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**ICANN BOARD OF DIRECTORS
SUBMISSION NO. 2019.09.08.1b**

TITLE: **Appointment of Root Server Operator
Organization Representatives to the RSSAC**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

Per Article 12, Section 12.2(c)(ii) of the ICANN Bylaws, the Co-Chairs of the Root Server System Advisory Committee (RSSAC) submit the following members for appointment to the RSSAC:

- Keith Bluestein, National Aeronautics and Space Administration (NASA)
- Howard Kash, United States Army Research Laboratory
- Karl Reuss, University of Maryland
- Kevin Wright, Defense Information Systems Agency

These individuals have been selected by their root server operator organizations to serve on the RSSAC.

RSSAC RECOMMENDATION:

The RSSAC Co-Chairs recommend the ICANN Board of Directors appoint Keith Bluestein, Howard Kash, Karl Reuss, and Kevin Wright as the RSSAC representatives of their respective root server operator organizations.

PROPOSED RESOLUTION:

Whereas, the ICANN Bylaws call for the establishment of the Root Server System Advisory Committee (RSSAC) with the role to advise the ICANN community and

ICANN Board of Directors on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System.

Whereas, the ICANN Bylaws call for the ICANN Board of Directors to appoint one RSSAC member from each root server operator organization, based on recommendations from the RSSAC Co-Chairs.

Whereas, the RSSAC Co-Chairs have recommended to the ICANN Board of Directors the appointments of representatives from Defense Information Systems Agency; National Aeronautics and Space Administration (NASA); University of Maryland; and United States Army Research Laboratory to the RSSAC.

Resolved (2019.09.08.XX), the ICANN Board of Directors appoints Keith Bluestein, Howard Kash, Karl Reuss, and Kevin Wright to the RSSAC through 31 December 2022.

PROPOSED RATIONALE:

In May 2013, the root server operator organizations agreed to an initial membership of representatives for the RSSAC, each nominating an individual. The ICANN Board of Directors approved the initial membership of the RSSAC in July 2013 with staggered terms. The current term for the representatives from Defense Information Systems Agency; National Aeronautics and Space Administration (NASA); University of Maryland; and United States Army Research Laboratory expires 31 December 2019.

Today, the Board is taking action pursuant to Article 12, Section 12.2 (c)(ii) of the ICANN Bylaws to appoint members to the RSSAC.

The appointment of RSSAC members is not anticipated to have any fiscal impact on the ICANN organization that has not already been accounted for in the budgeted resources necessary for ongoing support of the RSSAC.

This resolution is an organizational administrative function for which no public comment is required. The appointment of RSSAC members contributes to the public interest and the commitment of the ICANN organization to strengthen the security, stability, and resiliency of the DNS.

Submitted by:	Kaveh Ranjbar
Position:	RSSAC Liaison to the ICANN Board
Date Noted:	21 August 2019
Email and Phone Number	kaveh.ranjbar@board.icann.org

ICANN BOARD SUBMISSION NO. 2019-09-08-1c

TITLE: **Appointment of 2020 Nominating Committee Chair and Chair-Elect**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board is being asked to consider the Board Governance Committee's (BGC) recommendation with respect to the 2020 Nominating Committee (NomCom) Chair and Chair-Elect.

Following the call for expressions of interest (EOI), as input into the selection of 2020 the NomCom leadership positions, the BGC reviewed and discussed the received EOIs, reviewed the NomCom members' evaluations of the 2019 NomCom leadership and 2019 NomCom members who expressed interest in serving in a NomCom leadership position, and interviewed candidates. Following the above actions and further discussion, the BGC agreed on recommendations to the Board for the 2020 NomCom Chair and Chair-Elect.

BOARD GOVERNANCE COMMITTEE RECOMMENDATION:

The BGC recommends that the Board appoint Jay Sudowski as the 2020 NomCom Chair and Ole Jacobsen as the 2020 NomCom Chair-Elect.

PROPOSED RESOLUTION:

Whereas, the BGC reviewed the Expressions of Interest from candidates for the 2020 Nominating Committee ("NomCom") Chair and Chair-Elect, considered the NomCom members' evaluations of the 2019 NomCom leadership and members who expressed interest in serving in a leadership position, and conducted interviews of candidates.

Whereas, the BGC has recommended that Jay Sudowski be appointed as the 2020 NomCom Chair and Ole Jacobsen be appointed as the 2020 NomCom Chair-Elect.

Resolved (2019.09.08.xx), the Board hereby appoints Jay Sudowski as the 2020 Nominating Committee Chair and Ole Jacobsen as the 2020 Nominating Committee Chair-Elect.

PROPOSED RATIONALE:

ICANN's Bylaws require the Board to appoint the Nominating Committee (NomCom) Chair and NomCom Chair-Elect. *See* ICANN Bylaws, [Article 8, Section 8.1](#). The Board has delegated the responsibility for recommending the NomCom Chair and Chair-Elect for Board approval to the Board Governance Committee (BGC). (*See* BGC Charter at <http://www.icann.org/en/committees/board-governance/charter.htm>.) The BGC oversaw the posting of a call for expressions of interest (EOI) on 24 May 2019 seeking EOIs by 15 June 2019 (see <https://www.icann.org/news/announcement-2019-05-24-en>), which was then extended to 5 July 2019 (<https://www.icann.org/news/announcement-2-2019-06-14-en>).

As input into the selection of 2020 the NomCom leadership positions, the BGC reviewed and discussed the received EOIs, reviewed the NomCom members' evaluations of the 2019 NomCom leadership and 2019 NomCom members who expressed interest in serving in a NomCom leadership position, and interviewed candidates. Following the above actions and further discussion, the BGC agreed on recommendations to the Board for the 2020 NomCom Chair and Chair-Elect.

The Board has considered and agrees with the BGC's recommendation for the 2020 NomCom Chair and 2019 NomCom Chair-Elect. The Board also would like to thank all who expressed interest in becoming part of the 2020 NomCom leadership.

Appointing a NomCom Chair and Chair-Elect identified through a public EOI process, including interviews of the candidates, is in the public interest as it positively affects the transparency and accountability of ICANN. It is also fully consistent with ICANN's mission.

Adopting the BGC's recommendation has no financial impact on ICANN that was not otherwise anticipated, and will not negatively impact the security, stability and resiliency of the domain name system.

This is an organizational administrative function not requiring public comment.

Submitted by: Amy A. Stathos, Deputy General Counsel
Date Noted: 27 August 2019
Email: amy.stathos@icann.org

**ICANN BOARD OF DIRECTORS
SUBMISSION NO. 2019.09.08.XX**

TITLE: Standard Bylaw Amendments to Article 12 Section 12.2(b)(ii) on the terms of the SSAC Chair, and Section 12.2(c)(ii) on the leadership structure of RSSAC

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

There are two Bylaws changes at issue in this paper:

- (1) The ICANN Bylaws Article 12, Section 12.2(b) (ii) currently states that there is no limit to the number of terms that the SSAC Chair may serve. The SSAC proposes the necessary changes in the ICANN Bylaws to enable SSAC, should it so choose, to impose term limits to its Chair as part of implementing the improvements out of the second Organizational Review of the SSAC.
- (2) Article 12, Section 12.2(c)(ii) currently sets out a co-chair leadership structure that the RSSAC proposes is necessary to restructure as part of implementing the improvements out of the second Organizational Review of the RSSAC.

Each of these proposed amendments were posted for public comment, and with no objections raised, the Board is now asked to consider the approval of these Standard Bylaws amendments.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE RECOMMENDATION:

As part of the Organizational Effectiveness Committee’s work in coordinating oversight of organizational reviews and their implementation, the OEC recommends that the ICANN Board approve the amendments to Article 12, Sections 12.2(b)(ii) and (c)(ii), in order to enable, respectively, the SSAC and RSSAC to implement the recommendations from their organizational reviews. As it relates to the SSAC, the proposed amendment gives the SSAC the ability, should it so choose, to impose term limits on its Chair. For the RSSAC, the proposed amendment removes the Co-Chair structure in favor of a singular Chair.

PROPOSED RESOLUTION:

Whereas, Article 12, Section 12.2(b) of the Bylaws governs the Security and Stability Advisory Committee (SSAC), and Article 12, Section 12.2(c) governs the Root Server System Advisory Committee (RSSAC).

Whereas, under the current Bylaws Article 12, Section 12.2(b) (ii), the SSAC is not permitted to limit the number of terms the SSAC chair may serve, and the SSAC proposes amendments to that Article to remove language referring to the chair's term, which will give the SSAC the ability to impose term limits if it so chooses..

Whereas, under the current Bylaws Article 12, Section 12.2(c)(ii), the RSSAC is to be led by two co-chairs, and the RSSAC proposed amendments to Article 12 that would require only a singular chair.

Whereas both the SSAC and RSSAC were motivated to request these amendments as part of the implementation of the recommendations arising out of their most recent organizational reviews.

Whereas, on 3 May 2019, pursuant to the Standard Bylaws amendment process at Section 25.1(b) of the ICANN Bylaws, the ICANN Board approved the posting of these proposed Bylaws amendment for public comment.

Whereas, the amendments were posted for public comment from 10 June 2019 – 9 August 2019. Two comments were received, and both were supportive of the changes.

Whereas, the Organizational Effectiveness Committee of the Board recommends the approval of the Bylaws changes related to the SSAC and RSSAC leadership, as posted for public comment.

Resolved (2019.09.08.xx), pursuant to Section 25.1 of the ICANN Bylaws, the Board approves the amendments to Article 12, Section 12.2(b)(ii) and Section 12.2(c)(ii) as posted for public comment, and directs the ICANN President and CEO, or his designee, to continue with the Standard Bylaws amendment process for these sections.

PROPOSED RATIONALE:

The Board is taking this action today at the request of the SSAC and RSSAC and in support of the organizational reviews required under Section 4.4 of the ICANN Bylaws. The Final Report of the Independent Review of SSAC by Analysis Group recommended that term limits be applicable for the leadership of the SSAC, which the Bylaws do not allow at this time. Flexibility in the structure of the RSSAC leadership is proposed as an implementation item in direct response to a recommendation arising out of the organizational review of the RSSAC regarding issues of succession.

These changes were jointly posted for [public comment](#), with two comments received. The ICANN Business Constituency and the Non-Commercial Stakeholder Group were each in support of the proposed Bylaws changes. These comments were reflected in a [staff report](#).

Today's action does not pose any identified fiscal impact, nor does it impact the security, stability or resiliency of the Internet's DNS. This action serves ICANN's mission in ensuring the stable and secure operation of the Internet's unique identifier systems through supporting the continued evolution of the governance of these two key advisory committees. In addition, this action supports the accountability mandates of organizational review process, as each of the requested changes arise out of that process. It is in the public interest as following the Bylaws-mandated amendment process supports ICANN's multistakeholder community and allows ICANN to remain accountable to its Bylaws-mandated mechanisms.

Submitted by: Samantha Eisner
Position: Deputy General Counsel
Date Noted: 27 August 2019

PROPOSED BYLAWS AMENDMENTS

ARTICLE 12, SECTION 2(c)

DRAFT as of 15 April 2019

(c) Root Server System Advisory Committee

(i) The role of the Root Server System Advisory Committee ("**Root Server System Advisory Committee**" or "**RSSAC**") is to advise the ICANN community and Board on matters relating to the operation, administration, security, and integrity of the Internet's Root Server System. It shall have the following responsibilities:

(A) Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The RSSAC shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.

(B) Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.

(C) Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary audit activity to assess the current status of root servers and the root zone.

(D) Respond to requests for information or opinions from the Board.

(E) Report periodically to the Board on its activities.

(F) Make policy recommendations to the ICANN community and Board.

(ii) The RSSAC shall be led by ~~two coa~~-chairs. The RSSAC's chairs and members shall be appointed by the Board.

(A) RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC chairs shall provide recommendations to the Board regarding appointments to the RSSAC. If the Board declines to appoint a person nominated by the RSSAC, then it will provide the rationale for its decision. The RSSAC chairs shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointment or re-appointment each year. The Board shall also have the power to remove RSSAC appointees as recommended by or in consultation with the RSSAC.

(B) The RSSAC shall recommend the appointment of the chairs to the Board following a nomination process that it devises and documents.

(iii) The RSSAC shall annually appoint a Liaison to the Board according to Section 7.9.

PROPOSED BYLAWS AMENDMENTS
ARTICLE 12, SECTION 12, SECTION 2(b)
DRAFT as of 2 May 2019

(b) Security and Stability Advisory Committee

(i) The role of the Security and Stability Advisory Committee ("**Security and Stability Advisory Committee**" or "**SSAC**") is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

(A) To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator community, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The SSAC shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.

(B) To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The SSAC shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

(C) To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC (as defined in Section 12.2(c)(i)), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The SSAC shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

(D) To report periodically to the Board on its activities.

(E) To make policy recommendations to the ICANN community and Board.

(ii) The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. ~~The chair and members~~ Members may be re-appointed, and there are no limits to the number of terms ~~the chair or~~ members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall stagger appointment recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointment or re-appointment each year. The Board shall also have the power to remove SSAC appointees as recommended by or in consultation with the SSAC.

(iii) The SSAC shall annually appoint a Liaison to the Board according to Section 7.9.

**Staff Report of Public Comment on Revisions to the
ICANN Bylaws re SSSAC and RSSAC Leadership**

Revisions to the ICANN Bylaws re SSAC and RSSAC Leadership

Publication Date: 7 August 2019

Prepared By: Samantha Eisner

Public Comment Proceeding

Open Date: 10 June 2019

Close Date: 26 July 2019

Staff Report Due Date: 9 August 2019

Important Information Links

[Announcement](#)

[Public Comment Proceeding](#)

[View Comments Submitted](#)

Staff Contact: Samantha Eisner

Email: samantha.eisner@icann.org

Section I: General Overview and Next Steps

Both the Security and Stability Advisory Committee (SSAC) and the Root Server System Advisory Committee (RSSAC) are undergoing Organizational Reviews pursuant to ICANN's Bylaws. In each of those reviews, there is an identified need to update the leadership references contained within ICANN's Bylaws. As a result, both the SSAC and RSSAC requested the Board to initiate the Bylaws amendment process. The RSSAC wishes to change its leadership structure, while the SSAC wishes to have the option to do the same should it so choose. Bylaws changes are required to effectuate each of these outcomes. On 3 May 2019, at Board Resolutions 2019.05.03.13 and 2019.05.03.15 – 2019.05.03.23, the Board directed the ICANN President and CEO, or his designee(s), to publish for Public Comment the proposed standard amendments to Article 12, Section 12.2(b)(ii) (SSAC) and Article 12, Section 12.2(c) (RSSAC) of the ICANN Bylaws.

The following staff report summarizes the comments received on the proposed changes to Article 12, Section 12.2(b)(ii) (SSAC) and Article 12, Section 12.2(c) (RSSAC) of the ICANN Bylaws.

Following the close of the Public Comment period and taking into account the Public Comments received, the Board will consider the proposed changes to Article 12, Sections 12.2(b)(ii) and 12.2(c) of the ICANN Bylaws for adoption.

Section II: Contributors

At the time this report was prepared, a total of [number] (n) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
ICANN Business Constituency	Steve DelBianco	BC
Non-Commercial Stakeholder Group	Rafik Dammak	NCSG

Section III: Summary of Comments

***General Disclaimer:** This section intends to summarize broadly and comprehensively the comments submitted to this Public Comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

ICANN org received two comments in response to the proposed changes to Article 12, Section 12.2(b)(ii) (SSAC) and Article 12, Section 12.2(c) (RSSAC) of the ICANN Bylaws. Both the ICANN Business Constituency (BC) and the Non-Commercial Stakeholder Group (NCSG) expressed support for the proposed changes.

The NCSG stated that the proposed changes would better support diverse participation and bring fresh insight into the leadership of the SSAC. Further, the NCSG stated that the notion of a single chair for the RSSAC would lead to effective coordination and resource utilization; but suggested that if the activities of RSSAC require heavy engagement, that such demand be met with a Vice Chair.

Section IV: Analysis of Comments

***General Disclaimer:** This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.*

ICANN org notes the general support of the proposed changes to the ICANN Bylaws. Based on an evaluation of the comments received, ICANN org provides the following analysis and recommendations.

As a next step, staff will submit this report of Public Comments to ICANN Board of Directors so it can consider the appropriate next steps with regards to the proposed changes to the ICANN Bylaws.

ICANN BOARD PAPER NO. 2019.09.08.xx

**TITLE: Fundamental Bylaws Change to IANA Naming Function Review
Team Composition**

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

In making appointments to the IANA Naming Function Review Team, as required under Article 18 of the ICANN Bylaws, the ccNSO Council ran into complications in identifying a non-ccNSO ccTLD representative. The ccNSO Council requested that the ICANN Board initiate the Fundamental Bylaws Amendment process under Section 25.2 of the ICANN Bylaws, and the Board previously approved that proposed amendment to be posted for public comment. There were no issues identified during public comment that require updates to the language nor suggest that the amendment is inappropriate. As a result, the Board is being asked to approve a Fundamental Bylaws amendment to Section 18.7 of the ICANN Bylaws.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE (OEC)

RECOMMENDATION:

The OEC recommends that the Board approve the Fundamental Bylaws Amendment to section 18.7 as was posted for public comment after request by the ccNSO Council.

PROPOSED RESOLUTION:

Whereas, Article 18 of the ICANN Bylaws requires ICANN to cause periodic reviews of the performance of the IANA Naming Function.

Whereas, the first IANA Naming Function Review was commenced by the Board in September 2018 and the appointing entities began the work to comprise the IANA Naming Function Review Team (IFR Team).

Whereas, due to changing composition of the ccNSO in the years since the IANA Stewardship Transition, the ccNSO Council had difficulty locating a non-ccNSO ccTLD representative as required by Section 18.7(b) of the ICANN Bylaws. As a

result, this significantly delayed the completion of composition of the IFR team, and this same difficulty is anticipated to arise for future IANA Naming Function Reviews.

Whereas, on 12 April 2019 the ccNSO Council, through its Chair, requested the ICANN Board to initiate an amendment to the ICANN Bylaws to remedy this situation, and proposed language for such amendment.

Whereas, on 31 May 2019, following a recommendation from the Board's Organizational Effectiveness Committee, responsible for coordinating the Board's oversight of the IANA Naming Functions Review, the ICANN Board directed ICANN org to post the proposed amendments for public comment and initiate the Fundamental Bylaws Amendment Process under Section 25.2 of the ICANN Bylaws.

Whereas, the proposed amendment to Section 18.7 of the ICANN bylaws was [posted for public comment](#) from 10 June – 9 August 2019. Six comments were received, and no commenters were opposed to the amendment.

Whereas, the OEC recommends that the Board approve the amendments to Section 18.7 of the ICANN Bylaws, as posted for public comment, and direct ICANN org to continue with the Fundamental Bylaws Amendment process.

Resolved (2019.09.08.xx), the ICANN Board approves the amendments to Section 18.7 of the ICANN Bylaws as posted from public comment. The Board directs the President and CEO, or his designee(s), to continue with the Fundamental Bylaws Amendment Process under Section 25.2 of the ICANN Bylaws.

PROPOSED RATIONALE:

Moving forward with the Fundamental Bylaws amendment process is in direct response to the request of the ccNSO Council, and also supports the new accountability and oversight mechanisms designed by the community in the IANA Stewardship Transition Process. The IANA Naming Function Review is an important part of the accountability and oversight of IANA's performance of the Naming Function and was a key aspect of the Transition proposal. During the pendency of Bylaws' change process to date, the ccNSO Council was eventually, was eventually able, through considerable effort and perseverance, able to locate a non-ccNSO member ccTLD manager to serve on the current IANA Naming Function Review Team, however the ccNSO Council is likely to be unable to complete the required composition of the IANA Naming Function Review Teams in the future unless we continue with this change. Taking this action today is a step forward to making sure that the IANA Naming Function Reviews can proceed in a manner that the ICANN community collectively supports, as will be identified through the Fundamental Bylaws process.

