetic systems”.

As we can notice, this notion is very wide and refers to transmission of data, writings, images, sounds and information through telephone wire, fiber optic, microwaves or via satellite, in the same manner as the Internet transmission.

Internet is an integrated connection of computer networks. The way it operates is very fast inasmuch as it essentially comprises three steps that develop at high speed except in case of congestion in connection lines.

If for example, a person desires to virtually visit the German Museum located in the city of Munich, the information is obtained in the following manner:

- a) His/her computer – through a modem – automatically dials the telephone number of the network local server. This is the computer of the connection company to which the person is affiliated.
- b) After, the person types the museum address: [www.deutsches-museum.de](http://www.deutsches-museum.de)
- c) The call is directed through microwaves, fiber optic or via satellite, until Munich. There, the signal is received by another local server that directs it to the German Museum, where all information related to it is found.

In addition to the speed of the information, this network has the advantage of economy. In fact, the person who wants to connect to any part in the world, through Internet, does not need to make a long distant call. The person locally dials the telephone number of the enterprise connection which is in charge of establishing communication with the desired country. Whether the connection is national or international, the same amount will be charged: the cost of the local call plus the length of time of the network connection, according to special established fare.

The term “operator” is defined, in second sub-section of article 2o of the above mentioned decree 1900, in the following terms:

“Operator is understood as a natural or legal, public or private person, who is responsible for the management of a telecommunications service by virtue of authorization, concession, or by prescription of the Law”.

**2.7.2. Some powers of the Ministry of Communications.** The Ministry of Communications has responsibility and is in charge of the large world of communications and especially of telecommunications.

Law 72 of 1989 establishes, in section 1o, the following:

“The national Government, through the Ministry of Communications, shall adopt the general policy of the communications sector and shall exercise the task of planning, regulating and controlling all the sector’s services which comprises, among others:

- Telecommunications services.
- Informatic and telematic services.
- Telecommunications specialized services or mark-up services.
- Postal services”.

These functions of general character are ratified, in relation to telecommunications, by article 5o of the Law decree 1900 of 1990 that sets forth that: “the national Government, through the Ministry of Communications, shall exercise the functions of planning, regulating and controlling telecommunications”.

On the other hand, article 8o of the above mentioned law, expressly confers to the Ministry the power to give prior authorization for telecommunication services:

“The establishment, operation and use in the country, of networks, systems and national and international telecommunication services as well as its enlargement, modification and renovation, require prior authorization from the Ministry of Communications. The regulations thereof shall be in accordance with the standards and recommendations of the International Telecommunications Union and its standardization organisms such as CCIR and CCITT.”

In this sense, article 39 of the Law decree 1900 of 1990 states:

“The Ministry of Communication is in charge of prior authorization for the establishment, use, operation, enlargement, extension and renovation of telecommunication services. Such authorization shall have a general character if it is enrolled in a plan or program approved by the Ministry of Communications.

To issue these authorizations the Ministry of Communications shall only consider reasons of technical order”.

Now, concerning regulations of the communications sector, the decree 1130 of 1990 through which the Ministry of Communications was restructured, is in compliance with the principle of the regulating power assigned to the President of the Republic through sub-section 11 of the article 189 of the Constitution. Indeed, this decree states, in sub-section 3o, among the functions of the Ministry we find that of preparing the necessary administrative acts in order for the Government to fulfill, among other functions related to the communications sector, the following:

- a) Adopt the communications sector policies, plans, programs and projects;

(...)

- c). Establish the operation general conditions and services and network commercialization in compliance with the law;
- d) Regulate conditions for the provision of telecommunications and postal services within the class established by law and define the classification of each service;

(...)

- h) Regulate new technological developments according with the service classification;
- i) Point out the counter-service regime”.

Concerning the latter point, it is worth mentioning that sub-section 16 of article 30 indicates as the Ministry functions that of administrating the counter-service regime under the following headings: service concessions, network authorizations, permit for the use of the radio-electric spectrum and registry, certification of the registry and other administrative actions that involve the payment of rights, through development of winding-up and collection operations”.