This action is based on a review of the ccNSO's initial request to change the Bylaws and a review of the public comments received on the proposed amendments, including the [Staff Report of the Public Comment Proceeding](#). There were six unique comments submitted, including from the ccNSO Council, the Business Constituency, the Registries Stakeholder Group, the Non-Commercial Stakeholder Group, the At-Large Advisory Council, and an individual affiliated with Nominet. The ccNSO, BC, RySG, ALAC and individual commenter all supported the Bylaws change as proposed. The NCSG, while not opposing the recommendation, suggested that a requirement for best efforts to identify a non-ccNSO should also be incorporated into the Bylaws. The individual commenter, who participates in ccNSO processes, warned against being too proscriptive in the Bylaws regarding the ccNSO processes. None of the commenters opposed the proposed language. No other commenter, including the ccNSO, supported the NCSG's recommendation for further change the proposed language.

The Board recognizes that the RySG, which is also responsible for the appointment of two members to the IFR, included in its comment a suggestion for further amendment of the composition requirements so as to relax some of the RySG's obligations as it

relates to geographic diversity of its selected members. The action today on the amendments proposed by the ccNSO do not preclude further amendment to this section of the Bylaws and does not make any assessment of the RySG's proposal. The Board looks further to further dialogue with the RySG and the broader community if additional issues are identified through the running of the IFR, and to considering issues of geographic diversity alongside the diversity work that is arising out of the impending implementation of the diversity recommendations from Work Stream 2 of the Cross-Community Working Group on Enhancing ICANN Accountability.

Today's action does not pose any identified fiscal impact, nor does it impact the security, stability or resiliency of the Internet's DNS. This action serves ICANN's mission of coordinating the allocation and assignment of names in the root zone, as it will allow continued oversight over how ICANN serves that naming function. It is in the public interest as following the Bylaws-mandated amendment process supports ICANN's multistakeholder community and allows ICANN to remain accountable to its Bylaws-mandated mechanisms.

Signature Block:

Submitted by: Samantha Eisner

Position: Deputy General Counsel

Date Noted: 27 August 2019

Staff Report of Public Comment Proceeding

Fundamental Bylaws Amendment Proposal – IANA Naming Function Review (IFR)																			
Publication Date:	09-August-2019																		
Prepared By:	Amy Creamer																		
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View Comments Submitted																			
Staff Contact:	Amy Creamer	Email:	amy.creamer@gmail.com																
Section I: General Overview and Next Steps																			
<p>The purpose of this Public Comment proceeding is to obtain community input on a proposed change to Bylaws Section 18.7(b), regarding the IANA Naming Function Review Team's (IFR) composition. The proposed amendment was raised by the ccNSO, which has identified a current and ongoing issue with populating the IANA Naming Function Review in accordance with the Bylaws' requirements. The ICANN Board, taking on the ccNSO's request, agreed to initiate the Fundamental Bylaws amendment process (specified Section 25.2 of the Bylaws) to seek community input on the ccNSO's proposed modifications to the composition requirements. The amendment would remove the requirement for the ccNSO to identify a non-ccNSO member ccTLD representative and instead allow the ccNSO to appoint three representatives to the team, regardless of ccNSO member status.</p> <p>ICANN org will submit this report of Public Comments to the ICANN Board of Directors as part of its consideration of the proposed Bylaws amendment.</p> <p>ICANN org will additionally provide the RySG with next steps should the RySG decide to pursue an amendment to the Bylaws regarding the geographic diversity required between its two elected IFR members.</p>																			
Section II: Contributors																			

At the time this report was prepared, a total of [number] (n) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
ccNSO Council	Katrina Sataki	ccNSO
ICANN Business Constituency	Steve DelBianco	BC
gTLD Registries Stakeholder Group (RySG)	Samantha Demetriou	RySG
NCSG	Rafik Dammak	NCSG
ALAC	ICANN Policy Staff in support of the At-Large-Community, prior to ratification	ALAC1
ALAC	ICANN Policy Staff in support of the At-Large-Community, ratification confirmed	ALAC2

Individuals:

Name	Affiliation (if provided)	Initials
Nick Wenban-Smith	Nominet, General Counsel and Head of Stakeholder Relations	NWS

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this Public Comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

There were seven (7) comments submitted regarding the proposed change to Bylaws Section 18.7(b), regarding the IANA Naming Function Review Team's Composition. Please note, the ALAC submitted a comment prior to its member ratification, and then after it had been ratified; since the comment was remained one of support for this Bylaws change, it will be noted as a single supporting comment.

Five (5) comments supported the Bylaws change; (1) comment recommended alternative wording; and two (2) comments brought up issues with written IFR team composition requirements.

1. Support

The ccNSO, BC, RySG, ALAC and NWS supported the Bylaw change as originally proposed by the ccNSO.

The ccNSO commented, *"The ccNSO Council respectfully urges the amendment of the ICANN Bylaws as proposed. Experience has shown again and again that the pool of experienced and skilled candidates for IANA Naming Function review is very limited. With the declining number of non-ccNSO members and the limited interest of non-ccNSO member ccTLDs in ICANN (related) affairs, it has proved difficult to find a non-ccNSO member representative to the IFR team."*

The ccNSO, BC, RySG and ALAC noted their approval, with the ALAC commenting, “The ALAC agrees that the proposed change preserves the intent of the original Fundamental Bylaw and supports the change. Subject to any new information being brought to the ALAC’s attention, the current intention is that the ALAC will support this Fundamental Bylaw change when it is presented to the Empowered Community.”

2. Recommendation for Alternative Change to Bylaws

The NCSG commented that “while the proposed change does not appear unreasonable, we would look favourably at maintaining the obligation for the ccNSO to reach out to a non-ccNSO affiliated ccTLD manager. Such an obligation could be qualified by a term such as ‘best efforts.’ This would impose a lighter burden on the composition of the IFRT, while ensuring that non-ccNSO affiliated ccTLD managers keep a reserved seat as was provided for in the original bylaws.”

3. Issues Raised

Two (2) comments highlighted potential issues in relation to Bylaws requirements.

The RySG noted, “We would like to take the opportunity during this comment period to reflect on other challenges encountered in establishing the IANA Naming Function Review Team as a result of the requirements identified in the bylaws, specifically as they relate to geographic diversity.... The membership of the RySG is currently 84 members: 36 from Europe; 32 from North America; 12 from Asia Pacific; 2 from Latin America and 1 from Africa. Our original call for volunteers, which was over 12 months ago, identified two well-qualified volunteers from North America; however, because of the geographic requirement highlighted above we had to conduct a second call in order to satisfy the requirement. While we were able to address the problem on this occasion, it is foreseeable that this may not always be the case and as such consideration should be given to building some flexibility into the bylaws to overcome this situation. Otherwise, we run the risk that a future process may also be subject to significant delays while attempts are made by the RySG to satisfy the geographic requirement. The RySG understands and acknowledges the importance of geographic diversity; however, we believe it is important for others to recognise the limitations we sometimes face in meeting prescribed ICANN Bylaw requirements because of the composition of our membership.”

NWS wrote, “Personally I would not be too prescriptive about the process the Council needs to follow in appointing the individuals to the review team in the by laws themselves. I wouldn’t want to get into legal arguments about whether the process was ‘inclusive’ for example, as those sorts of words are inherently fairly subjective and mean different things to different people. I trust that the Council in making the appointments would follow due process and appoint appropriately without any formal requirement to do so.”

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

None of the comments submitted directly opposes the ccNSO’s proposed Bylaw amendment to remove the requirement for the ccNSO to identify a non-ccNSO member ccTLD representative and instead allow the ccNSO to appoint three representatives to the team, regardless of ccNSO member status.

Two comments raised issues with the restrictions on IFR team composition, with the RySG raising *“challenges encountered in establishing the IANA Naming Function Review Team as a result of the requirements identified in the bylaws, specifically as they relate to geographic diversity.”*

Though not an issue, the NCSG would *“look favourably at maintaining the obligation for the ccNSO to reach out to a non-ccNSO affiliated ccTLD manager. Such an obligation could be qualified by a term such as ‘best efforts.’”* ICANN org notes that “best efforts” is a term requiring further definition and qualification. However, if the ccNSO Council, who presented the text, determines to update the original proposal to align with the NCSG suggestion, the ccNSO Council can flag this for consideration.

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) ~~Three~~^{Two} representatives who are associated with ccTLD managers, appointed by the ccNSO Council. Representatives need not be associated with a ccNSO member. The ccNSO Council should use an inclusive process, which is open to all ccTLD managers, independent of their membership to the ccNSO, from its ccTLD registry operator representatives;

~~(b) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO;~~ ⁱ It is strongly recommended that the ccNSO Council reaches out to all ccTLD managers directly and or through consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in making its appointment seeking volunteers;

~~(bc)~~ Two representatives appointed by the Registries Stakeholder Group;

~~(cd)~~ One representative appointed by the Registrars Stakeholder Group;

~~(de)~~ One representative appointed by the Commercial Stakeholder Group;

~~(ef)~~ One representative appointed by the Non-Commercial Stakeholder Group;

~~(fg)~~ One representative appointed by the GAC;

~~(gh)~~ One representative appointed by the SSAC;

~~(hi)~~ One representative appointed by the RSSAC;

~~(ij)~~ One representative appointed by the ALAC;

~~(jk)~~ One liaison appointed by the CSC;

~~(kl)~~ One liaison who may be appointed by the ASO; and

~~(lm)~~ One liaison who may be appointed by the IAB.

~~(mn)~~ The IFRT shall also include an unlimited number of non-member, non-liaison participants.

~~(no)~~ The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

From: Katrina Sasaki
Date: Friday, 12 April 2019
To: Cherine Chalaby
Subject: Composition of the IANA Functions Review Team: proposed ICANN Bylaws change

To:
Cherine Chalaby, ICANN Board of Directors, Chair

Cc:
Göran Marby, ICANN, CEO & President
Chris Disspain, Nigel Roberts, ICANN Board
John Jeffrey, ICANN, General Counsel & Secretary

Dear Cherine:

Composition of the IANA Functions Review Team

We refer to previous correspondence and our latest discussions on the subject of the composition of the IANA Functions Review Team (IFRT) at ICANN64.

As you know, the current Bylaws require the appointment of a non-ccNSO ccTLD representative to the IFRT. Despite extensive efforts this has not been possible to date, and the IFRT work has consequently been delayed. Since the pool of available non-ccNSO members is now very limited, we are not optimistic that this requirement can be fulfilled.

We are therefore now formally writing to you to request an amendment to the relevant Bylaw to resolve this unsatisfactory situation and allow the IFRT to proceed. A suggested draft is attached to this letter.

Yours sincerely,

Katrina Sasaki
on behalf of the ccNSO Council

-- Article 18.7 current wording

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

- a. *Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;*
- b. *One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in making its appointment;*

-- Proposed new article 18.7

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

- a. ***Three representatives who are associated with ccTLD Managers, appointed by the ccNSO Council. Representatives need not be associated with a ccNSO member. [The ccNSO Council should use an inclusive process, which is open to all ccTLD Managers, independent of their membership to the ccNSO. It is strongly recommended that the ccNSO Council reaches out to all ccTLD Managers directly and/or through the regional ccTLD organisations in seeking volunteers.]***

**ICANN BOARD OF DIRECTORS
SUBMISSION NO. 2019.09.08.1f**

TITLE: **ITU-D Sector Membership**
PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

During the Board's January 2019 strategy day at its Los Angeles Workshop, the ICANN Board tasked the ICANN President and CEO with moving forward with an application for ITU-D Sector membership. The ICANN organization completed the application process and in June 2019, was notified that its application was accepted and that the ITU-D agreed to waive fees for ICANN's membership. During the Board's workshop in Marrakech at ICANN65, the Board discussed and decided that it would be appropriate to affirm the acceptance of ICANN's application in a forthcoming resolution. In line with that agreement, the Board is now asked to affirm ICANN's participation as a sector member of the ITU-D and authorize the President and CEO to take the appropriate next steps for ICANN's engagement and participation.

BOARD RECOMMENDATION:

The Board agreed, during its discussions of this issue in Marrakech during ICANN65, that taking a resolution to affirm the application and membership is appropriate.

PROPOSED RESOLUTION:

Whereas, after discussion and support from the Board, ICANN organization applied for ITU-D sector membership, and also sought a fee waiver for membership, if approved.

Whereas, ICANN's engagement with the ITU-D is based on the importance of effective engagement within the ITU and its membership, alongside other members of the technical community, in order to effectively communicate the role of ICANN, and, as appropriate to defend our Mission and multistakeholder processes.

Whereas, in June 2019, ICANN was informed that its application for sector membership was approved, and that the fee waiver was granted.

Resolved (2019.09.08.xx), the Board thanks the ITU for the approval of ICANN's application as a sector member of the ITU-D, and thanks the ITU for the granting of the fee waiver. The Board directs ICANN's President and CEO, or his designee, to review the appropriate next steps for ICANN's participation within the ITU-D following the approval of the application and in accordance with ICANN's organizational engagement strategy.

PROPOSED RATIONALE:

As part of the technical community, ICANN has had a long history of engagement with the International Telecommunications Union (ITU). In the past, as part of the now-defunct Technical Liaisons Group (TLG), the ITU was responsible for seating a liaison to the ICANN Board every third year. Though the TLG was disbanded a few years ago, the ability to maintain engagement opportunities with the ITU has remained important to ICANN.

ICANN's application for sector membership to the ITU-D, and the resulting approval of that application on a fee-waived basis, is an important recognition of the reciprocal relationship between the two organizations. ICANN's ability to serve as a sector member in the ITU-D provides an opportunity for ICANN org to effectively communicate the role of ICANN, and, as appropriate to defend our Mission and multistakeholder processes.

This action is within ICANN's mission as ICANN's engagement with other technical organizations serves and enhances ICANN's ability to ensure the stable and secure operation of the Internet's unique identifier system. It is in the public interest in that it upholds and recognizes the role of other entities in the broader ecosystem and the value in keeping open lines of communication, as well as upholding the value of ICANN's multistakeholder model.

This action is not expected to have an impact on ICANN's resources or a direct impact on the security or stability of the Internet's DNS.

Submitted by: Cherine Chalaby
Position: Chair, ICANN Board
Date Noted: 27 August 2019

ICANN BOARD PAPER NO. 2019-09-08-2a

TITLE: Delegation of the .eu (“eu”) domain representing the European Union in Greek script to EURid vsw/asbl

PROPOSED ACTION: For Board Consideration and Approval

REFERENCE: 1147481

EXECUTIVE SUMMARY:

As part of PTI’s responsibilities under the IANA Naming Function contract with ICANN, PTI has prepared a recommendation to authorize the delegation of the .eu top-level domain, comprised of the IDN ccTLD Fast Track approved string representing the European Union in Greek script, to EURid vsw/asbl.

Key points of the investigation on the delegation request are:

- The string under consideration successfully completed the Fast Track process, which deemed it an appropriate representation of the European Union.
- In Greek language, the string has a transliteration equivalent to “eu” in English.
- The proposed manager is EURid vsw/asbl, a non-profit association based in Belgium.
- EURid vsw/asbl has managed the .EU and .eu top-level domains since 2005 and 2016, respectively.
- Support for the delegation has been provided by:
 - The European Commission’s Information Society and Media Directorate-General
 - The Ministry of Digital Governance of Greece
 - The Ministry of Transport, Communications and Works of the Republic of Cyprus

PROPOSED RESOLUTION:

Resolved (2019.09.08.xx), as part of the exercise of its responsibilities under the IANA Naming Function Contract with ICANN, PTI has reviewed and evaluated the request to delegate the .eu top-level domain to EURid vsw/asbl. The documentation demonstrates that the proper procedures were followed in evaluating the request.

PROPOSED RATIONALE:

Why the Board is addressing the issue now?

In accordance with the IANA Naming Function Contract, PTI has evaluated a request for ccTLD delegation and is presenting its report to the Board for review. This review by the Board is intended to ensure that the proper procedures were followed.

What is the proposal being considered?

The proposal is to approve a request to create the .εv country-code top-level domain in Greek script and assign the role of manager to EURid vsw/asbl.

Which stakeholders or others were consulted?

In the course of evaluating a delegation application, PTI consulted with the applicant and other interested parties. As part of the application process, the applicant needs to describe consultations that were performed within the country concerning the ccTLD, and their applicability to their local Internet community.

What concerns or issues were raised by the community?

PTI is not aware of any significant issues or concerns raised by the community in relation to this request.

What significant materials did the Board review?

The Board reviewed the following evaluations:

- The domain is eligible for delegation as it is a string that has been approved by the IDN ccTLD Fast Track process and the European Union is qualified under section 2.1 of the Final Implementation Plan for [the] IDN ccTLD Fast Track Process.
- The relevant government has been consulted and does not object;
- The proposed manager and its contacts agree to their responsibilities for managing this domain;
- The proposal has demonstrated appropriate local Internet community consultation and support;

- The proposal does not contravene any known laws or regulations;
- The proposal ensures the domain is managed locally in the country, and is bound under local law;
- The proposed manager has confirmed they will manage the domain in a fair and equitable manner;
- The proposed manager has demonstrated appropriate operational and technical skills and plans to operate the domain;
- The proposed technical configuration meets the technical conformance requirements;
- No specific risks or concerns relating to Internet stability have been identified; and
- Staff have provided a recommendation that this request be implemented based on the factors considered.

These evaluations are responsive to the appropriate criteria and policy frameworks, such as "Domain Name System Structure and Delegation" (RFC 1591) and "GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains".

As part of the process, Delegation and Transfer reports are posted at:

<http://www.iana.org/reports>.

What factors the Board found to be significant?

The Board did not identify any specific factors of concern with this request.

Are there positive or negative community impacts?

The timely approval of country-code domain name managers that meet the various public interest criteria is positive toward ICANN's overall mission, the local communities to which country- code top-level domains are designated to serve, and responsive to obligations under the IANA Naming Function Contract.

Are there financial impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

The administration of country-code delegations in the DNS root zone is part of the IANA functions, and the delegation action should not cause any significant variance on pre-planned expenditure. It is not the role of ICANN to assess the financial impact of the internal operations

of country-code top-level domains within a country.

Are there any security, stability or resiliency issues relating to the DNS?

ICANN does not believe this request poses any notable risks to security, stability or resiliency. This is an organizational administrative function not requiring public comment.

SIGNATURE BLOCK:

Submitted by: Naela Sarras
Position: Director, IANA Operations
Date Noted: 22 August 2019
Email: naela.sarras@iana.org

Report on the Delegation of the .ευ (“eu”) domain representing the European Union in Greek script to EURid vzw/asbl

22 August 2019

This report is a summary of the materials reviewed as part of the process for the delegation of the .ευ (“eu”) top-level domain. It includes details regarding the proposed delegation, evaluation of the documentation pertinent to the request, and actions undertaken in connection with processing the delegation.

FACTUAL INFORMATION

Country

The “EU” two-letter code is exceptionally reserved by the ISO 3166 Maintenance Agency to cover representation of the European Union in any application.

String

The domain under consideration for delegation at the DNS root level is “ευ”. This is represented in ASCII-compatible encoding according to the IDNA specification as “xn--qxa6a”. The individual Unicode code points that comprise this string are U+03B5 U+03C5.

In the Greek language, the string has a transliteration equivalent to “eu” in English. The string is expressed using the Greek script.

Chronology of events

On 22 April 2002, the European Parliament and the Council of the European Union adopted Regulation 733/2002 on the implementation of the .EU top-level domain, which entered into force upon publication in the Official Journal of the European Communities on 30 April 2002.

On 21 May 2003, the European Commission, in consultation with its Member States, designated the European Registry for Internet Domains vzw/asbl (EURid) as the appropriate manager of the .EU top level domain.

On 27 June 2003, EURid was registered as a non-profit association in Belgium. It was founded by the managers of the .BE (Belgium), .IT (Italy), and .SE (Sweden) top-level domain managers. Later, the managers of the .CZ (Czechia) and .SI (Slovenia) top-level domains became members, as did the European Chapter of the Internet Society and Business Europe.