“As the Internet transmissions are included within the notion of telecommunications, and the national government has the powers to regulate legal matters of this sector, it must be inferred that the government has the authority to regulate activities concerning Internet according to the class of services that it offers. Clearly, this regulation does not include the content of communications. Insofar as the content affects the rights and fundamental duties of people, the means of regulation will be a statutory Act.”

**2.7.3 Legal classification of telecommunication services.** Article 27 of the decree law 1900 of 1990 concerning telecommunication activities and services and related matters, classifies such services in the following manner:

“Telecommunication services are classified, for the purpose of this decree, in basic, and those of diffusion, telematic and mark-up, auxiliary help and specials”.

The basic services are defined in article 28 of the decree in the following terms:

“Basic services comprise carrier services and teleservices. Carrier services are those that provide the necessary capacity for the signal transmission between two or more specific points of the telecommunications network. Those services include services done through commuted circuit network or packet and those services carried out through non-commuted networks. Among these services can be found, leasing of isolated pairs and dedicated circuits.

Telematic services are those that provide in itself, the complete capacity for communication between users, including the function of the unit equipment. Among these services can be found, telephonic services as much fix as mobile and cellular-mobile, telegraphy and telex”.

On the other hand, article 30 of the cited decree, defines telematic services in the following terms:

“Telematic services are those that using support basic services, they allow information exchange between servers, with established protocols for open interconnection systems. Among those services can be found, the telefax, publifax, teletex, videotex and datafax”.

As we have seen, networks and computers integrated in Internet use TCP/IP protocols.

Now, article 31 of the cited decree 1900 defines mark-up services in the following terms:

“Mark-up services are those that use as a support basic services, telematic, diffusion or any combination thereof. With that support, the mark-up services provide the complete capacity to send or exchange information, adding other facilities to the support service or satisfying new telecommunication specific needs.

Among these services can be found, the access, dispatch, treatment, deposit and retrieval of information stored, electronic transfer of funds, videotext and electronic mail.

Mark-up services are only those that can be distinguishable from basic services”.

It can be noted that law 527 of 1999 concerning electronic commerce, indicates that this law is applied to “all type of information in the form of data message”, with some exceptions (art. 1o). This law defines the data message as “the information generated, sent, received, stored or communicated through electronic, optic or similar means such as, among others, the electronic data exchange (EDI), Internet, electronic mail, telegram, telex or telefax”.

For its part, article 2o of the decree 1794 of 1991, that regulates decree law 1900 of 1990 in relation to telematic services and telecommunications mark-up, present definitions essentially similar to those of decree 1900 on such services. Concerning the mark-up services, decree 1794 reaffirms the requirement that in this category only those services that are considered as such can be distinguished from the basic services, to which article 4 states the distinguishable characteristics. This regulation establishes the following on this matter:

“Distinguishable characteristics.- Mark-up services are only those that can be distinguished from basic services. The characteristics that make a mark-up service

distinguishable can be referred to the transmission of information of any nature or to an information transmitted or a combination or both.

Among others, distinguishable characteristics referred to transmission are protocols, codes, format and speed conversion, error protection, encrypting, codification, information routing and adaptation to quality requirements.

Among other, distinguishable characteristics referred to information treatment can be found, the access, storage, dispatch, treatment, deposit and retrieval of distant information, management of electronic mail and messages, financial transactions and telebank.

It is implied from the regulations that local Internet servers or access suppliers provide telematic services and if any additional services are added for the users, such as those indicated in the standard of distinguishable characteristics, the ISP is said to provide mark-up telecommunications services.

2.7.4. The administration of domain names is a matter of the telecommunications sector. Internet transmissions are telecommunications and as expressed by the French State Council, the architecture of domain names constitutes the Internet “back bone”, since it allows identification of sites in such a way that without this identification the system would stop functioning.