On 28 April 2004, European Commission Regulation 874/2004 laid out the public policy rules concerning the implementation and functions of the .EU top-level domain and the principles governing registration.

In May 2005, management of the .EU top-level domain was delegated to EURid.

In 2009, EURid launched internationalized domain names (IDNs) at the second level of the .EU domain, after extensive consultation with its community.

On 5 May 2010, an application was made to the ICANN ccTLD IDN Fast Track Process to have the strings “ευ” and “εю” recognized as representing the European Union in Greek and Cyrillic scripts, respectively.

In 2012, the Cyrillic string succeeded in passing the DNS Stability Panel evaluation, but the DNS Stability Panel found that the Greek string presented an “unacceptably high risk of user confusion” and was therefore rejected by the Panel.

On 14 May 2013, the European Commission published a call for expressions of interest in the Official Journal of the European Union, inviting applications from organizations wishing to be selected as the manager of the .EU top-level domain and “possible .EU variants in other scripts”. The call was closed on 20 June 2013 and only one application was received. The application was submitted by EURid and an evaluation found that it met the minimum requirements of the selection criteria.

In April 2014, the European Commission entered into a new contract with EURid to continue managing the .EU top-level domain and its variants in other scripts.

In September 2014, following a request for re-evaluation, the IDN ccTLD Fast Track Process’ Extended Process Similarity Review Panel found that the Greek string in upper case “should still be considered confusingly similar to the following ISO 3166-1 entries: EV and EY.”

On 12 February 2016, management of the .εю top-level domain representing the European Union in Cyrillic script was delegated to EURid.

On 29 March 2019, ICANN announced the release of the updated IDN ccTLD Fast Track Final Implementation Plan (FIP), including changes proposed by ICANN’s Country Code Supporting Organization and Security and Stability Advisory Committee in response to the ICANN Board of Directors’ request for guidance on the implementation of the Extended Process Similarity Review Panel. In accordance with the updated FIP, EURid proposed risk mitigation measures which it will implement on or before the launch of the .εю top-level domain.

In April 2019, it was announced that the Service Concession Contract between EURid and the European Commission had been extended until 12 October 2022.

On 5 June 2019, ICANN announced the successful string evaluation completion of the proposed IDN ccTLD string in Greek and, on 18 July 2019, EURid initiated a request for delegation of the .eu top-level domain.

Proposed Manager and Contacts

The proposed manager is EURid vzw/asbl, a non-profit association created in 2003. It is based in Belgium.

The proposed administrative contact is Marc Van Wesemael, General Manager of EURid. The administrative contact is understood to be based in Belgium.

The proposed technical contact is Peter Janssen, Technical Manager of EURid.

EVALUATION OF THE REQUEST

String Eligibility

The top-level domain is eligible for delegation, as the string has been deemed an appropriate representation of the European Union in Greek through the ICANN Fast Track String Selection process, and the European Union is qualified under section 2.1 of the Final Implementation Plan for [the] IDN ccTLD Fast Track Process.

Public Interest

Support was provided by the following:

- Gerard de Graaf, Director of Audiovisual, Media and Internet at the European Commission's Information Society and Media Directorate-General.
- Kyriakos Pierrakakis, Minister of Digital Governance of Greece.
- Vassiliki Anastasiadou, Minister of Transport, Communications and Works of the Republic of Cyprus.

EURid's member organizations represent a broad range of significantly interested parties in the Europe Union. They currently include:

- DNS Belgium
- The European Multi-Channel Online Trade Association
- The European Communities Trademark Association
- Business Europe
- CZ.NIC
- The Academic and Research Network of Slovenia
- The Council of European Professional Informatics Societies
- Euroconsumers
- The National Research Council's Institute of Informatics and Telematics
- The European Association of Craft, Small and Medium-Sized Enterprises
- The Interactive Advertising Bureau

The application is consistent with known applicable laws and regulations in the European Union and Belgium. The proposed manager undertakes responsibilities to operate the domain in a fair and equitable manner.

Based in country

The proposed manager is constituted in Belgium, a member state of the European Union. The headquarters of the European Union is located in Belgium. The proposed administrative contact is understood to be resident in Belgium. The registry is to be operated in Belgium.

Stability

The application does not involve a transfer of domain operations from an existing domain registry, and therefore stability aspects relating to registry transfer are not relevant.

The application is not known to be contested.

Competency

The application has provided information on the technical and operational infrastructure and expertise that will be used to operate the proposed new domain.

Proposed policies for management of the domain have also been tendered.

EVALUATION PROCEDURE

PTI is tasked with coordinating the Domain Name System root zone as part of a set of functions governed by a contract with ICANN. This includes accepting and evaluating requests for delegation and transfer of top-level domains.

A subset of top-level domains are designated for the local Internet communities in countries to operate in a way that best suits their local needs. These are known as country-code top-level domains (ccTLDs), and are assigned to responsible managers that meet a number of public-interest criteria for eligibility. These criteria largely relate to the level of support the manager has from its local Internet community, its capacity to ensure stable operation of the domain, and its applicability under any relevant local laws.

Through the IANA Services performed by PTI, requests are received for delegating new ccTLDs, and transferring or revoking existing ccTLDs. An investigation is performed on the circumstances pertinent to those requests, and the requests are implemented where they are found to meet the criteria.

Purpose of evaluations

The evaluation of eligibility for ccTLDs, and of evaluating responsible managers charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet's unique identifier systems.

In considering requests to delegate or transfer ccTLDs, input is sought regarding the proposed new manager, as well as from persons and organizations that may be significantly affected by the change, particularly those within the nation or territory to which the ccTLD is designated.

The assessment is focused on the capacity for the proposed manager to meet the following criteria:

- The domain should be operated within the country, including having its manager and administrative contact based in the country.
- The domain should be operated in a way that is fair and equitable to all groups in the local Internet community.
- Significantly interested parties in the domain should agree that the prospective manager is the appropriate party to be responsible for the domain, with the desires of the national government taken very seriously.
- The domain must be operated competently, both technically and operationally. Management of the domain should adhere to relevant technical standards and community best practices.
- Risks to the stability of the Internet addressing system must be adequately considered and addressed, particularly with regard to how existing identifiers will continue to function.

Method of evaluation

To assess these criteria, information is requested from the applicant regarding the proposed manager and method of operation. In summary, a request template is sought specifying the exact details of the delegation being sought in the root zone. In addition, various documentation is sought describing: the views of the local internet community on the application; the competencies and skills of the manager to operate the domain; the legal authenticity, status and character of the proposed manager; and the nature of government support for the proposal.

After receiving this documentation and input, it is analyzed in relation to existing

root zone management procedures, seeking input from parties both related to as well as independent of the proposed manager should the information provided in the original application be deficient. The applicant is given the opportunity to cure any deficiencies before a final assessment is made.

Once all the documentation has been received, various technical checks are performed on the proposed manager's DNS infrastructure to ensure name servers are properly configured and are able to respond to queries correctly. Should any anomalies be detected, PTI will work with the applicant to address the issues.

Assuming all issues are resolved, an assessment is compiled providing all relevant details regarding the proposed manager and its suitability to operate the relevant top-level domain.

ICANN BOARD SUBMISSION NO. 2019.09.08.2b

TITLE: **Consideration of Reconsideration Request 19-1**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Requestor, the Government of Colombia,¹ seeks reconsideration of ICANN Board Resolutions 2019.05.15.13–2019.05.15.15 (15 May 2019 Resolutions). The challenged Resolutions provided:

Resolved (2019.05.15.13), the Board finds the Amazon corporation proposal of 17 April 2019 acceptable, and therefore directs the ICANN org President and CEO, or his designee(s), to continue processing of the .AMAZON applications according to the policies and procedures of the New gTLD Program. This includes the publication of the Public Interest Commitments (PICs), as proposed by the Amazon corporation, for a 30-day public comment period, as per the established procedures of the New gTLD program.

Resolved (2019.05.15.14), the Board thanks ACTO, the ACTO member states, and the Amazon corporation for their time and efforts in attempting to reach a mutually acceptable solution on this matter.

Resolved (2019.05.15.15), the Board thanks the ICANN org President and CEO, along with his team within the ICANN organization, for their facilitation efforts.²

The Requestor claims that:

- (i) The Board “failed to consider the detailed legal concerns raised in a [7 April 2019] communication to Amazon the Company in which the ICANN CEO, ICANN Board Chair, and ICANN GAC [Governmental Advisory Committee] Chair were all copied.”³
- (ii) The Board relied on inaccurate information when it adopted the Resolutions, including “Amazon the Company’s representation that operating the contested

¹ The Request was filed on behalf of the Government of Colombia by Ivan Dario Castaño Perez of the Ministerio de Tecnologías de la Información y las Comunicaciones. Request 19-1, § 1, at Pg. 1. While the Government of Colombia is a member of the Amazon Cooperation Treaty Organization (ACTO), the Requestor states that it is filing Request 19-1 in its individual capacity and not on behalf of ACTO or any other ACTO member state. *Id.* at § 7, Pg. 5.

² See <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>.

³ Request 19-1, § 8, at Pg. 5.

string under a Specification 13 designation would be consistent with existing ICANN established best practice and would safeguard all parties' best interests.”⁴

- (iii) The Board failed to consider a potential governance structure for the .AMAZON TLD and IDNs offered by the Government of Colombia and modelled after the .SAS TLD.⁵
- (iv) The Board violated Article 3.4 of the ICANN Bylaws by posting the agenda for the 15 May 2019 meeting one day prior to the meeting.⁶
- (v) ICANN organization violated the ICANN Bylaws regarding transparency by scheduling a closed meeting during ICANN65 with the ICANN Registry Stakeholder Group to discuss a potential process for amending previously contracted-for Public Interest Commitments (PICs).⁷

On 14 August 2019, the Board Accountability Mechanisms Committee (BAMC) evaluated Request 19-1 and all relevant materials and recommended that the Board deny Request 19-1 because the Board adopted the 15 May 2019 Resolutions based on accurate and complete information. The BAMC further recommended that the Board deny Request 19-1 because neither the Board nor ICANN organization took any action in contradiction of ICANN's Bylaws.

Pursuant to Article 4, Section 4.2(q), the Requestor has 15 days from the receipt of the BAMC's Recommendation on Request 19-1 to submit a rebuttal. The rebuttal was sent to the Requestor on 14 August 2019. The Requestor's 15 day deadline to file a rebuttal expired on 29 August 2019. No rebuttal was filed by the 29 August 2019 deadline and none has been received to date.

BOARD ACCOUNTABILITY MECHANISMS COMMITTEE RECOMMENDATION:

The BAMC recommended that Request 19-1 be denied and that no further action be taken in response to the Request for the following reasons: (a) the Board adopted the 15 May 2019 Resolutions based on accurate and complete information; and (b) neither the Board nor ICANN organization took any action in contradiction of ICANN's Bylaws.

PROPOSED RESOLUTION:

⁴ Request 19-1, § 8, at Pg. 6.

⁵ Request 19-1, § 8, at Pg. 7.

⁶ Request 19-1, § 9, at Pg. 9.

⁷ Request 19-1, § 9, at Pg. 9–10.

Whereas, the Government of Colombia (Requestor), submitted Reconsideration Request 19-1 seeking reconsideration of ICANN Board Resolutions 2019.05.15.13–2019.05.15.15 (15 May 2019 Resolutions).

Whereas, the Requestor suggests that the Board failed to consider material information and that the Board relied on inaccurate information when it adopted the 15 May 2019 Resolutions.

Whereas, the Requestor further suggests that the Board violated the ICANN Bylaws by not publishing the agenda for the 15 May 2019 Board meeting until the day before the meeting was scheduled to take place.

Whereas, the Requestor further suggests that ICANN organization violated the ICANN Bylaws regarding transparency by scheduling a closed meeting during ICANN65 with the ICANN Registries Stakeholder Group to discuss a potential process for amending previously contracted-for Public Interest Commitments.

Whereas, the Board Accountability Mechanisms Committee (BAMC) previously determined that Request 19-1 is sufficiently stated and sent Request 19-1 to the Ombudsman for consideration in accordance with Article 4, Section 4.2(j) and (k) of the ICANN Bylaws.

Whereas, the Ombudsman recused himself from this matter pursuant to Article 4, Section 4.2(l)(iii) of the Bylaws.

Whereas, the BAMC carefully considered the merits of Request 19-1 and all relevant materials and recommended that Request 19-1 be denied because the Board adopted the 15 May 2019 Resolutions based on accurate and complete information and because neither the Board nor ICANN org took any action in contradiction of ICANN's Bylaws.

Whereas, pursuant to Article 4, Section 4.2(q) of the ICANN Bylaws, the Requestor has 15 days from the receipt of the BAMC's Recommendation on Request 19-1 to submit a rebuttal. No rebuttal was filed by the 29 August 2019 deadline and none has been received to date.

Resolved (2019.09.08.XX), the Board adopts the [BAMC Recommendation on Request 19-1](#).

PROPOSED RATIONALE:

1. Brief Summary and Recommendation

The full factual background is set forth in the [BAMC Recommendation on Request 19-1](#) (BAMC Recommendation), which the Board has reviewed and considered, and which is incorporated here.

On 14 August 2019, the BAMC evaluated Request 19-1 and all relevant materials and recommended that the Board deny Request 19-1 because the 15 May 2019 Resolutions were adopted based on accurate and complete information. The BAMC further recommended that the Board deny Request 19-1 because neither the Board nor ICANN organization took any action in contradiction of ICANN's Bylaws.

Pursuant to Article 4, Section 4.2(q), the Requestor has 15 days from the receipt of the BAMC's Recommendation on Request 19-1 to submit a rebuttal. No rebuttal was filed by the 29 August 2019 deadline and none has been received to date.

The Board has carefully considered the [BAMC's Recommendation](#) and all relevant materials related to Request 19-1, and the Board agrees with the [BAMC's Recommendation](#).

2. Issue

The issues are as follows:

- Whether the Board adopted the 15 May 2019 Resolutions based on false or inaccurate relevant information, or without consideration of material information.
- Whether the Board adopted the 15 May 2019 Resolutions contrary to ICANN's Bylaws, which require that “[a]t least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.”⁸
- Whether ICANN org or the ICANN Board violated ICANN's Bylaws, which require that ICANN “operate to the maximum extent feasible in an open and transparent manner,”⁹ by holding a closed meeting with the Registries Stakeholder Group (RySG) to discuss a potential process to modify Public Interest Commitments (PICs).

⁸ ICANN Bylaws, 18 June 2018, Art. 3 § 3.4.

⁹ *Id.* at § 3.1.

3. Analysis and Rationale

A. The Board Did Not Fail to Consider Material Information Before Adopting the Resolutions.

The Board did consider all relevant materials in adopting the 15 May 2019 Resolutions. The Requestor suggests that “ICANN Staff and Board . . . failed to consider the detailed legal concerns raised in a [7 April 2019] communication to Amazon the Company in which the ICANN CEO, ICANN Board Chair, and ICANN GAC Chair were all copied.”¹⁰ Relatedly, the Requestor notes that “the Colombian government offered other governance structures” in its 7 April 2019 communication to the Amazon corporation, but that it “does not appear that the ICANN Board even consider[ed] this potential option in seeking to achieve a mutually agreeable resolution between the parties.”¹¹ Contrary to the Requestor’s assertion, the Board considered the issues set forth in the Requestor’s 7 April 2019 Letter as part of its discussion on the Amazon corporation’s April 2019 Proposal at the Board workshop from 1-3 May 2019. Hence, the BAMC concluded, and the Board agrees, that there is no evidence that the Board failed to consider material information in adopting the 15 May 2019 Resolutions.¹²

1. The Board considered the “legal concerns” raised in the Requestor’s 7 April 2019 Letter.

The Requestor’s conclusion that the Board did not consider the Requestor’s “legal concerns” is based solely on the Requestor’s assertion that it “has been unable to find [the 7 April 2019] communication listed on the ICANN public correspondence website or in any of the cited references in the Resolution[s].”¹³ However, the Requestor’s 7 April 2019 Letter was addressed to the Amazon corporation, not to the ICANN Board, ICANN org, or any individual associated with ICANN.¹⁴ ICANN org’s President and CEO, as well as the Board Chair, were simply

¹⁰ Request 19-1, § 8, at Pg. 5.

¹¹ *Id.* at Pg. 7.

¹² In connection with the shared governance model, the Request also asks that “ICANN Org direct SSAC to prepare [a] report for the ICANN Board to address the security and stability concerns raised by Amazon the Company in connection with the concurrent use proposal made by the Colombia government.” Request 19-1, § 9, at Pg. 11. However, such information is not relevant to the issue at hand. Moreover, a Request for Reconsideration is not the appropriate forum in which to request such relief. *See* Bylaws Art. 4, § 4.2. A Request for Reconsideration is likewise not the appropriate forum for the Requestor’s request that the ICANN Board “be provided with a confidential briefing document on the approximately thirty-seven Specification 13 requests that were either ‘Not Approved or Withdrawn.’” Request 19-1, § 9, at Pg. 11.

¹³ *See id.* at Pg.5.

¹⁴ *See id.* at Attachment, Pg. 17.

copied on the communication.¹⁵ It is not ICANN’s policy or practice to publicly post communications between third parties on which it is only copied.

While the Board acknowledges that the Requestor’s 7 April 2019 Letter was not specifically identified in the 15 May 2019 Resolutions under the “What materials did the Board review” section of the Rationale, the legal concerns and the proposed joint governance structure for the .AMAZON TLDs set forth in the Requestor’s 7 April 2019 Letter were also discussed in other correspondence from the ACTO member states that the Board considered and listed in adopting the 15 May 2019 Resolutions.¹⁶ Specifically, the legal concerns and proposed joint governance structure were included in the 11 April 2019 letter from the Secretary General of ACTO to the ICANN Board Chair,¹⁷ and the letters from Ambassador Zaluar of Brazil to the ICANN Board of 23 April 2019¹⁸ and 7 May 2019.¹⁹ Further, ACTO noted in its 11 April 2019 letter to the Board that the ACTO member states “have presented many times in the past years . . . their joint and clear position about the baseline for an agreement, i.e., a shared governance of the TLD.”²⁰ These letters were identified in the “What materials did the Board review” section to the 15 May 2019 Resolutions.²¹

2. The Board considered the alternative governance models suggested by the Requestor and ACTO member states.

Contrary to the Requestor’s claims, the Board did consider the alternative governance models proposed by the Requestor and ACTO member states when the Board adopted the 15 May 2019 Resolutions. The fact that the Board did not accept the proposed joint governance models is not

¹⁵ See *id.*

¹⁶ The Requestor’s 7 April 2019 Letter cited several models of joint governance, including the .SAS TLD governance model.

¹⁷ See <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-11apr19-en.pdf>.

¹⁸ See <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>.

¹⁹ See <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-07may19-en.pdf>.

²⁰ <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-11apr19-en.pdf>.

²¹ See, e.g., <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>; <https://www.icann.org/en/system/files/correspondence/glaser-to-chalaby-29apr19-en.pdf>. See also ICANN Reference Materials to Paper No. 2019-05-15-1c, Attachment B (<https://www.icann.org/en/system/files/bm/briefing-materials-2-redacted-15may19-en.pdf>) (describing 23 April 2019 letter from the Brazilian government to ICANN); 23 April 2019 letter from Brazilian government to ICANN (<https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>) (asserting that “the applied-for string would be operated as a closed .BRAND gTLD, which would foreclose the actual sharing of domains under the .AMAZON TLDs for purposes other than the protection and promotion of the brand”).

evidence that the Board failed to consider the proposals.²² It should further be noted that the alternative governance models were not material to the question before the Board when it adopted the Resolutions. That is, pursuant to the 10 March 2019 Resolutions, the Board was to consider whether the Amazon corporation’s proposal was acceptable, not to compare the Amazon corporation’s proposal with alternatives proposed by other stakeholders. Nevertheless, the Board did consider the proposed alternative governance models.

B. The Board Did Not Adopt the 15 May 2019 Resolutions Based on False or Inaccurate Information.

1. The ICANN Board did not approve Amazon corporation’s Specification 13 Applications when it adopted the 15 May 2019 Resolutions.

The Requestor claims that in adopting the 15 May 2019 Resolutions, “[t]he ICANN Board appears to blindly accept Amazon the Company’s representation that operating the contested string under a Specification 13 designation would be consistent with existing ICANN established best practice and would safeguard all parties’ best interests.”²³ According to the Request, “that is not the case,” and is therefore inaccurate information, because “only the trademark owner, its affiliates and licensees are permitted to use domain names in a Specification 13 (aka Brand) TLD,” and the Requestor “cannot see how Amazon Inc’s proposal to permit ACTO members to be beneficial registrants of the domain names is acceptable under the existing ICANN registry contractual framework.”²⁴

The Board’s determination in the 15 May 2019 Resolutions that ICANN org should “continue processing” the .AMAZON applications “according to the policies and procedures of the New gTLD Program” was not a determination that the Amazon corporation is automatically entitled to move forward to delegation of the .AMAZON TLDs, nor did the Board’s action constitute approval of the Amazon corporation’s Specification 13 applications to operate as .BRAND TLDs. In adopting the 15 May 2019 Resolutions, the Board acknowledged that the .AMAZON

²² See Request 19-1, § 8, at Pg. 7.

²³ Request 19-1, § 8, at Pg.6.

²⁴ See *id.* § 8, at Pg.6.

applications still needed to go through the remaining application processes in accordance with the Applicant Guidebook.²⁵

While the Board was aware of the Amazon corporation's intention of operating the .AMAZON TLDs as .BRAND TLDs,²⁶ the 15 May 2019 Resolutions did not take a position on the propriety of any Specification 13 application because individual Specification 13 applications are evaluated and approved or denied by ICANN org.²⁷ The Board notes that the Amazon corporation had not yet submitted a formal Specification 13 application for the proposed .AMAZON TLDs when the Board approved the 15 May 2019 Resolutions. Because the Board did not take a position on the propriety of any Specification 13 application, it did not rely on any "representations" about Specification 13, and therefore those representations do not support the Requestor's claim that the Board relied on inaccurate information when it enacted the 15 May 2019 Resolutions.

2. Specification 13 status is not necessarily incongruent with the proposed PICs.

The Requestor claims that Amazon corporation's proposed PICs would automatically be incongruent with any Specification 13 application submitted by the Amazon corporation. The Board does not agree with the Requestor's conclusion. Specification 13 requires, among other things, that only the Registry Operator (here, this would be the Amazon corporation), "its Affiliates or Trademark Licensees are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD."²⁸ There is no prohibition on allowing third parties to *use* domain names in a .BRAND TLD, which was what the Amazon corporation proposed to do.²⁹

The Requestor states that it advised the Board of the conflict between Amazon corporation's Specification 11 and 13 designations in the Requestor's 7 April 2019 Letter. The Board notes

²⁵ Resolution 2019.05.15.13 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>).

²⁶ Letter from Amazon to ICANN Board at Pg. 3, 17 April 2019 (<https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>).

²⁷ See .BRAND TLD Application Process, Pgs. 6-7 (<https://newgtlds.icann.org/en/applicants/agb/base-agreement-spec-13-application-form-15jul14-en.pdf>).

²⁸ Applications to Qualify for Specification 13 to the Registry Agreement (<https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/specification-13-applications>).

²⁹ See *id.*

that the Requestor actually concedes in the letter that the proposed PICs do not inherently conflict with Specification 13. That is, the Requestor does *not* assert that the proposed PICs *actually* violate Specification 13, but rather, the Requestor posits that the proposed PICs “violate the spirit of the Specification 13 guidance and the best practice of ICANN Org in approving Specification 13 requests.”³⁰ Because Specification 13 does not prohibit the type of use (without third-party registration) that the Amazon corporation proposed, the Requestor’s assertions about the “spirit” of Specification 13 are misplaced and not grounds for reconsideration.³¹

Finally, the Requestor’s concerns about Specification 13 appear to arise from a belief that, if the Amazon corporation applies for and receives Specification 13 status for the proposed .AMAZON TLDs, such status will nullify or diminish the effect of the PICs.³² While the Board understands the Requestor’s concerns, they are unfounded and premature at this stage. Amazon corporation’s Specification 13 status has no bearing on its Specification 11 PICs. The approval of a Specification 13 to an eventual registry agreement and the designation of a TLD as a .BRAND TLD does not nullify the Registry Operator’s Specification 11 PICs. A Registry Operator will be contractually bound by its Specification 11 commitments and its Specification 13 obligations, if applicable. Each Specification has its own enforcement mechanisms. A Registry Operator’s failure to operate in compliance with its Specification 11 PICs shall be subject to the Public Interest Commitment Dispute Resolution Procedure.³³ Similarly, upon a Registry Operator’s failure to satisfy the requirements of Specification 13, “(i) the TLD shall immediately cease to be a .BRAND TLD, (ii) Registry Operator shall immediately comply with the provisions of the [Registry] Agreement as no longer modified by [] Specification 13 [] and (iii) the provisions of

³⁰ Request 19-1, Attachment, at Pg. 2.

³¹ The Requestor asks that the Board either confirm that the plan proposed by the Amazon corporation is consistent with ICANN’s policies and practices or, alternatively, reconsider the Resolutions if the plan is inconsistent with ICANN’s policies and practices. Request 19-1, §§ 8–9, at Pg. 7, 11. As a preliminary matter, a Request for Reconsideration is not the appropriate forum in which to ask the Board to “confirm” the Board’s determination; in evaluating a Request for Reconsideration, the BAMC and Board consider whether the Board’s action—here, the Resolutions—contradicted ICANN’s established policies and procedures. *See* Bylaws Art. 4, § 4.2. The BAMC concluded that the Resolutions are consistent with ICANN’s established policies and procedures, and with ICANN’s Bylaws. As a result, Reconsideration is not warranted.

³² *See* Request 19-1, § 8, at Pg. 6 (“[W]e cannot see how Amazon Inc’s[] proposal to permit ACTO members to be beneficial registrants of the domain names is acceptable . . . the fact remains that the ACTO members would be the beneficial registrants and would thus violate the terms of Specification 13.”).

³³ Base Specification 11, updated 31 July 2017 (<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf>); Public Interest Commitment Dispute Resolution Procedure (<https://www.icann.org/resources/pages/picdrp-2014-01-09-en>; <http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf>.)

[the] Specification 13 [] shall thereafter no longer have any effect.”³⁴ Thus, if an actual conflict should arise between the Amazon corporation’s Specifications 11 and 13, there are safeguards in place to address such conflicts.

C. The Board’s Adoption of the Resolutions Was Consistent with ICANN’s Bylaws.

The Requestor claims that the Board adopted the Resolutions in contravention of the ICANN Bylaws because “the agenda for the 15-May-2019 ICANN Board meeting was published one (1) day in advance of the actual meeting.”³⁵ In the Requestor’s view, this violated Article 3.4 of the ICANN Bylaws, which required that “[a]t least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.”³⁶ As the Requestor acknowledges, “the bylaws provide some latitude” with respect to this provision by including “qualifiers like ‘as is practicable.’”³⁷ In this case, the 15 May 2019 meeting was set to address the urgent matter of the GNSO EPDP Recommendations on the Temporary Specification for gTLD Registration Data, because the Temporary Specification was set to expire.³⁸ Given the circumstances, the agenda for the meeting was not finalized until 14 May 2019, when it was promptly posted as soon as practicable. Therefore, the timing of when the agenda was posted was consistent with the Bylaws.

D. No Meeting Was Scheduled with the RySG to Discuss a Potential Process to Modify PICs.

The Board agrees with the BAMC that Request 19-1 does not identify a violation of ICANN Bylaws, policies, or procedures because there was no private meeting between ICANN org and the RySG during ICANN 65 about a process for modifying previously agreed to PICs. Rather, the meeting cited by the Requestor concerned the process for *enforcing* PICs (the PIC Dispute Resolution Process, or PICDRP).

³⁴ Base Specification 13, updated 31 July 2017 (<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-specification-13-31jul17-en.pdf>).

³⁵ Request 19-1, § 8, at Pg. 9.

³⁶ *Id.*

³⁷ *Id.*

³⁸ <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.b>.

For foregoing reasons, the Board concludes that reconsideration is not warranted.

This action is within ICANN's Mission and is in the public interest as it is important to ensure that, in carrying out its Mission, ICANN is accountable to the community for operating within the Articles of Incorporation, Bylaws, and other established procedures, by having a process in place by which a person or entity materially affected by an action of the ICANN Board or Staff may request reconsideration of that action or inaction by the Board. Adopting the BAMC's Recommendation has no financial impact on ICANN and will not negatively impact the security, stability and resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

Submitted By: Amy A. Stathos, Deputy General Counsel
Date Noted: 30 August 2019
Email: amy.stathos@icann.org

REFERENCE MATERIALS – BOARD PAPER NO. 2019.09.08.XX

TITLE: **Consideration of Reconsideration Request 19-1**

Documents

The following attachments are relevant to the Board’s consideration of Reconsideration Request 19-1, which contain all the relevant information considered by the Board Accountability Mechanisms Committee.

Attachment A is [Reconsideration Request 19-1](#) and Attachments 1 through 2, submitted on 15 June 2019.

Attachment B is the [BAMC’s Determination Regarding Requestor’s Request for Urgent Consideration of Request 19-1](#), dated 18 June 2019.

Attachment C is the [Ombudsman’s Action Regarding Request 19-1](#), issued 28 June 2019.

Attachment D is the [BAMC’s Recommendation on Reconsideration Request 19-1](#), issued 14 August 2019.

Submitted By: Amy Stathos, Deputy General Counsel

Date Noted: 30 August 2019

Email: amy.stathos@icann.org



Reconsideration Request

1. Requestor Information

Name: Ivan Dario Castaño Perez

Address:

MinTIC
Edificio Murillo Toro - Cra. 8a Between calles 12 y 13

Zip Code: 111711 - Bogotá D.C. - Colombia

Email:

Phone Number (optional):

Contact Information Redacted

2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

ICANN Board meeting held on 15-May-2019 at which resolutions 2019.05.15.13 thru 2019.05.15.15 were approved.

4. Date of action/inaction:

15-May-2019

5. On what date did you become aware of the action or that action would not be taken?

The Colombia government did not become fully aware of this action/inaction by ICANN until 18-May-2019. Upon information and belief, the Resolutions and accompanying rational were posted on the ICANN website on 17-May-2019.



6. Describe how you believe you are materially and adversely affected by the action or inaction:

The Colombia government believes that ICANN's rush to judgment in connection with the Amazon EU S.à r.l. applications materially and adversely impact it in the following several overarching areas. Hereinafter, when citing Amazon the Company we intend to reference Amazon.com, Inc., Amazon EU S.à r.l., Amazon Registry Services, and any other subsidiary or affiliate associated with the TLD applications in question.

1. Adverse impact on the rights of Amazonian communities and indigenous peoples:

In accordance with the Political Constitution of Colombia, the State recognizes and protects the ethnic and cultural diversity of the Nation (art.7), and fulfills its obligation to protect cultural and natural wealth (art.8). Also, the State recognizes the communal lands of the ethnic groups and the lands of protection as "inalienable, imprescriptible and indefeasible property" (art.63). For this reason, the Colombian government is committed to the preservation, protection and promotion of the rights of the indigenous peoples and the Amazonian communities, through the adoption of the necessary measures to guarantee the effectiveness of the rights of the communities.

In addition, ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, of which Colombia is a State Party, establishes the obligation of States to take actions to protect indigenous peoples and "guarantee respect for their integrity." The treaty also provides that legislative or administrative measures that directly affect indigenous peoples must be consulted in good faith (art.6).

Therefore, the decision of the ICANN Board to prematurely conclude the negotiations, without having fully and adequately addressed the key aspects of the proposal of Amazon the Company, and its effects on the rights of the indigenous peoples of the country affects the responsibilities of the government of Colombia with the indigenous territories and communities of the Amazon of Colombia.

2. Economic and Commercial adverse impacts:

A top-level domain works, not just as a postal address, where the order or place where a name appears transmits different types of information about the delivery address, but also as a signpost, which provides information on what type of activity is really supposed to happen in that delivery address or below it.

A top-level domain sends a clear message about what kind of business one would expect to find under existing TLDs. From the commercial point of view, an own domain helps to create identity, promotes the image of the product, service or company on the internet and gives it an



additional value. For this reason, by granting the Amazon the Company the commercial exclusivity of the first level domain, the economic interests of the country are affected, because it limits the future possibilities of commercial incursion of the communities of the Amazon, through this name of global reach, which is intrinsically related to the territory they inhabit.

In this regard, ICANN's decision also directly affects the market capture of Amazonian products and, therefore, all of the biotrade, as well as the loyalty of customers who are already associated with the Amazonian market, avoiding the attraction and attracting potential customers and affecting the loyalty of current customers, with which the market for products of Amazonian origin already counts.

Likewise, from the approach of the country's policy for Economic and Environmental Sustainability to "produce conserving and preserving production", a negative impact is generated for the creation or incursion in an international market of local products through electronic commerce, whose opportunities they are restricted because the use of the name at the commercial level is limited exclusively to Amazon the Company. In this case, for example, the products that are the result of the zones where programs, projects and economic activities are being developed, such as "Corazón de la Amazonia", through which conflicts between environmental partners in protected areas are avoided, strategies of conservation in situ and in strategic ecosystems, they will not find a fair trade, but they will be subordinated to the juridical person of ".Amazon"

Consequently, ICANN's decision has broader implications on the country's public policy programs for the protection and development of the Colombian Amazon and, in particular, the National Sustainable Biotrade program, which is a strategy that seeks to take advantage of the benefits comparisons of the country in terms of its biodiversity, in order to facilitate the collective construction of sustainable businesses that enhance equity and social justice of the Amazonian communities.

These implications, derived from the decision of ICANN, limit the future possibilities regarding the competitive and sustainable development of products and services based on native biodiversity in a global economic context, and structurally, to the generation of wealth and opportunities through of its sustainable commercial use, and puts our Amazon companies at a clear disadvantage, for not being able to carry out a brand positioning of products originating from the Amazonian region through the use of a first level domain whose name identifies them.

3. Risk of confusion between geographical names and domain names - impossibility of using IP rights

The Amazon is one of the regions of Colombia with the greatest ethnic and linguistic diversity, in which several sociocultural complexes located in different areas are located. The Amazon also corresponds to the name of the largest department of Colombia with 110,000 square km with approximately 75,000 inhabitants until 2015. It is also a macro region that brings together 8 countries. In this sense, the Amazonian communities, and the indigenous peoples that are part of them, represent a great ethnic diversity in Colombia, as well as cultural expressions,



traditional knowledge and biodiversity.

The registration of domain names has important implications because it is an address that transcends the territorial and offers a global identification for all consumers in the world. The registration is granted to the first who requests it under the principle "first in time, first in law". However, it is still controversial that granting such domain may affect the rights of third parties such as intellectual property rights, rights of the personality or rights of geographical places.

The Amazonian peoples represent a great ethnic diversity in Colombia, as well as cultural expressions, traditional knowledge and biodiversity and the Government exerts its territorial sovereignty through the recognition of the region, the extension of Government programs, recognition of its inhabitants, a legal framework that protects its biodiversity, indigenous reserves

The main challenge of the Colombian Amazon is economic growth and development without threatening its wealth and natural, cultural and ethnic heritage. However, the granting of a gTLD domain to the company Amazon Inc. affects the interests, values and economic rights of indigenous communities, and of a region that is developing over time in global positioning through connectivity and commerce. electronic.

This is due to the notoriety acquired by a domain name that differentiates resources, products, services and values through the Internet and portals, and that will be exploited by a third party, establishing a risk of confusion by trying to link the products, services and content of the domain with the geographic location, limiting the possibility of the communities to use it for their own interest, taking advantage of the positioning with which the Amazonian worldview counts, and attributing characteristics that AMAZON does not have as an American company, to products that are not native to the Amazon region.

In this sense, when the word Amazon is treated to a reference in English of the Amazon region, a distorted perception of the consumer is generated in the linking of the products of the multinational with the population and geographical location, when there is no direct relationship or hint. In addition, a reputational risk of the region is generated, which may be affected by the company's misconduct.

In this case, it is also evident that the communities of the Amazon, its inhabitants and political and local leaders cannot make use of this domain name in the future, as would be the case of a brand or denomination of origin of an Amazon product. Intellectual property rights also enter into conflict with the domain name.

4. Adversely impacting the global multi-stakeholder model and preservation of a unified internet authoritative root.

In the area of Internet Governance, the Colombia government has actively supported and contributed to the global multi-stakeholder model. The Colombia government specifically



recognizes that the public and private sector partnership is the bedrock upon which the ICANN multi-stakeholder model is built. However, the ICANN Board decided to prematurely conclude negotiations between Amazon the Company, and the individual Member Countries of the Amazon Cooperation Treaty Organization (ACTO) based on its own self-imposed deadline. These actions directly undermined and threatened the legitimacy of the entire multi-stakeholder model to advance the commercial interests of a single company that already owns and operates over fifty other generic top-level domains.

The Colombia government would respectfully like to call ICANN's attention to the multiple sessions planned for the upcoming ICANN Policy Meeting in Marrakesh in which the topic of "alternative protocols" will be discussed. In fact, this is not the first time that this issue has been addressed at an ICANN regional meeting. While the Colombia government to date has offered no support to these alternative protocols in defense of the ICANN multi-stakeholder model and the unified root, ICANN's disregard of the Colombia government's legitimate concerns provides fuel to the fire for those interests seeking to undermine and/or replace the current multi-stakeholder model.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

Upon information and belief, the Colombia government believes that other ACTO Member States that have been in in communication with ICANN in connection with this matter will also be adversely impacted by the action/inaction of ICANN. To be clear, this Reconsideration Request is being filed solely by the Colombia government and not on behalf of ACTO or any other Member State other than the Colombia government.

8. Detail of Board or Staff Action/Inaction – Required Information

The Colombia government respectfully submits that the ICANN Staff and Board, upon information and belief, failed to consider the detailed legal concerns raised in a communication to Amazon the Company in which the ICANN CEO, ICANN Board Chair, and ICANN GAC Chair were all copied. See Attachment A – Communication sent by Ivan Castano, Director IT Industry Development on 7-April-2019. Specifically, the Colombia government has been unable to find this communication listed on the ICANN public correspondence website or in any of cited references in the Resolution. Additionally, the Colombia government has not been able to review REFERENCE MATERIALS ATTACHMENT A & B cited in the Resolution. We would respectfully request that ICANN provide the community with a public link to this material at its earliest convenience.

Specification 13 Concerns



This communication by the Colombia government raised new and material issues in response to Amazon the Company's proposal to seek Specification 13 designation in connection with the AMAZON TLD extensions. While Amazon the Company has made references to operate the TLD as a "highly restrictive" brand, there was no Specification 13 designation/option available at the time of filing in 2012. We believe that Amazon the Company only recently made public its intention to seek Specification 13 designation in connection with the contested strings. In fact, we can find no reference to Specification 13 in the final IRP decision.

The ICANN Board appears to blindly accept Amazon the Company's representation that operating the contested string under a Specification 13 designation would be consistent with existing ICANN established best practice and would safeguard all parties' best interests. However, that is not the case as we tried to inform both ICANN and Amazon the Company in follow excerpt from our 7-April-2019 communication:

As only the trademark owner, its affiliates and licensees are permitted to use domain names in a Specification 13 (aka Brand) TLD, we cannot see how Amazon Inc's. proposal to permit ACTO members to be beneficial registrants of the domain names is acceptable under the existing ICANN registry contractual framework. While it appears that Amazon Inc. has tried to comply with the "letter" of Specification 13 by proposing to register these domain names in its name, controlling the name servers, and holding exclusively editorial control over the context appearing on these website, the fact remains that the ACTO members would be the beneficial registrants and thus violate the terms of Specification 13. Unless of course Amazon Inc. was under the false impression that ACTO members would be entering a "license" agreement to use these domain names.