Consequently, the administration of domain names in a country represents a telecommunication service inasmuch as it is essential for the operation of telecommunication through Internet.

In fact the administration of the country code domain such as the .co involves the domain name registration service under the code of this country. This is the relationship of the entry of the addresses of the national or foreign persons who want to identify their site on the Internet as originating from this country or direct their messages and service to and from that address.

This way, it cannot be stated that the administration of the domain .co is a subject outside the telecommunications sector and does not constitute a telecommunication service, only because there is no Act that clearly qualifies it as such. Indeed, without that administration, addresses identifying a country in the Internet space and people from a given country who want to participate in telecommunications through the Internet cannot be registered.

It is to note that article 10 of law 72 of 1989 presents a non-exhaustive but rather express enumeration. First of all, this article pinpoints the telecommunication services. Then, without further qualification, confers to the national government, through the Ministry of communications, the authority to plan, regulate and control these services. These functions are ratified by article 5 of the decree law

1900 of 1990, that refers to the term “telecommunications” in general, without limiting it to telecommunications services.

This way, the administration of the domain .co and the resulting domain name registry in Colombia, for Internet network, is a matter intrinsically related to telecommunications. Consequently, there exists the authority of the national government through the Ministry of Communications to plan, regulate and control this sector, in compliance with the regulations above mentioned and the concordant regulations of decree 1130 of 1999. This power exists with more reason inasmuch as domain .co, as explained in point 2.5, constitutes a resource of public interest. Therefore, the Colombian State must keep vigil over the proper use of domain .co to prevail general interest, according to the principle enshrined in article 1 of the Political Constitution.

It is worth noting that Resolution COM 5/15 of the International Telecommunications Union issued at the Minneapolis Conference in 1998, states that “mechanisms of allocation of world essential resources, such as domain names and Internet addresses are a matter that concerns as much the governments as the private sector”. It was also stated that the “government’s role is to establish a clear, coherent and predictable legal regime to promote a favorable environment in which the world information networks could inter-function and these networks be largely accessible to citizens of all countries. In addition the government must ensure the proper protection of the consumer and user’s interests”. It can be inferred that the telecommunications international organism is aware of the significance of the government intervention in the domain names and Internet addresses management.

This way, it is important to observe that the Comité de Asesoría Gubernamental (Governmental Advisory Committee – GAC) of ICANN in a document entitled “Principios para la delegación y administración de dominios de nivel superior de código de país” [Principles for the delegation and administration of country code higher level domain – Tr.], included in the Consultation, indicates the fact that the government of each country must intervene in the designation of the administrator of such domain (ccTLD), which is called “delegate” and which is defined in the following terms:

“Delegate’ means the organization, enterprise or individual designated by the government or relevant public authority to exercise the function of public trustee of a ccTLD. Consequently, this institution is recognized through a communication between ICANN and the entity designated for such purpose. The delegate for a ccTLD can be a government and the same relevant public authority or a supervising organism designated by those” (point 3.5)

The cited document expresses that “the delegation itself cannot be subcontracted or sublicensed or negotiated in any manner without the consent of the government or relevant public authority and ICANN” (point 4.1). The document also justifies

the role of those institutions in the matter because they represent “the interest of the country or territory individuals for which the ccTLD has been delegated” (point 5.1). Furthermore, GAC has adopted the “general principle that the system for giving Internet names is a public resource in the sense that its functions should be administrated with the public or common interest in mind” (point 5.3).

As it is noticed, GAC, which is committee of higher level from the private organization ICANN, points out the need for the government of each country to intervene in the designation of the delegate or administrator for the country domain and, as this organism indicates, in some cases, it has not occurred. GAC states that “concerning delegations or reallocations of futur delegations, ICANN must only delegate the administration of a ccTLD to an organization, enterprise or individual that have been designated by the government or relevant public authority” (point 7.4, emphasized the Room).