As we have previously disclosed, the Colombian government has submitted a Documentary Information Disclosure Policy (DIDP) request with ICANN to see further clarification on this point. Hopefully, the timely provisioning of any documents might help clarify this potential fundamental disagreement between the parties.

As noted in the Colombia government communication of 7-April-2019, we had filed a DIDP with ICANN.Org seeking any documentation in connection with Specification 13 that would shed light on the proposed designation being sought by Amazon the Company considering their proposed PIC commitments. ICANN was unable to provide any additional document but was able reference that following fact which the Colombia government had previously cited in its communication:

Only Registry Operator, its Affiliates or Trademark Licensees are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD;

Given that the ICANN Board specifically cited the "highly restricted" nature of the Amazon strings in its rationale associated with the Resolutions, the Colombia government believes that the ICANN community is required a "detailed explanations of the basis for decision" as set forth



in ICANN Bylaw Section 3.1. If ICANN.Org determines that Amazon the Company would not be permitted a Specification 13 designation based upon proposed multi-purpose use of the TLDs as proposed in their PIC Specification, then then ICANN Board should reconsider the basis of the Resolutions in question.

Security Issues Involving Concurrent Use of the .AMAZON TLDs

ACTO Member States, including the Colombia government, in some of their negotiations with Amazon the Company had discussed the potential joint ownership/control of the .AMAZON TLDs. However, in an attempt to negotiate in good faith, the Colombia government offered other governance structures for consideration by Amazon the Company. Specifically, in our 7 April-2019 communication we cited the concurrent use of the .SAS TLD. While this TLD appears to be used by two SAS trademark owners (see NIC.SAS), only one of them is designated as the Registry Operator according to ICANN's records, see <https://www.icann.org/resources/agreement/sas-2015-04-02-en>

In an apparent response to this issue raised by the Colombia government, Amazon the Company raised potential security and stability concerns regarding the joint control of the TLDs in question. However, Amazon the Company did not elaborate on the specific security and stability concerns it had and whether it might be possible to mitigate them. Clearly the .SAS TLD appears to be currently operated in a manner that does not give rise to security and stability concerns.

Unfortunately, it does not appear that the ICANN Board even consider this potential option in seeking to achieve a mutually agreeable resolution between the parties. Instead, the ICANN Board appears to have rushed to judgment in approving the last best offer put forth by Amazon the Company and their claims of security and stability concerns. The Colombia government believes this deficiency is heightened considering the ICANN Board's apparent reliance on the Specification 13 representation made by Amazon the Company. If Specification 13 is not a viable option as we have represented under current ICANN guidance, then the ICANN Board should have provided extra scrutiny to other potential options to ensure the equitable stewardship of the .AMAZON TLD extensions.

Expedited Processing of Colombia Government's Original DIDP

The Colombia government appreciates the expedited manner in which ICANN.Org processed its original DIDP (20180402-1). It appears that ICANN deviated from its standard operating procedure in waiting the full 30 days before publicly posting a response to a DIDP request. The Colombian government hopes that ICANN.org will be able to act in a similar expedited to provide the ICANN Board some of the documents requested in this Reconsideration Request.

ICANN's Questionable Sense of Urgency

The ICANN Board in its rationale for the Resolution stated in relevant part that:



in terms of fairness and ICANN's obligations to treat applicants equally, the Board believes that the activity spanning the past seven years, during which the .AMAZON applications have followed the course of the AGB and have been the subject of other ICANN processes, supports the decision to allow the applications to continue to proceed.

While the Colombia government supports all applicants being treated equally and fairly in accordance with the ICANN bylaws, the Colombia government struggles to identify ICANN's sense of urgency in connection with the .AMAZON applications in light of the .HOTEL application. The .HOTEL application had an IRP decision rendered on 12 February 2016, a whole year before the Amazon Inc. IRP decision (11 July 2017). According to the ICANN website there has been a "second" pending Cooperative Engagement involving the .HOTEL application initiated on 2-October-2018. There appears to have been a delay of over eight months in connection with this Cooperative Engagement with no apparent action taking place. If ICANN is so concerned about fairness and multi-year delays, where is ICANN's same sense of urgency in connection with the .HOTEL application?

The Colombia government would also like to point out the following representation that ICANN made publicly in the final published Applicant Guidebook back in 2012.

The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

It has now been over seven years since the close of the application submission period for the last round of new TLD applications. Despite repeated requests from members of the ICANN community to expedite a new round, the ICANN Board has maintained a slow and steady pace to get it right. Through this Reconsideration Request the Colombia government hopes that the ICANN Board would abandon its previous rush to judgement in connection with the AMAZON TLDs. Instead, the ICANN Board should permit the parties to continue to negotiate in good faith toward a mutual goal, absent an artificial deadline imposed by ICANN. Amazon the Company currently has been delegated over 50 other TLDs, it is not like Amazon the Company is being denied the opportunity to innovate with these other TLD extensions while ICANN takes the time to get it right in connection with these .AMAZON strings.

Violation of the ICANN Bylaws Regarding Timely Posting of the Board Agenda

Article 3.4 of the ICANN bylaws state in relevant part that:

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.



However, the agenda for the 15-May-2019 ICANN Board meeting was published one (1) day in advance of the actual meeting.¹ While the bylaws provide some latitude in connection with qualifiers like “as is practicable.” It appears upon information and belief that this meeting and the agenda was known about before it was scheduled, and the agenda withheld until the last minute. It is important to note that there were three specific agenda items at the 15-May-2019 Board meeting: 1) Consideration of GAC Advice: Kobe Communiqué (March 2019); 2) Consideration of GNSO EPDP Recommendations on the Temporary Specification for gTLD Registration Data and 3) Consideration of Amazon Corporation's Proposal on ACTO Member States Continuing Concerns re: .AMAZON New gTLD Application

The Colombia government fully recognizing the time sensitive nature of the first two agenda items, particularly the Temporary Specification that was set to expire. However, Amazon the Company's TLD applications do not appear to merit the same sense of urgency. The basis for the Colombia government's representation that the eDPD and Amazon would be timely addressed by the ICANN Board, is a statement made by Chris Disspain, ICANN Board Vice-Chair at the Bangkok GDD Summit on 9-May-2017.

During the Board session with GDD Summit attendees, Chris Disspain at 12:38 minutes in the Zoom record conflates the eDPD issue and the Amazon issues. Chris Disspain acknowledged that at the ICANN Board retreat in Istanbul just prior to the GDD Summit, the issues of the ePDP and .AMAZON were discussed and some work needed to be done.²

The Colombia government finds it hard to believe that the agenda for the ICANN Board meeting was not known until less than 24 hours before the 15-May-2019 special Board meeting. While it respects the ICANN Board taking action in violation of the 7 day agenda posting requirement in connection with the ePDP agenda item, there appears to be no similar sense of urgency in connection with Amazon the Company's applications. It appears that ICANN merely intended to bootstrap the urgency of the ePDP to pass the Amazon resolution.

Violation of the ICANN Bylaws Regarding Failure to Operate to the Maximum Extent Feasible in an Open and Transparent Manner

In Document Information Disclosure Policy (DIDP) Request 20190402-1 the Colombia government asked for information about any proposed change process whereby a Registry Operator could amend previously committed to Public Interest Commitments (PIC) Specifications. This request was made based upon information and belief about an initiative within the Registry Stakeholder Group. The Colombia government was disappointed when it acknowledged that a single Registry Operator had requested such a process but denied any

¹ See <https://www.icann.org/resources/board-material/agenda-2019-05-15-en>

² See <https://www.icann.org/resources/pages/gdd-summit-session-recordings-2019-05-08-en> (Session with Members of ICANN Board)



further information stating:

While ICANN org cannot disclose details of the Registry Operator's request to amend its Specification 11 and ICANN org's response for the reasons set forth below, ICANN org notes that it was unable to proceed with the request at the time and deferred the request. The documents regarding the Registry Operator's request to amend its Specification 11 are subject to the following DIDP Conditions of Nondisclosure (Nondisclosure Conditions) and are therefore not appropriate for disclosure.

While the Colombia government accepted this determination without further objection, we were disappointed to learn that ICANN staff has a scheduled a session on this very subject with the ICANN Registry Stakeholder Group at the upcoming Marrakech meeting. However, what we find unconscionable is that according to the current public agenda this is a closed session open only to ICANN staff and the Registry Stakeholder Group,

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We would request that given the key importance of the PIC Specification to GAC members in ensuring that the proposed Amazon the Company PIC Specifications are properly enforced that all such future sessions be open for observation by interested third parties. Additionally, the Colombia government would respectfully request that ICANN delay any Registry Agreement execution with Amazon the Company until the current PIC modification process underway within the Registry Stakeholder Group is successful concluded or terminated.

9. What are you asking ICANN to do now?

The Colombia government is asking that ICANN.Org stay any further actions in connection with the processing of Amazon the Company's applications covered in the above cited ICANN resolutions, e.g. .AMAZON (Application ID: 1-1315-58086), アマゾン(Application ID: 1-1318-

83995) and 亚马逊 (Application ID: 1-1318-5591) until the concerns raised in this Reconsideration Request have been fully and properly addressed.

The Colombia government is also asking for confirmation from ICANN.Org on whether the multi-purpose use of the AMAZON strings by Amazon the Company and ACTO Member States is consistent ICANN's existing Specification 13 requirements. Additionally, we are requesting that the ICANN Board be provided a confidential briefing document on the approximately thirty-seven Specification 13 requests that were either "Not Approved or Withdrawn" to see if any Non-Approval or Withdraw applications were based in part upon the use of domain names by a third party other than the "Registry Operator, its Affiliates or Trademark Licensees."

The Colombia government would respectfully request that the ICANN.Org direct SSAC to prepare report for the ICANN Board to address the security and stability concerns raised by Amazon the Company in connection with the concurrent use proposal made by the Colombia government. The Colombia government is available to answer any clarifying questions that SSAC might have in preparation of this report. At a minimum, SSAC should address if there are any inherent security and stability concerns in connection with the operation of the .SAS TLD and how a proposed a joint use TLD framework could happen in a safe and secure manner.

The Colombia government is further requesting that the ICANN Board encourage the parties to engage in continued constructive dialog during the pendency of this Reconsideration Request and that any updated discussions be incorporated into any ICANN Board action.

Finally, the Colombia government would request that ICANN delay any Registry Agreement execution with Amazon the Company until the current PIC modification process underway within the Registry Stakeholder Group is successful concluded or terminated. Given the critical importance that the PIC Specification plays in the Amazon governance and accountability framework, the Colombia government needs to know that the representations made by Amazon the Company cannot be easily altered after contractual execution.

10. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

The Colombia government respectful cites to the above references bylaws violations for the basis of its right to assert this Reconsideration Request.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes



No. This Reconsideration Request is specifically associated with previous points raised by the Colombia government in its communication dated 7-April-2019 and its Document Information Disclosure Policy (DIDP) request 20190402-1.

11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?

Yes

No

12a. If yes, please explain why the matter is urgent for reconsideration.

As noted above there have been multiple violations of the ICANN Bylaws in connection with ICANN's actions to proceed with the processing of Amazon the Company's applications. Failure to halt contract execution and potential delegation will have a direct impact on the obligations of the Colombia government to the ingenious territories and people within the Colombia Amazon Region.

13. Do you have any documents you want to provide to ICANN?

See attached 7-April-2019 email communication and accompanying letter.

Terms and Conditions for Submission of Reconsideration Requests

Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

The BAMC shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The BAMC may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The BAMC's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.



Hearings are not required in the Reconsideration Process; however, Requestors may ask for the opportunity to be heard. The BAMC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BAMC's decision on any such request is final.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BAMC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BAMC shall be documented and promptly (i.e., as soon as practicable) posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en> and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BAMC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Reconsideration Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BAMC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BAMC. The ICANN Board's decision on the BAMC's recommendation is final and not subject to a Reconsideration Request.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN [Privacy Policy](#), and agree to abide by the website [Terms of Service](#).

Signature 

Date 15-06-2019.

Print Name Ivan Castano





Attachment #1

De: Ivan Dario Castaño Perez <Contact Information Redacted>
Enviado: domingo, abril 7, 2019 9:39 p. m.
Para: Huseman, Brian
CC: Jehudi Castro Sierra; Maria Juliana Lopera Gomez; Contact Information Redacted
Thiago Braz Jardim Oliveira; Contact Information Redacted
Contact Information Redacted

goran.marby@icann.org; cherine.chalaby@board.icann.org; Contact Information Redacted
Asunto: Response to Amazon Inc regarding .amazon (Colombia)

Dear Mr Huseman,

Please find attached the response from the Colombian Government regarding the discussion about the .amazon domain.

Best,

--
Ivan Castano

Director – IT Industry Development
GAC Member - Colombia
Contact Information Redacted

Edificio Murillo Toro - Cra. 8a Between calles 12 y 13
Zip Code: 111711 - Bogotá D.C. - Colombia
www.mintic.gov.co





Attachment #2

The 7-April-2019 Communication that was attached to the email referenced in Attachment #1.



TO: **Brian Huseman**
Vicepresident Public Policy
Amazon Inc.

CC: **Cherine Chalaby**
Chair
ICANN Board of Directors

Göran Marby
CEO and President
ICANN

FROM: **Ivan Darío Castaño**
Director of IT Industry Development – Viceministry of Digital Economy
GAC Member - Colombia

Dear Mr. Huseman.

Thank you for your previous communications.

Before directly responding to the six points of “fundamental disagreement” cited in your communication, there are some key concerns that the Colombian government would like to formally enter into the record regarding the framework of these dialogues to date.

While we appreciate your acknowledgment of “the difficult political situation involving the ACTO organization and its member countries,” we have tried both individually and collectively with other ACTO members to engage in good faith discussions to find a mutually agreeable solution.

Unfortunately, we appear to find ourselves in a stand-off, in which Amazon Inc. seems content on running out the clock in the hopes that the ICANN Board will approve its proposed Public Interest Commitment (PIC) Specification. Even the countries of Colombia, Peru and Brazil presented different proposals within the period granted by ICANN to reach a mutually acceptable solution, but all were rejected, and their essential aspects were not taken into account to modify the position of Amazon Inc. In this regard, we now have a final proposal from Amazon Inc. that would seem to be more an “accession agreement” for the Amazon countries, than the result of a fruitful dialogue.



However, instead of ICANN having to pick winners and losers and potentially undermining the global multi-stakeholder model, we would like to put on the record the following comments for your consideration and the ICANN Board.

1. Ownership rights

It is important to frame our discussion supporting the following Brazil's statement on their last communication to Amazon Inc.:

It is a matter of common knowledge, I believe, that the name "Amazon" was selected as a brand because it means a certain region that was seen as "exotic and different", and because the Amazon River, the biggest river in the world, gave an idea of what was to become "the biggest bookstore in the world".

We would also like to add that "In 1994 Jeff Bezos, a former Wall Street hedge fund executive, incorporated Amazon.com, choosing the name primarily because it began with the first letter of the alphabet and because of its association with the vast South American river."¹

So, from our point of view, it is clear that Amazon Inc. got its name based on the Amazon region, hence our right to protect, discuss and even oppose any resolution that affects the heritage, culture and rights of the communities and countries that are the Amazon region.

2. Specification 13 Concerns

We would respectfully disagree with your characterization of the Specification 13 concerns that we raised to date. Specifically, you stated the governments "belief that the .AMAZON TLDs are a geographic term and are not eligible to be .BRAND TLDs under Specification 13." To be clear, the concerns of the Colombian government are focused on your proposed solution which on its face appears to violate the spirit of the Specification 13 guidance and the best practice of ICANN Org in approving Specification 13 requests.

As only the trademark owner, its affiliates and licensees are permitted **to use** domain names in a Specification 13 (aka Brand) TLD, we cannot see how Amazon Inc's. proposal to permit ACTO members to be beneficial registrants of the domain names is acceptable under the existing ICANN registry contractual framework. While it appears that Amazon Inc. has tried to comply with the "letter" of Specification 13 by proposing to register these domain names in its name, controlling the name servers, and holding exclusively editorial control over the context appearing on these website, the fact remains that the ACTO members would be the beneficial registrants and thus violate the terms of Specification 13. Unless of course Amazon Inc. was under the false impression that ACTO members would be entering a "license" agreement to use these domain names.

¹ See <https://www.britannica.com/topic/Amazoncom>



As we have previously disclosed, the Colombian government has submitted a Documentary Information Disclosure Policy (DIDP) request with ICANN to see further clarification on this point. Hopefully, the timely provisioning of any documents might help clarify this potential fundamental disagreement between the parties.

3. Proposed Joint Ownership of the TLD

We believe that Amazon Inc. has prematurely rejected the proposal of various ACTO members' proposals to jointly operate the TLD citing its intention to operate it as a Brand TLD.

It is also important to recognize the fact that in the proposal received from Amazon Inc. in 2015, the issues raised in the virtual call dated 3rd April were not present, and we still believe that from the technical point of view it is possible to actually have concessions from Amazon Inc. on this matter, and we even believe that it Amazon's Inc concerns could be elevated to the Security and Stability Advisory Committee (SSAC), and governments can also commit to a safe and secure operation of the domain.

In support of our proposition, we would like to share the following data points recently uncovered as part of our due diligence in connection with these dialogues. The first is the .SAS TLD which was originally applied for by two companies claiming legal rights in the same extension, SAS AB and Research IP LLC. Despite these competing legal rights, the parties appear to have reached an agreement in which one applicant proceeded to entering into a "Registry Agreement" with ICANN, but one in which both seem to have retained rights to use the TLD as evidenced by the information contained on the NIC.SAS webpage.² What Amazon Inc. may also find of interest is that this co-use of the TLD does not appear to violate the terms of Specification 13 which ICANN Org has approved.

The co-use of a domain extension is not unique to SAS case cited above. Our additional research evidenced that this is in fact a long-established practice. For example, the domain name SCRABBLE.COM is currently operated as a gateway to direct consumers to two different website sites depending upon the geographic rights of the trademark licensee. We believe that these examples show that the concept of co-use of the domain substantiate the need for further discussions and potential creative ideas to resolve this situation.

In the interest of fostering a continued constructive dialog on this point, the Colombian government acknowledges that unlike the SAS example cited above Amazon Inc. was the only applicant for the .AMAZON extension. However, the Colombian government would like to point out the deficiency and inequality of the gTLD program as evident by the fact that South America was one of the most under represented regions with only 24 applications (1.2%) out of 1930 submitted to ICANN.³

² The following statement currently appears on the NIC.SAS webpage, "SAS is a Specification 13 registry exclusively to promote the SAS Institute and SAS Airline trademarked brands."

³ See <https://newgtlds.icann.org/en/announcements-and-media/announcement-13jun12-en>



Moreover, Amazon Inc. has rejected various ACTO members' proposals to jointly own and operate the TLD citing Amazon Inc. intention to operate it as a Brand TLD. We would like to point, that is not acceptable for us to be undermined in what we firmly believe are our rights, moreover now, that your company is appearing as a concession making actor, when we actually believe that is the other way around.

Additionally, Amazon Inc. presented, in 2015, its initial proposal to the Amazon countries, which, despite being rejected, included terms that could be considered as a minimum in any subsequent dialogue, while now there is a clearly inferior proposal.

4. Notice Requirement & Veto Authority

Amazon Inc. notes as its third point of fundamental objection the governments requirement "for advance notice and veto authority of domain names Amazon Inc. wants to register and use in the .AMAZON TLDs." Ironically, Amazon Inc. criticism of the governments' proposals is almost identical in nature and scope to the authority that it has set forth in its proposed PIC Specification. During the call, Amazon Inc. raised some additional security and stability concerns about having to disclose certain products before they launch.

Unfortunately, the parties find themselves at an impasse trying to anticipate future domain names that may give rise to cultural heritage significance. In an effort to break this impasse and potentially build further good will between the parties would Amazon Inc. be willing to share the following information with ACTO members. Specifically, would Amazon Inc. be willing to share with ACTO Members all non-confidential domain names contained in the Amazon Inc. (and affiliates) portfolio and all national trademark registrations and applications. We believe this effort, will go a long way toward identifying any points of cultural heritage significance and a framework for future dialog between the parties.

Notwithstanding this exercise to minimize the scope of domains that might give rise to potential cultural heritage significance, the reality is there will likely arise a situation in the future where the parties disagree. Instead of a framework where either Amazon Inc. or an ACTO Member can veto the objection of the other party, there is clearly the need for an objective third party to resolve such disputes. The Colombian government would like to put on the table for consideration the potential of engaging UNESCO to identify how they may be able assist. While UNESCO is uniquely qualified to make such determinations on cultural heritage using objective standards, their Convention may preclude them from taking on an operation role to solve this problem. If this limitation does exist, UNESCO may nevertheless still be able to identify a suitable third party.

In response to Amazon Inc's security and stability concerns about the vetting certain domain names prior to public disclosure, we believe the concept of a governance or steering committee could provide a framework for expedited review/approval. We believe it is also important to note that Amazon Inc. was able to become the world's wealthiest public company without the use of its own dot brand extension. Therefore, there are clear options that Amazon Inc. could elect that are not dependent upon the immediate inclusion of a second level domain within the .AMAZON zone file.



Nevertheless, it is clear that Amazon's Inc. vision over an inclusion of a steering committee into a possible agreement, is nothing different than an advisory committee, with any power to decide or oppose to any decision that can affect or contravene the interest of the countries of safeguarding the heritage and importance of the Amazon region or its significance. The ACTO member states, will ultimately know the decisions of the company and will not even be able to express its opinion as to whether it contravenes in any way the interests of the States of safeguarding the Amazon region and its heritage.

5. ACTO Member's Scope of Use of Permitted Domains

Amazon Inc. in their proposed PIC Specification has provided very prescriptive details on how ACTO Members can use their domain names, including a prohibition regarding any commercial use of the domain name and a requirement to review all content appearing on the website. This on its face does not appear to any type of compromise if one party holds all the power, at best it could be deemed as a benevolent dictatorship.

We as governments, as we have tried to point out from the beginning, do not have an interest on getting revenues from the usage of the domain, instead we would like to promote the Amazon region and to preserve, protect and promote its cultural heritage and its communities. That does not mean, that promotional information about the richness in culture, heritage and nature, could not be seen as commercial information and in those terms, practice a veto authority.

This point is relevant having into account that the content and development of these domains will be supervised by the company, and should be limited to sharing informative subjects about the region, but never of promotion as we have tried from the beginning, neither in the same page, nor redirecting.

The intention of ACTO Member States as communicated early on in this process was our desire to use the .AMAZON domain to promote the Amazon region and its importance to the world. While we are not currently able to provide an enumerated list of these activities, we could envision one or more of these domain names being used to promote eco-tourism and the richness in culture, heritage and nature that the region offers. Unfortunately, similar to the joint-use of the domain discussion above, Amazon Inc. summarily cut-off any discussion on potential technical solutions to address their security and stability concerns.

We believe that the use of pop-up notifications could be an effective technical solution to minimize any potential confusion. For example, any Internet user seeking to access an ACTO Permissible Domain would be prompted with a pop-up notification informing them that they were accessing a website maintained by an ACTO Member and that any user seeking information about Amazon Inc. could be directed to a URL of Amazon Inc. choice. We believe this approach provides a much more elegant solution to permit co-use of ACTO Permissible Domains within the .AMAZON extension, while removing Amazon Inc. from the burden of micromanaging ACTO Member activities. To respect the joint responsibility that ACTO Member States would share in safeguarding the .AMAZON namespace, the Colombian government would be supportive of an industry security best practice to prevent any abused within the domain.



6. Dispute Resolution & Decision over the Denominations that will be Reserved due to its Significance to the region

Amazon Inc. remains steadfast in their position that any disputes regarding the PIC Specifications be administered by the PICDRP standing panel, as opposed to any potential formal arbitration process citing the “add[ed] complexity and commercial uncertainty.” Speaking in its own capacity, the Colombian government has two primary concerns about replying on the PICDRP to administer any disputes between the parties. First, the current standing panel does not appear to have any panelists with subject matter expertise to enable them to make determinations on what domain names may or may not raise cultural sensitivity. Second, the Amazon Inc. proposal would place ICANN Org in the unenviable task of being the gatekeeper to determine if any third-party complaints merit referral to the PICDRP Panel.

While it is important the proposal where the operator will commit to not use domain names in the .amazon TLD terms, that have a primary and well recognized significance for the culture and heritage specific to the Amazon region, it is certainly problematic and incoherent, the fact that according to the proposal, the decision making over the actual significance for the region of a given name, does not lie with the States of such region.

The Colombian government remains aligned with other ACTO members that advocate in support of a formal arbitration process to resolve any disputes between the parties regarding any PIC Specification and/or Memorandum of Understanding. The Colombian government believes the use of a similar binding ICC arbitration process as contained in the Registry Agreements between ICANN and Governments / Intergovernmental Organizations is the appropriate legal framework to resolve any dispute between private and public parties. As noted above, we also believe this approach removes ICANN Org from being in the unenviable task of being the gatekeep to refer any disputes to the PICDR Panels.

Regarding the number of denominations with special importance and meaning for the region, it could be bigger each day, but when it comes to say, who is going to be in charge to determine whether it has or hasn't special importance or significance to the region, the countries will not have any role, it will be decided by the company. And in those terms, it loses all effectiveness.

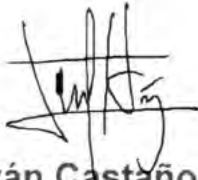
7. Conclusion

Unfortunately, the Colombian government does not believe the four-week time frame provided to the parties by the ICANN Board to reach a mutually resolution was sufficient. While such an expedited timeline may be sufficient for private / commercial entities, sovereign States simply require more time to engage in the necessary consultative processes to ensure that the best interest of our people and their heritage are properly safeguarded. While it would be our preference for the ICANN Board to grant an extension to the parties to continue a constructive dialog on the substantive points raised in this communication, we recognize that such an extension may not be granted.

In the event that the ICANN Board decides to act in connection with the .AMAZON extension, we would ask that they please address each of the points raised in this communication in any Rationale for Resolution.

Finally, although we really appreciate the respectful dialogue that has happened during the past 4 weeks, we must point out, that we never felt the willingness from Amazon Inc. to consider our government concerns, but was only seeking our conformance to its latest PIC.

Best,



Iván Castaño

Director – IT Industry Development
GAC Member - Colombia
Contact Information Redacted

Edificio Murillo Toro - Cra. 8a Between calles 12 y 13
Zip Code: 111711 - Bogotá D.C. - Colombia
www.mintic.gov.co

**DETERMINATION OF THE
BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
RE: NEED FOR URGENT CONSIDERATION OF
RECONSIDERATION REQUEST 19-1**

18 June 2019

I. Introduction and Brief Summary

The Requestor, the Government of Colombia, seeks reconsideration of ICANN Board Resolutions 2019.05.15.13 – 2019.05.15.15 (Request 19-1).¹ The challenged Resolutions directed ICANN org to continue processing Amazon corporation’s applications for the .AMAZON generic top-level domain and related internationalized domain names (IDN) (collectively the .AMAZON applications).² A substantive review of the merits of the Requestor’s claims is beyond the scope of this determination. The BAMC’s determination is limited to only its assessment of whether Request 19-1 meets the requirements for urgent reconsideration under Article 4, Section 4.2(s) of ICANN Organization’s Bylaws. For the following reasons, the BAMC concludes that Request 19-1 does not meet the requirements for urgent reconsideration.

The Requestor suggests that “there have been multiple violations of the ICANN Bylaws in connection with ICANN’s actions to proceed with the processing of Amazon the Company’s applications,”³ and states that it “is asking that ICANN Org stay any further actions” in connection with the .AMAZON applications “until the concerns raised in this Reconsideration Request have been fully and properly addressed.”⁴

¹ Request 19-1, §§ 3, 12.

² <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en>.

³ Request 18-3, § 12a.

⁴ Request 18-3, § 9

The Requestor further asks that Request 19-1 be considered on an urgent basis.⁵ In explaining why the matter is urgent for reconsideration, the Requestor simply states that “[f]ailure to halt contract execution and potential delegation will have a direct impact on the obligations of the Colombia government.”⁶ However, as discussed below, because further processing of the .AMAZON applications will be put on hold pursuant to normal ICANN org processes until Request 19-1 is resolved, urgent resolution of Request 19-1 is not necessary. Further, Request 19-1 was not filed within two business days of the posting of the resolution at issue, and thus does not meet the time requirements for urgent consideration under ICANN’s Bylaws.

Notwithstanding that Request 19-1 will not be treated as urgent under ICANN’s Bylaws, the Requestor may still proceed with Request 19-1 under the timeline for a standard (meaning non-urgent) reconsideration request, and the BAMC will ensure, as always, that the matter will be handled expeditiously, to the extent feasible and practicable.

II. Grounds for Urgent Consideration of Reconsideration Requests

Article 4, Section 4.2(s) of ICANN Organization’s Bylaws allows requestors to submit urgent requests for reconsideration provided certain requirements are met:

If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is

⁵ Request 18-3, § 12.

⁶ Request 18-3, § 12.

urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

Article 4, Section 4.2(t) of ICANN organization's Bylaws sets forth expedited timing for urgent requests for reconsideration:

The Board Accountability Mechanisms Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Accountability Mechanisms Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Accountability Mechanisms Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Accountability Mechanisms Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

III. Request 19-1 Does Not Meet the Bylaws Requirements for Urgent Consideration

Under ICANN organization's Bylaws, a request for urgent reconsideration must, among other things, "include a discussion of why the matter is urgent for reconsideration."⁷ The Requestor suggests only that Request 19-1 is "urgent" because "[f]ailure to halt contract execution and potential delegation will have a direct impact on the obligations of the Colombia government."⁸ However, because the contracting process for the .AMAZON applications, as well as the delegation of .AMAZON and related IDNs, will be halted pending the resolution of Request 19-1 per ICANN organization's normal processes, urgent consideration of Request 19-1 is not necessary. Meaning that resolving Request 19-1 pursuant to the standard timeline for reconsideration requests under the Bylaws will not result in contract execution or

⁷ ICANN Bylaws, Art. 4, § 4.2(s).

⁸ Request 18-3, § 12a.

delegation of the .AMAZON string before Request 19-1 is resolved. The Request does not contain any other statement identifying reasons “why the matter is urgent for reconsideration.”⁹

Further, the ICANN Bylaws provide that “[a]ny request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue.”¹⁰ Request 19-1 seeks reconsideration of Board Resolutions first posted on the ICANN website on 17 May 2019.¹¹ According to the Request, the Requestor first became aware of the Resolutions on 18 May 2019.¹² Yet Request 19-1 was not made until 15 June 2019.¹³ The fact that the request for urgent consideration was not made within two business days of the posting of the resolution at issue, or even from the Requestors’ knowledge of the resolutions, is another reason Request 19-1 need not be considered on an urgent basis as it does not qualify for urgent reconsideration under the Bylaws.

IV. Conclusion

For the reasons stated above, Request 19-1 does not qualify for urgent consideration. Pursuant to Article 4, Section 4.2(t) of ICANN organization’s Bylaws, the Requestor is free to file a new reconsideration request under “the regular time frame” set forth in the Bylaws. However, in the interest of time, rather than requiring the Requestor to re-file, ICANN organization will proceed with Request 19-1 under the regular time frame of the Reconsideration Process. The BAMC will ensure that Request 19-1 will be handled expeditiously, to the extent feasible and practicable.

⁹ See ICANN Bylaws, Art. 4, 4.2(s).

¹⁰ See ICANN Bylaws, Art. 4, 4.2(s).

¹¹ Request 19-1, § 5.

¹² Request 19-1, § 5.

¹³ Request 19-1, p. 13.

Subject: Re: [Reconsideration Request] Reconsideration Request 19-1
Date: Friday, June 28, 2019 at 2:48:15 AM Pacific Daylight Time
From: reconsider on behalf of Herb Waye
To: ICANN
CC: ombudsman, Reconsideration
Attachments: ATT00001.txt

Reconsideration Request 19-1

Pursuant to Article 4, Section 4.2(l)(iii), I am recusing myself from consideration of Request 19-1.

Best regards,

Herb Waye
ICANN Ombudsman

<https://www.icann.org/ombudsman> [icann.org]
<https://www.facebook.com/ICANNOmbudsman> [facebook.com]
Twitter: @IcannOmbudsman

ICANN Expected Standards of Behavior:

<https://www.icann.org/en/system/files/files/expected-standards-15sep16-en.pdf> [icann.org]

Community Anti-Harassment Policy

<https://www.icann.org/resources/pages/community-anti-harassment-policy-2017-03-24-en> [icann.org]

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint

From: ICANN
Date: Tuesday, June 25, 2019 at 4:37 AM
To: Herb Waye <herb.waye@icann.org>, ombudsman <ombudsman@icann.org>
Cc: Reconsideration <reconsideration@icann.org>
Subject: Reconsideration Request 19-1

Dear Herb,

ICANN recently received [Reconsideration Request 19-1 \[icann.org\]](#), which was submitted on 15 June 2019 by the Colombian Government (Requestor), seeking reconsideration of the Board's action on 15 May 2019 (Resolutions 2019.05.15.13 - 2019.05.15.15) to move forward with the processing of Amazon corporation's applications for .AMAZON and related IDNs (.AMAZON applications).

The Board Accountability Mechanisms Committee (BAMC) has determined that Request 19-1 is sufficiently stated pursuant to Article 4, Section 4.2(k) of the ICANN Bylaws. Pursuant the Article 4, Section 4.2(l) of the ICANN Bylaws, a reconsideration request must be sent to the Ombudsman for consideration and evaluation if the request is not summarily dismissed following review by the BAMC to determine if the request is sufficiently stated. Specifically, [Section 4.2 \(l\) \[icann.org\]](#) states:

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in [Section 4.2\(l\)\(iii\)](#) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to [Article 5](#) of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

Please advise whether you are accepting Request 19-1 for evaluation or whether you are recusing yourself pursuant to the grounds for recusal set forth in Section 4.2(l)(iii). If you are accepting Request 19-1 for evaluation, please note that your substantive evaluation must be provided to the BAMC within 15 days of receipt of Request 19-1.

Best regards,
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

**RECOMMENDATION
OF THE BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
RECONSIDERATION REQUEST 19-1
14 August 2019**

The Requestor, the Government of Colombia,¹ seeks reconsideration of ICANN Board Resolutions 2019.05.15.13–2019.05.15.15 (15 May 2019 Resolutions). The challenged Resolutions directed ICANN organization to continue processing the Amazon corporation’s applications for the .AMAZON generic top-level domain (TLD) and related internationalized domain names (IDNs) (collectively, the .AMAZON applications and .AMAZON TLDs) according to the policies and procedures of the New gTLD Program.²

Specifically, the Requestor claims that:

- (i) The Board “failed to consider the detailed legal concerns raised in a [7 April 2019] communication to Amazon the Company in which the ICANN CEO, ICANN Board Chair, and ICANN GAC [Governmental Advisory Committee] Chair were all copied.”³
- (ii) The Board relied on inaccurate information when it adopted the Resolutions, including “Amazon the Company’s representation that operating the contested string under a Specification 13 designation would be consistent with existing ICANN established best practice and would safeguard all parties’ best interests.”⁴

¹ The Request was filed on behalf of the Government of Colombia by Ivan Dario Castaño Perez of the Ministerio de Tecnologías de la Información y las Comunicaciones. Request 19-1, § 1, at Pg. 1. While the Government of Colombia is a member of the Amazon Cooperation Treaty Organization (ACTO), the Requestor states that it is filing Request 19-1 in its individual capacity and not on behalf of ACTO or any other ACTO member state. *Id.* at § 7, Pg. 5.

² Resolution 2019.05.15.15 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en>); Request 19-1, § 3, at Pg. 1.

³ Request 19-1, § 8, at Pg. 5.

⁴ Request 19-1, § 8, at Pg. 6.

- (iii) The Board failed to consider a potential governance structure for the .AMAZON TLD and IDNs offered by the Government of Colombia and modelled after the .SAS TLD.⁵
- (iv) The Board violated Article 3.4 of the ICANN Bylaws by posting the agenda for the 15 May 2019 meeting one day prior to the meeting.⁶
- (v) ICANN organization (also ICANN org) violated the ICANN Bylaws regarding transparency by scheduling a closed meeting during ICANN65 with the ICANN Registry Stakeholder Group to discuss a potential process for amending previously contracted-for Public Interest Commitments (PICs).⁷

The Requestor seeks the relief identified in Section III below.

I. Brief Summary.

Since October 2017, in accordance with GAC Advice in the Abu Dhabi Communiqué,⁸ ICANN org President and CEO had been facilitating discussions between ACTO and the Amazon corporation on the use of the .AMAZON TLDs. On 10 March 2019, in Resolutions 2019.03.10.01- 2019.03.10.07, the Board “call[ed] on the ACTO member states and the Amazon corporation to engage in a last effort that allows both parties over the next four (4) weeks to work in good faith toward a mutually acceptable solution.”⁹ The Board also directed that if no mutual agreement was reached, the Amazon corporation should “submit a proposal on how it will address the ACTO member states continuing concerns regarding the Amazon Applications.”¹⁰ Resolution 2019.03.10.05 explained that “if the Amazon corporation’s proposal is acceptable to

⁵ Request 19-1, § 8, at Pg. 7.

⁶ Request 19-1, § 9, at Pg. 9.

⁷ Request 19-1, § 9, at Pg. 9–10.

⁸ See: <https://gac.icann.org/advice/communiques/public/gac-60-abu-dhabi-communication.pdf>.

⁹ ICANN Board Resolutions 2019.03.10.01 – 2019.03.10.07 (<https://www.icann.org/resources/board-material/resolutions-2019-03-10-en#1.a>).

¹⁰ *Id.*

the Board [in accordance with policies and procedures governing the 2012 round of the New gTLD Program], and is not inconsistent with any outstanding formal advice received regarding the Amazon Applications, the Board will direct ICANN org to continue processing the Amazon Applications according to the policies and procedures governing the 2012 round of the New gTLD Program.”¹¹

ACTO and the Amazon corporation did not submit a joint proposal for a solution or a joint request for an extension within the timeline outlined by the Board.¹² On 17 April 2019, within the time designated in Resolutions 2019.03.10.01- 2019.03.10.07, the Amazon corporation submitted its proposal to the ICANN Board on how it will address the ACTO member states’ continuing concerns (the April 2019 Proposal). That proposal is embodied in a “modified proposal for PICs.”¹³ As detailed below, the April 2019 Proposal included, in addition to the creation of a joint Steering Committee, the following commitments:

- (1) Not use as domain names in each .AMAZON TLD those terms that have a primary and well-recognized significance to the culture and heritage of the Amazonia region;
- (2) Provide nine domain names in each .AMAZON TLD to be used for noncommercial purposes by ACTO and its member states to enhance the visibility of the region; and

¹¹ *Id.*

¹² ICANN Board Resolutions 2019.05.15.13 – 2019.05.15.15 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>).

¹³ *Id.*; *see also* Letter from Amazon to ICANN Board, 17 April 2019 (<https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>). The April 2019 Proposal follows other proposals submitted by the Amazon corporation in the past several years, including proposals from October 2015, October 2017, February 2018, and November 2018.

- (3) Block from all use up to 1500 domain names in each .AMAZON TLD that have a primary and well recognized significance to the culture and heritage of the Amazonia region.