***2.8. Do the regulations of private and foreign coordinating bodies of the Internet prevail, or not, over the legal Colombian order regarding law subjects and objects and legal relations?***

Article 40 of the Political Constitution indicates that this is a statute of statutes and that in case of incompatibility between Constitution and law or other statute, the constitutional dispositions shall apply. This article otherwise provides: “Nationals and foreigners in Colombia have the duty to observe the Constitution and the laws, and respect and obey the authorities”.

In the regulations adopted by Internet coordinating institutions are found aspects of a technical nature. They entail measures destined to ensure the proper functioning and development of the Network. In particular, are contained a definition of standards related to communication protocols and the allocation of addresses that allow identification of computers connected to the Network. The effectiveness of these regulations depends on the acceptance by participants in the network activities, inasmuch as they are required for proper functioning and development of the network.

And, concerning the regulation clauses that deal with the nature, configuration and scope of legal relations between Internet participants there must be in accordance with constitutional and legal provisions, particularly those defining the scope of territoriality of the law. And these regulations must also comply with the legal dispositions that have a binding force to the international treaties signed by Colombia.

Consequently, in a general manner, those regulations cannot prevail over the national legal order.

**2.9. Taxes.** In relation to taxes generated by service provision for domain name administration under our country code, .co, we observe that, presently, there is no special legal regulation creating a tax in compliance with the provisions by article 338 of the Constitution. Consequently, to the present time, there is no legal support for the collection

of tax under this heading. The law establishing a tax to be charged in order to recover service costs provided for the name registry under domain .co, shall have the destination determined by provisions. Naturally, the purpose will be to obtain a benefit for the support and improvement of such service.

For the registry of domain name in the mercantile registry, provided by article 91 of law 633 of 2000, the Room deems that, that registration must be performed as part of a business registration as provided by articles 28 sub-section 1, 29, 31, 32 of the Commercial Code, particularly those concerning addresses.

Therefore, all individuals carrying out economic activities of commercial or financial nature or providing services, if they fit into the definition of business person or corporation enshrined in articles 10 and 25 of the Commercial Code, have the obligation to enroll in the mercantile registry (art. 19, sub-section 1, *ibidem*).

Consequently, as the merchant's matriculation in the mercantile registry already has a fixed tax, a new one shall not be necessary. The registry of domain names shall have, as previously mentioned, an additional data in the merchant's address.

It is to note that the different registries provided by law must pay taxes, such as: mercantile registry, public instruments registry, trademark patents and industrial property registry, among others.

### **Final Observation**

3. Internet makes obvious the need for the adoption by the State of urgent decisions destined to regulate all concerning the domain .co., the protection as much Colombia's name as the cities and places of economic, cultural and tourist interest of potential cyber-occupations through domain names. Similarly, on the part of the national government it will also be very suitable to the country that it advances with other States in regulation agreements of above the mentioned matters. It is important for Colombia to have the Internet as a favorable space for scientific, cultural, social and commercial matter in our national community with others in the hemisphere, and as a complement to legislation that was adopted regarding electronic commerce."

4. The Room responds:

**4.1** The domain .co assigned to Colombia as the country code in the Internet domain names system is of public interest.

**4.2** The administration of the domain .co is a point intrinsically related to telecommunications. By such virtue, the national government is competent, through the Ministry of Communications, to put into action its planning, regulation and control without prejudice to the functions that may have

been attributed to the ICFES, as indicated in the official letter 0529 of May 4, 1989 of the Ministry of National Education.

**4.3** As long as there is no Act adopted by the Congress of the Republic that allows authorities to determine the tax to be collected to recover the costs for services provided for registration of names under domain .co, no amount can be charged under this heading.

Transcribe the Minister of Communications. Send also copy to the Legal Secretary of the Presidency of the Republic.

Signatures

Augusto Trejos Jaramillo  
President of the Room

Cesar Hoyos Salazar  
Ricardo H. Monroy Church  
Flavio Augusto Rodriguez Arce

Elizabeth Castro Reyes  
Room's Secretary