The Amazon corporation also noted in its proposal that its TLDs would be “highly restricted .BRANDs” and that “Amazon would only register domain names that align with its global brand strategy so that the .AMAZON TLDs are strongly affiliated with the reputation of the Amazon brand, which should eliminate concerns of ACTO and its member states that third parties will abusively use the TLDs.” Finally, the Amazon corporation stated that it would host the nine domain names noted above and would make use of “proactive security controls paired with reactive and detective controls [to offer] the most comprehensive approach to security” related to the “provisioning and configuration of .AMAZON domains.”¹⁴

On 18 April 2019, ACTO submitted an alternative proposal regarding the governance and PICs for the .AMAZON TLDs.¹⁵ Shortly thereafter, ACTO responded to the Amazon corporation’s proposal.¹⁶ Specifically, ACTO stated that “the [Amazon] company’s proposal of April 17 cannot be said to accommodate the principles of shared responsibility and shared governance called for by ACTO members.”¹⁷ ACTO stated that the Amazon corporation’s Steering Committee would only be able to make suggestions and would not be subject to the obligations of the PIC. Further, ACTO held concerns with an “overly restrictive definition of the concept of ‘Culture and heritage specific to the Amazon region’, which would not even include

¹⁴ ICANN Board Resolutions 2019.05.15.13 – 2019.05.15.15 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>).

¹⁵ Letter of Ambassador Alexandra Moreira (<https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-18apr19-en.pdf>).

¹⁶ Letter of Ambassador Achilles Zaluar, 23 April 2019 (<https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>).

¹⁷ *Id.*

the names of cities, towns, villages, rivers, culinary dishes, typical ingredients, animals and plants, touristic attractions, and travel related services, among others.”¹⁸

At its workshop in Istanbul, Turkey from 1-3 May 2019, the Board discussed the Amazon corporation’s proposal in light of all that has come before, including the rules and procedures of the New gTLD Program as set out in the Applicant Guidebook, previous GAC advice, the Amazon corporation Independent Review Process (IRP) Final Declaration, and all relevant correspondence, including, among others, a letter dated 7 April 2019 from the Colombian Government to the Amazon corporation in which the ICANN CEO, ICANN Board Chair, and ICANN GAC Chair were all copied.

On 15 May 2019, the Board again considered the Amazon corporation’s proposal and all other relevant materials, found the proposal acceptable, and adopted the 15 May 2019 Resolutions.¹⁹

On 15 June 2019, the Requestor filed Request 19-1, seeking reconsideration of the 15 May 2019 Resolutions.²⁰

The BAMC has considered Request 19-1 and all relevant materials. Based on its extensive review of all relevant materials, the BAMC finds that reconsideration is not warranted because the Board adopted the 15 May 2019 Resolutions based on accurate and complete information and because the Board’s adoption of the 15 May 2019 Resolutions was consistent with ICANN’s Bylaws, policies and procedures.

¹⁸ *Id.*

¹⁹ ICANN Board Resolutions 2019.05.15.13 – 2019.05.15.15 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>).

²⁰ Request 19-1, § 3, at Pg. 1.

II. Facts.

A. Initial Decision on the .AMAZON Applications.

In 2012, the Amazon corporation submitted the .AMAZON applications.²¹ The .AMAZON applications were the subject of GAC Early Warnings submitted by the governments of Brazil and Peru (with the endorsement of Bolivia, Ecuador, Guyana and Argentina), which put the Amazon corporation on notice that these governments had a public policy concern about the applied-for strings. Specifically, the GAC Early Warnings noted that “[g]ranting exclusive rights to this specific gTLD to a private company would prevent use of this domain for purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region.”²² The GAC Early Warnings also noted that the requested .AMAZON TLD “matches part of the name, in English, of the ‘Amazon Cooperation Treaty Organization,’ an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty.”²³ Finally, the GAC Early Warnings explained that the .AMAZON applications “ha[d] not received support from the governments of the countries in which the Amazon region is located.”²⁴

The GAC considered the matter at its April 2013 meeting in Beijing. Consensus was not reached, but the GAC requested that ICANN org refrain from moving forward with the .AMAZON applications to allow the GAC time to consider the matter at its next meeting.²⁵ At

²¹ <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.d>.

²² GAC Early Warning – Submittal Amazon- BR- PE- 58086 at Pg. 1 (<https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197938/Amazon-BR-PE-58086.pdf>).

²³ *Id.*

²⁴ *Id.*

²⁵ Beijing Communiqué at Pg. 3 (<https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>).

its July 2013 meeting in Durban, the GAC reached consensus and advised ICANN org that the .AMAZON applications should not proceed.²⁶

The Board—acting via the New gTLD Program Committee (NGPC)—approved a resolution on 14 May 2014 accepting the GAC’s advice and directing ICANN org not to proceed with the .AMAZON applications.²⁷ In reaching this decision, the NGPC relied in part on an independent, third-party expert analysis that concluded there was “no rule of international, or even regional or national, law” which obligated ICANN to either reject or accept the .AMAZON applications.²⁸ Additionally, the NGPC explained that the decision was made “without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.”²⁹

B. The IRP Initiated by the Amazon Corporation.

Following the Board’s acceptance of the GAC Durban Communiqué advice, according to ACTO, “representatives from both the Amazon countries and [the Amazon corporation] held several meetings, including at the ACTO headquarters in Brasília.”³⁰ The parties explored possibilities to establish an arrangement “in order to allow the commercial exploitation of the ‘.amazon’ TLDs by the company, while at the same time safeguarding the countries’ right to use the TLDs for the public interest, in line with national strategies and for the benefit of the local peoples. However, neither party could accept the different proposals presented by the other at that time.”³¹

²⁶ Durban Communiqué at Pg. 3-4 (<https://gac.icann.org/advice/communiques/gac-47-durban-communique.pdf>).

²⁷ <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#/2.b>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter from ACTO to ICANN Board, 5 Sept. 2018, at Annex V, Pg. 5 (<https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05sep18-en.pdf>).

³¹ *Id.*

On 1 March 2016, the Amazon corporation initiated an IRP challenging the ICANN Board’s decision ([2014.05.14.NG03](#)) to stop proceeding with the .Amazon applications.³² The IRP Panel issued its Final Declaration on 11 July 2017, finding the Amazon corporation to be the prevailing party.³³ The Final Declaration concluded that “GAC consensus advice, standing alone, cannot supplant the Board’s independent and objective decision with a reasoned analysis.”³⁴ Moreover, the Final Declaration explained that neither the GAC Early Warnings, nor the GAC advice, nor the Board Resolution to stop proceeding with the .AMAZON applications contained an explanation of a “well-founded public policy interest” that was sufficient to justify the Board’s action.³⁵ Based on these findings, the Final Declaration recommended that the Board “promptly re-evaluate Amazon’s applications” and “make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon’s applications.”³⁶

On 23 September 2017, the Board accepted the IRP Panel Final Declaration recommendation that the Amazon corporation was the prevailing party in the IRP.³⁷ The Board also resolved that

further consideration is needed regarding the Panel’s non-binding recommendation that the Board “promptly re-evaluate Amazon’s applications” and “make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon’s applications.”³⁸

³² See <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.d>.

³³ IRP Panel Declaration ¶¶ 124-26, at Pgs. 52-53.

³⁴ *Id.* ¶ 125, at Pgs. 52-53

³⁵ *Id.* ¶¶ 118-19, at Pg. 50.

³⁶ *Id.* ¶ 125, at Pgs. 52-53. See also <https://www.icann.org/resources/board-material/resolutions-2018-09-16-en#2.d>.

³⁷ Board 23 September 2017 Resolutions (<https://www.icann.org/resources/board-material/resolutions-2017-09-23-en#2.e>.)

³⁸ *Id.* at Resolution 2017.09.23.17.

C. Continued Negotiations between the Amazon Corporation and the ACTO Member States.

On 29 October 2017, the Board asked the GAC if it had any new or additional information to provide the Board regarding its advice that the .AMAZON applications should not proceed.³⁹

That same day, the GAC met with the Amazon corporation during the ICANN60 meeting in Abu Dhabi to discuss possible solutions that could produce a mutually satisfactory resolution of the .AMAZON applications.⁴⁰ During the meeting, the Amazon corporation presented a proposal to the GAC and the ACTO member states.⁴¹

In its November 2017 Abu Dhabi Communiqué, the GAC acknowledged the Board's request for new or additional information relating to the GAC's consensus advice on the .AMAZON applications.⁴² The GAC advised the ICANN Board to "continue facilitating negotiations between the...ACTO[] member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name."⁴³ The GAC acknowledged "the need to find a mutually acceptable solution for the countries affected and the Amazon corporation to allow for the use of .amazon as a top level domain name."⁴⁴ On 4 February 2018, the ICANN Board accepted this advice and directed the

³⁹ 29 October Letter (<https://www.icann.org/en/system/files/correspondence/crocker-to-schneider-29oct17-en.pdf>).

⁴⁰ https://sched.ws/hosted_files/icann60abudhabi2017/7b/I60_AUH-Sun29Oct2017_GAC%20Meet%20with%20Amazon.com-en.pdf.

⁴¹ Transcript of GAC meeting with the Amazon corporation in Abu Dhabi, Pg. 5-8 (https://sched.ws/hosted_files/icann60abudhabi2017/7b/I60_AUH-Sun29Oct2017_GAC%20Meet%20with%20Amazon.com-en.pdf); *see also* GAC Abu Dhabi Communiqué, Pgs. 6-7, 17 (<https://www.icann.org/en/system/files/correspondence/gac-to-icann-01nov17-en.pdf>).

⁴² GAC Abu Dhabi Communiqué, Pg. 7.

⁴³ *Id.* at Pg. 13.

⁴⁴ *Id.*

ICANN President and CEO “to facilitate negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation.”⁴⁵

On 7 February 2018, following informal exchanges facilitated by ICANN org, the Amazon corporation issued an updated proposal to ACTO, which was reviewed by the ACTO member states.⁴⁶ The ACTO member states also had an opportunity to pose clarifying questions to the Amazon corporation regarding their proposal.⁴⁷ Following review of the proposal, on 5 September 2018, ACTO sent a letter to the Board stating that the Amazon corporation proposal “does not constitute an adequate basis to safeguard [ACTO member states’] inherent rights relating to the delegation of the ‘.amazon’ TLD.”⁴⁸ The ACTO member states also stated that delegation of .AMAZON “requires the consent of the Amazon countries...[which] have the right to participate in the governance of the ‘.amazon’ TLD.”⁴⁹ The ACTO member states further expressed “the willingness to engage with the ICANN Board, based on the aforementioned principles, with a view to safeguarding their rights as sovereign states with respect to the delegation of the ‘.amazon’ TLD.”⁵⁰

On 16 September 2018, the ICANN Board directed ICANN org “to support the development of a solution for delegation of the strings represented in the .AMAZON applications that includes sharing the use of those top-level domains with the ACTO member states to support the cultural heritage of the countries in the Amazonian region,” and “if possible,

⁴⁵ <https://www.icann.org/resources/board-material/resolutions-2018-02-04-en#2.d>.

⁴⁶ Letter from ACTO to ICANN Board, 5 Sept. 2018, at Annex V, Pg. 2 (<https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05sep18-en.pdf>).

⁴⁷ *Id.* See also <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.d>.

⁴⁸ Letter from ACTO to ICANN Board, 5 Sept. 2018, at Pg. 1.

⁴⁹ *Id.*

⁵⁰ *Id.*

to provide a proposal to the Board, on the .AMAZON applications to allow the Board to take a decision on the delegation of the strings represented in the .AMAZON applications.”⁵¹

The ACTO member states met on 16 October 2018 to discuss a response to the September Board Resolution.⁵² On 19 October 2018, the ACTO member states “formally invited the ICANN President and CEO to meet with their representatives in Brasilia so that they could participate in the ‘further work that could result in a solution’ . . . for the delegation of the .AMAZON string,” if the solution was “acceptable to the Amazon countries.”⁵³

On 25 October 2018, the GAC published additional advice on the .AMAZON applications. Specifically, the GAC “welcome[d] the 16 September 2018 Board resolution,” and the Board’s attempt “to further the possibility of delegation of the .AMAZON applications . . . while recognizing the public policy issues raised through GAC advice on these applications.”⁵⁴ The GAC concluded its discussion by “call[ing] upon the Board to continue facilitating work that could result in [a mutually acceptable] solution.”⁵⁵

D. Resumption of Processing of the .AMAZON Applications to Facilitate Continued Negotiations.

On 25 October 2018, the ICANN Board discussed the status of the .AMAZON applications and directed ICANN org to “remove the ‘Will Not Proceed’ status and resume processing of the .AMAZON applications according to the policies and procedures governing the 2012 round of the New gTLD Program. This includes the publication of the Public Interest

⁵¹ <https://www.icann.org/resources/board-material/resolutions-2018-09-16-en#2.d>.

⁵² Letter from Mendoza to ICANN org, 19 Oct. 2018, <https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-19oct18-en.pdf>.

⁵³ Request 18-10, § 8, at Pg. 4. On 22 November 2018, ACTO rescinded the invitation. ICANN Board Resolutions 2019.03.10.01 – 2019.03.10.07 (<https://www.icann.org/resources/board-material/resolutions-2019-03-10-en#1.a>).

⁵⁴ Barcelona Communiqué at Pg. 10-11 (<https://gac.icann.org/advice/communiques/icann63%20gac%20communique%CC%81.pdf>).

⁵⁵ *Id.*

Commitments, as proposed by the Amazon Corporation, according to the established procedures of the New gTLD program.”⁵⁶ The Board also instructed the ICANN President and CEO “to provide regular updates to the Board on the status of the .AMAZON applications.”⁵⁷

On 5 November 2018, ACTO submitted Request 18-10, seeking reconsideration of the Board’s 25 October 2018 actions. ACTO also wrote to the ICANN Board on behalf of the ACTO member states to express concern that the “positions held by the Amazon countries appear to have been erroneously interpreted.”⁵⁸ Specifically, the Requestor reiterated that while “[t]he Amazon countries maintain their willingness to dialogue with the ICANN President and CEO to develop a mutually acceptable solution for the delegation of the ‘.AMAZON’ top-level domains, . . . such mutually acceptable solution has not yet been agreed upon.”⁵⁹

On 16 January 2019, the Board responded by “acknowledg[ing] that Request 18-10 reflects a difference in interpretation by the Requestor of the Resolution,” and thus “reiterate[d]” its “clear intention . . . to progress the facilitation process between the ACTO member states and the Amazon corporation with the goal of helping the involved parties reach a mutually agreed solution.”⁶⁰ The Board further explained that “in the event [ACTO and the Amazon corporation] are unable to do so, the Board will make a decision at ICANN 64 on the next steps regarding the potential delegation of .AMAZON and related top-level domains.”⁶¹

⁵⁶ <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.d>.

⁵⁷ *Id.*

⁵⁸ Letter from J. Mendoza to G. Marby and C. Chalaby, 5 November 2018 (<https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05nov18-en.pdf>) (“5 Nov. Letter”).

⁵⁹ *Id.*

⁶⁰ <https://www.icann.org/resources/board-material/resolutions-2019-01-16-en#2.a>.

⁶¹ *Id.* \

E. The Board’s 10 March 2019 Resolutions.

On 28 January 2019, ACTO invited the ICANN org President and CEO to meet with representatives from the ACTO member states regarding the .AMAZON applications.⁶² ICANN’s President and CEO accepted the invitation, and a meeting was scheduled for 19 February 2019.⁶³ However, ACTO cancelled the meeting on 13 February 2019, and provided no dates for rescheduling.⁶⁴ On 15 February 2019, the ICANN org President and CEO acknowledged the cancellation and expressed his hope for continued dialogue, particularly in light of the upcoming ICANN Board meeting at ICANN64.⁶⁵

On 21 February 2019, the Director of the Department of Technological Promotion of the Ministry of Foreign Affairs of Brazil wrote to ICANN, requesting “that the ICANN Board postpone a final decision on the .Amazon applications to ICANN 65, with a view to allow the eight Amazon countries and Amazon Inc. to find a mutually acceptable solution.”⁶⁶ On 27 February 2019, the Board of the Brazilian Internet Steering Committee (CGI.br) endorsed the request that the Board not take final action at ICANN64.⁶⁷

On 28 February 2019, ACTO requested that the Board not take final action on the .AMAZON applications at ICANN64, and welcomed further discussions, preferably before 9 March 2019.⁶⁸ On 2 March 2019, the ICANN org President and CEO invited the ACTO member

⁶²<https://www.icann.org/en/system/files/correspondence/lopez-to-ismail-28jan19-en.pdf>.

⁶³<https://www.icann.org/en/system/files/correspondence/moreira-to-marby-13feb19-en.pdf>.

⁶⁴ *Id.*

⁶⁵<https://www.icann.org/en/system/files/correspondence/marby-to-moreira-15feb19-en.pdf>.

⁶⁶<https://www.icann.org/en/system/files/correspondence/zaluar-to-icann-board-21feb19-en.pdf>.

⁶⁷<https://www.icann.org/en/system/files/correspondence/glaser-to-chalaby-ismail-27feb19-en.pdf>. CGI.br acknowledged “the intense exchange of correspondences between the Amazon Cooperation Treaty Organization (ACTO) and ICANN that ensued until February 2019,” and explained “that there is still room for dialogue between ICANN, the Amazonian countries and Amazon Inc., with the goal of helping the involved parties reach a mutually agreeable solution.” *Id.*

⁶⁸<https://www.icann.org/en/system/files/correspondence/moreira-to-marby-28feb19-en.pdf>.

countries to join him and the Amazon corporation on a conference call before 9 March 2019 to resume discussions.⁶⁹ ACTO responded that it was not available.⁷⁰

On 5 March, 2019, Ambassador Francisco Carrion Mena, writing “on behalf of” the ACTO member states, acknowledged that ACTO and the Amazon corporation had not been able to identify a mutually acceptable solution.⁷¹ However, he reiterated that the ACTO member states were “committed to working on a final solution” and “believe[d] this would be a win for all sides,” and therefore “propose[d] to set a strict and realistic timeline for the conclusion of talks between the Amazon countries and Amazon Inc.”⁷²

On 10 March 2019, at ICANN64, the Board considered the .AMAZON applications. The Board noted that “the President and CEO facilitated discussions with various ACTO member states over the period of a year,” and that “[d]espite repeated attempts, additional facilitation discussions were scheduled, but did not take place.”⁷³ In light of these facts, the Board concluded “that it ha[d] complied with the operative GAC advice on this matter” but that “no mutually agreed solution has been identified to date.”⁷⁴ However, the Board acknowledged requests by ACTO and various ACTO member states for further time to identify a mutually acceptable solution, “recognize[d] the need to balance concerns of all those involved,” and concluded “that allowing a further, short period of time before the Board makes a decision about whether to move toward delegation of the strings represented by the Amazon Applications could still lead to a mutually acceptable solution.”⁷⁵

⁶⁹ <https://www.icann.org/en/system/files/correspondence/marby-to-moreira-02mar19-en.pdf>.

⁷⁰ ICANN Board Resolutions 2019.03.10.01 – 2019.03.10.07 (<https://www.icann.org/resources/board-material/resolutions-2019-03-10-en#1.a>).

⁷¹ <https://www.icann.org/en/system/files/correspondence/mena-to-ismail-05mar19-en.pdf>.

⁷² *Id.*

⁷³ ICANN Board Resolutions 2019.03.10.01 – 2019.03.10.07 (<https://www.icann.org/resources/board-material/resolutions-2019-03-10-en#1.a>).

⁷⁴ *Id.*

⁷⁵ *Id.*

The Board therefore adopted Resolution 2019.03.10.01, “call[ing] on the ACTO member states and the Amazon corporation to engage in a last effort that allows both parties over the next four (4) weeks to work in good faith toward a mutually acceptable solution regarding the Amazon Applications, and if one is reached, to inform the Board of that solution by 7 April 2019.”⁷⁶ The Board noted that if “both ACTO member states and the Amazon corporation mutually agree to and request an extension” of the deadline, the Board would “honor that request.”⁷⁷ The Board also adopted Resolution 2019.03.10.04, which directed that if no mutual agreement was reached, the Amazon corporation should “submit a proposal [by 21 April 2019] on how it will address the ACTO member states continuing concerns regarding the Amazon Applications.”⁷⁸ Resolution 2019.03.10.05 explained that “if the Amazon corporation’s proposal is acceptable to the Board [in accordance with policies and procedures governing the 2012 round of the New gTLD Program], and is not inconsistent with any outstanding formal advice received regarding the Amazon Applications, the Board will direct ICANN org to continue processing the Amazon Applications according to the policies and procedures governing the 2012 round of the New gTLD Program.”⁷⁹

F. Negotiations after the 10 March 2019 Resolutions.

The ICANN org President and CEO wrote to both ACTO and the GAC Chair on 11 March 2019 to ensure they were promptly informed of the 10 March Resolutions.⁸⁰

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ <https://www.icann.org/en/system/files/correspondence/marby-to-moreira-11mar19-en.pdf>;
<https://www.icann.org/en/system/files/correspondence/marby-to-ismail-11mar19-en.pdf>.

ACTO and the Amazon corporation did not submit a joint proposal for a solution within the timeline outlined by the Board.⁸¹ On 5 April 2019, a representative for the Government of Ecuador wrote to ICANN to explain that while the ACTO member countries had been participating in negotiations with the Amazon corporation since the 10 March Resolutions were adopted, the parties had not yet reached a mutually acceptable solution.⁸² Ecuador therefore requested “an extension of the agreed deadline by ICANN, if possible, until the next meeting of that agency, ICANN65, that will take place in Marrakech in June 2019.”⁸³ However, neither Amazon corporation nor the other ACTO member states joined Ecuador in this request.⁸⁴

On 7 April 2019, the Colombian government sent a letter to the Amazon corporation in which the ICANN CEO, ICANN Board Chair, and ICANN GAC Chair were all copied.⁸⁵ The Colombian government expressed “some key concerns that the Colombian government would like to formally enter into the record regarding the framework of these dialogues to date,” including concerns regarding ownership rights, Specification 13 eligibility, and dispute resolution procedures.⁸⁶ The Colombian government stated that “[w]hile it would be our preference for the ICANN board to grant an extension to the parties to continue a constructive dialog on the substantive points raised in this communication, we recognize that such an extension may not be granted.”⁸⁷

On 8 April 2019, the ICANN Board of Directors Chair wrote to ACTO, copying the Amazon corporation, to acknowledge that “the 7 April 2019 deadline has now passed, and the

⁸¹ ICANN Board Resolutions 2019.05.15.13 – 2019.05.15.15 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>).

⁸² <https://www.icann.org/en/system/files/correspondence/espinoza-to-marby-05apr19-en.pdf>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Request 19-1, Attachment, at Pg. 17.

⁸⁶ *Id.*

⁸⁷ *Id.*, at Pgs. 17-23.

ICANN Board has not received either a mutually agreed-upon proposal for a solution or a joint request for an extension of the 7 April 2019 deadline.”⁸⁸ The letter further explained that the Board would proceed with the next steps described in the 10 March Resolutions.⁸⁹

On 9 April 2019, the Amazon corporation responded to the ICANN Chair’s letter, noting that it had received “various emails and proposals” from “the governments of Brazil, Peru, and Colombia” since the 10 March Resolutions.⁹⁰ The Amazon corporation also noted that it had been informed that the ACTO countries planned to meet later in the week, and that the Amazon corporation “sincerely hopes that the ACTO member states will be able to provide for Amazon’s consideration, before Amazon is required to file its proposal per the Board’s March 10 Resolutions, a single, unified proposal endorsed by all eight ACTO countries that meets Amazon’s commercial and security needs while protecting appropriately the cultural and heritage interests of the people living in the Amazonian region.”⁹¹

On 11 April 2019, ACTO wrote to the ICANN Board Chair to request that the ICANN Board “postpone any final decision on [the .AMAZON applications] until the ICANN 65 meeting” because “an agreement could still be reached if the parties were given more time to work together in good faith.”⁹² ACTO also noted that the ACTO member states “have presented many times in the past years . . . their joint and clear position about the baseline for an agreement, i.e., a shared governance of the TLD.”⁹³ The ICANN Board Chair responded on 15 April 2019, reiterating the timeline adopted by the Board in its 10 March Resolutions, and

⁸⁸ <https://www.icann.org/en/system/files/correspondence/chalaby-to-moreira-08apr19-en.pdf>.

⁸⁹ *Id.*

⁹⁰ <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-09apr19-en.pdf>.

⁹¹ *Id.*

⁹² <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-11apr19-en.pdf>.

⁹³ *Id.*

“respectfully ask[ing] ACTO to adhere to the process outlined in the Board Resolutions, and work with Amazon Corporation, to establish a new timeline if the parties believe that additional time will be useful to reaching an agreement.”⁹⁴

G. Amazon Corporation’s Updated Proposal pursuant to the 10 March 2019 Resolutions.

On 17 April 2019, within the time designated in Resolutions 2019.03.10.01-2019.03.10.07, the Amazon corporation submitted the April 2019 Proposal to the ICANN Board on how it will address the ACTO member states’ continuing concerns. That proposal is embodied in a modified proposal for PICs and included “the creation of a joint Steering Committee,” as well as commitments to: (1) “Not use as domain names in each .AMAZON TLD those terms that have a primary and well-recognized significance to the culture and heritage of the Amazonia region;” (2) “Provide nine domain names in each .AMAZON TLD to be used for non-commercial purposes by ACTO and its member states to enhance the visibility of the region;” and (3) “Block from all use up to 1500 domain names in each .AMAZON TLD that have a primary and well recognized significance to the culture and heritage of the Amazonia region.”⁹⁵ The Amazon corporation also explained that its TLDs would be “highly-restricted .BRANDs” such that “Amazon would only register domain names that align with its global brand strategy” in order to “eliminate concerns of ACTO and its member states that third parties will abusively use the TLDs.”⁹⁶ In a 7-page letter, the Amazon corporation explained how it believed its proposal addressed the concerns of the ACTO member states, while also explaining its rationale for refusing certain restrictions sought by the member states.⁹⁷

⁹⁴ <https://www.icann.org/en/system/files/correspondence/chalaby-to-moreira-15apr19-en.pdf>.

⁹⁵ <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>.

⁹⁶ *Id.*

⁹⁷ *Id.*

On 18 April 2019, ACTO submitted an alternative proposal regarding the governance and PICs for the .AMAZON TLDs, and seeking an extension of the deadline to reach mutual agreement.⁹⁸ ACTO’s modified proposed for PICs required the Amazon corporation “to share the .AMAZON TLD with” ACTO and its member states, to “permanently reserve (block from all use) in the .AMAZON TLD up to 4,500 domain names, and their translations in English, Spanish, Portuguese and Dutch, that have major, international or well-recognized importance to the cultural or natural heritage of the Amazon Region,” and “to make available for ACTO and its member States a list of second level domain names in the .AMAZON TLD that have major, international or well-recognized importance to the cultural or natural heritage of the Amazon Region, including country names and two-letter and three-letter codes for allocation to the entity to which they correspond.”⁹⁹ Further, the ACTO proposal would require “a Steering Committee for [the Amazon corporation] and ACTO member states to exercise their shared responsibility with respect to the governance and use of the .AMAZON TLD,” including deciding on the list of permanently reserved domain names, “to discuss and decide on any concerns ACTO member States may have about domain names used” by the Amazon corporation, and to determine the domain names allocated to ACTO and its member states.¹⁰⁰ Further, ACTO’s proposal would require disputes “over terms with major, international or well-recognized importance to the cultural or natural heritage of the Amazon Region, or over terms that can cause confusion or mislead about matters that can be reasonably associated with the cultural or natural heritage of

⁹⁸ Letter of Ambassador Alexandra Moreira (<https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-18apr19-en.pdf>).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

the Amazon Region” to be submitted to third-party arbitration, potentially by the UNESCO World Heritage Center.¹⁰¹

On 19 April 2019, the Amazon corporation wrote to the ICANN Board to oppose ACTO’s requested extension, and to explain its views that “the proposed PIC submitted by ACTO fails to take into account the nature and character of a .brand” and that “core aspects of the proposed PIC are contrary to international property law, raise substantial security concerns, and are otherwise impractical and inappropriate.”¹⁰²

On 22 April 2019, the Board received a letter from two “Lecturers in Law and Human Rights at the University of Essex and Middlesex University London,” expressing their view that international human rights law “indicates that the Amazon corporation should have ensured that the concerned indigenous peoples were consulted in relation to its application, and their consent to agreements that ensure fair and equitable benefits obtained in advance of the application.”¹⁰³

On 23 April 2019, the Government of Brazil wrote to the ICANN Board to provide excerpts of the ACTO member states’ communications with the Amazon corporation over the preceding months, and to express Brazil’s view that the Amazon corporation’s proposal “cannot be said to accommodate the principles of shared responsibility and shared governance called for by ACTO members.”¹⁰⁴ Brazil further expressed its view that the Amazon corporation’s technical and legal objections to ACTO’s proposal were unfounded, and that the operation of the TLDs as .BRAND TLDs would not “foreclose the actual sharing of domains.”¹⁰⁵

¹⁰¹ *Id.*

¹⁰² <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-19apr19-en.pdf>.

¹⁰³ <https://www.icann.org/en/system/files/correspondence/van-ho-doyle-to-chalaby-22apr19-en.pdf>.

¹⁰⁴ <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>.

¹⁰⁵ *Id.*

Responding to both the Government of Brazil’s letter and ACTO’s proposal, the Amazon corporation wrote to the ICANN Board on 23 April 2019.¹⁰⁶ The Amazon corporation explained its view that, “ACTO’s proposed PIC fails to take into account the nature and character of a .BRAND TLD, would create confusion and potentially dilute our brand recognition, and deprive Amazon of significant uses of its applied-for TLDs. Indeed, it seems that core aspects of ACTO’s proposed PIC are contrary to international intellectual property law, raise substantial security concerns, and are otherwise impractical and inappropriate.”¹⁰⁷ Specifically, the Amazon corporation stated that “ACTO’s proposal would foreclose Amazon’s ability to secure .BRAND status,” and that this status was “essential [to the corporation] for maintaining security and customer trust.”¹⁰⁸ The Amazon corporation also objected to ACTO’s proposal that member states’ country names be used as domain names, because the Amazon corporation “intends to withhold all country names from registration in accordance with the Registry Agreement.”¹⁰⁹ The Amazon corporation also stated, “[a]ny form of steering committee that is authorized to take a binding decision as to the administration or operation of the .AMAZON TLDs, or to how we use the .AMAZON TLDs, is not viable from a business perspective,” based in part on the requirements of international trademark law.¹¹⁰ The Amazon corporation also objected to the use of third-party arbitration, rather than established ICANN procedures, to resolve disputes.¹¹¹

¹⁰⁶ <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-23apr19-en.pdf>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

On 29 April 2019, CGI.br wrote to the ICANN Board to “reiterate[] [its] support . . . for the rejection of the delegation of the top-level domain name ‘.AMAZON’ exclusively to a private interest, to be operated as a closed brand top-level domain.”¹¹²

On 7 May 2019, the Government of Brazil wrote to the ICANN Board to “correct” “some misunderstandings about the Amazon countries’ proposed solutions.”¹¹³ Specifically, according to Brazil, the “proposed Steering Committee for the .amazon strings should only have responsibilities over a limited number of issues,” “should allow equal representation of both sides,” and “would only act by consensus.”¹¹⁴ Further, “the purpose of any shared-use[] by the Amazon countries of the .amazon strings would be to safeguard the natural and cultural heritage of the Amazon region and its peoples, never to function as an e-commerce platform.”¹¹⁵ Finally, Brazil addressed the “definition of protected terms” to be precluded from use of domain names, suggesting that the Amazon corporation’s proposed definitions were too restrictive.¹¹⁶

H. The Board’s 15 May 2019 Resolutions.

On 14 May 2019, the ICANN Board published an agenda of a Special Meeting to be held the following day.¹¹⁷ The Special Meeting was scheduled, in significant part, to consider the Generic Names Supporting Organization’s (GNSO) Expedited Policy Development Process (EPDP) Recommendations on the Temporary Specification for gTLD Registration Data, which was a time sensitive matter because the Temporary Specification was set to expire.¹¹⁸

At the 15 May 2019 meeting, the Board also considered the Amazon corporation’s April 2019 Proposal and adopted the 15 May 2019 Resolutions, which stated, in relevant part,

¹¹² <https://www.icann.org/en/system/files/correspondence/glaser-to-chalaby-29apr19-en.pdf>.

¹¹³ <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-07may19-en.pdf>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ <https://www.icann.org/resources/board-material/agenda-2019-05-15-en>.

¹¹⁸ Resolution 2019.05.15.13 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.b>).

Resolved (2019.05.15.13), the Board finds the Amazon corporation proposal of 17 April 2019 acceptable, and therefore directs the ICANN org President and CEO, or his designee(s), to continue processing of the .AMAZON applications according to the policies and procedures of the New gTLD Program. This includes the publication of the Public Interest Commitments (PICs), as proposed by the Amazon corporation, for a 30-day public comment period, as per the established procedures of the New gTLD program.

Resolved (2019.05.15.14), the Board thanks ACTO, the ACTO member states, and the Amazon corporation for their time and efforts in attempting to reach a mutually acceptable solution on this matter.

Resolved (2019.05.15.15), the Board thanks the ICANN org President and CEO, along with his team within the ICANN organization, for their facilitation efforts.¹¹⁹

The Board acknowledged the long history of the .AMAZON applications, including ICANN org’s extensive efforts to facilitate agreement on a mutually acceptable solution between the ACTO member states and the Amazon corporation.¹²⁰ The Board further “recognize[d] the need to balance concerns of all those involved, and that it should act fairly and transparently at all times.”¹²¹ The ICANN Board then concluded “that it ha[d] complied with the operative GAC advice . . . as stated in the November 2017 Abu Dhabi Communique.” Finally, “the Board [] determined that the Amazon corporation proposal is not inconsistent with GAC advice and that there is no public policy reason for why the .AMAZON applications should not be allowed to proceed in the New gTLD Program.”¹²²

¹¹⁹ Resolution 2019.05.15.13 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>); Request 19-1, § 3, at Pg. 1.

¹²⁰ Resolution 2019.05.15.13 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>); Request 19-1, § 3, at Pg. 1.

¹²¹ Resolution 2019.05.15.13 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>); Request 19-1, § 3, at Pg. 1.

¹²² Resolution 2019.05.15.13 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>); Request 19-1, § 3, at Pg. 1.

III. Relief Requested.

The Requestor asks that the Board either confirm that the Amazon corporation's April 2019 Proposal is consistent with ICANN's policies and practices or, alternatively, reconsider the Resolutions if the plan is inconsistent with ICANN's policies and practices.¹²³ To inform such reconsideration, the Requestor asks that the ICANN Board "be provided with a confidential briefing document on the approximately thirty-seven Specification 13 requests that were either 'Not Approved or Withdrawn,'"¹²⁴ and also that ICANN org "direct [the Security and Stability Advisory Committee, (SSAC)] to prepare a report for the ICANN Board to address the security and stability concerns raised by Amazon the Company."¹²⁵ Further, the Requestor asks that processing of the .AMAZON applications be stayed pending the conclusion of "the current PIC modification process underway within the Registry Stakeholder Group [RySG]."¹²⁶ Additionally, the Requestor asks the Board to "permit the parties to continue to negotiate in good faith toward a mutual goal, absent an artificial deadline imposed by ICANN."¹²⁷ Finally, the Requestor asks that ICANN make publicly available the "Reference Materials Attachment A & B cited in the Resolution."¹²⁸

IV. Issues Presented.

The issues are as follows:

1. Whether the Board adopted the 15 May 2019 Resolutions based on false or inaccurate relevant information, or without consideration of material information.

¹²³ *Id.* §§ 8–9, at Pg. 7, 11.

¹²⁴ *Id.* § 9, at Pg. 11. These Specification 13 requests were made by applicants for other gTLDs and do not involve the .AMAZON applications.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* § 8, at Pg. 8.

¹²⁸ *Id.* § 8, at Pg. 5.

2. Whether the Board adopted the 15 May 2019 Resolutions contrary to ICANN’s Bylaws, which require that “[a]t least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.”¹²⁹
3. Whether ICANN org or the ICANN Board violated ICANN’s Bylaws, which require that ICANN “operate to the maximum extent feasible in an open and transparent manner,”¹³⁰ by holding a closed meeting with the RySG to discuss a potential process to modify PICs.

V. The Relevant Standards for Reconsideration Requests.

Articles 4.2(a) and (c) of ICANN’s Bylaws provide in relevant part that any entity “may submit a request for reconsideration or review of an ICANN action or inaction . . . to the extent the Requestor has been adversely affected by:

- (i) One or more Board or Staff actions or inactions that contradict ICANN’s Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board’s or Staff’s consideration at the time of action or refusal to act; or
- (iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board’s or Staff’s reliance on false or inaccurate relevant information.”¹³¹

Request 19-1 seeks reconsideration of Board and staff action on the grounds that the action was taken without consideration of material information, based on false and inaccurate information, and in contradiction of ICANN’s Bylaws. The BAMC has reviewed the Request

¹²⁹ ICANN Bylaws, 18 June 2018, Art. 3 § 3.4.

¹³⁰ *Id.* at § 3.1.

¹³¹ *Id.* at §§ 4.2(a) and (c).

and now provides a recommendation to the Board.¹³² Denial of a Request for Reconsideration of ICANN Board action is appropriate if the BAMC recommends and the Board determines that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws.¹³³

VI. Analysis and Rationale.

A. The Board Did Not Fail to Consider Material Information Before Adopting the Resolutions.¹³⁴

The Requestor suggests that in adopting the 15 May 2019 Resolutions, “ICANN Staff and Board . . . failed to consider the detailed legal concerns raised in a [7 April 2019] communication to Amazon the Company in which the ICANN CEO, ICANN Board Chair, and ICANN GAC Chair were all copied.”¹³⁵ Relatedly, the Requestor notes that “the Colombian government offered other governance structures” in its 7 April 2019 communication to the Amazon corporation, but that it “does not appear that the ICANN Board even consider[ed] this potential option in seeking to achieve a mutually agreeable resolution between the parties.”¹³⁶ The BAMC concludes that the Requestor’s claims do not support reconsideration.

The BAMC confirms that the Board considered the issues set forth in the Requestor’s 7 April 2019 Letter as part of its discussion on the Amazon corporation’s April 2019 Proposal at the Board workshop from 1-3 May 2019.

¹³² *See id.* at § 4.2(e).

¹³³ *Id.*

¹³⁴ In addition to asserting that the Board failed to consider relevant information and relied on inaccurate information in adopting the Resolutions, the Request also asked that “ICANN provide the community with a public link” to the “Reference Materials Attachment A & B cited in the Resolution.” Request 19-1, § 8, at Pg. 5. In keeping with ICANN’s standard practice, those materials (with confidential material redacted) were posted alongside the approved Minutes of the 15 May 2019 meeting. They are available at <https://www.icann.org/en/system/files/bm/briefing-materials-2-redacted-15may19-en.pdf>.

¹³⁵ Request 19-1, § 8, at Pg. 5.

¹³⁶ *Id.* at Pg. 7.

1. The Board considered the “legal concerns” raised in the Requestor’s 7 April 2019 Letter.

The Requestor’s conclusion that the Board did not consider the Requestor’s “legal concerns” is based solely on the Requestor’s assertion that “the Colombia government has been unable to find [the 7 April 2019] communication listed on the ICANN public correspondence website or in any of the cited references in the Resolution[s].”¹³⁷ However, the Requestor’s 7 April 2019 Letter was addressed to the Amazon corporation, not to the ICANN Board, the ICANN organization, or any individual associated with ICANN.¹³⁸ ICANN org’s CEO and President, as well as the Chair of the Board, were only copied on the communication.¹³⁹ It is not ICANN’s policy or practice to publicly post communications between third parties on which it is only copied.

While the BAMC acknowledges that the Requestor’s 7 April 2019 Letter was not specifically identified in the 15 May 2019 Resolutions under the “What materials did the Board review” section of the Rationale, the legal concerns and the proposed joint governance structure for the .AMAZON TLDs set forth in the Requestor’s 7 April 2019 Letter were also discussed in other correspondence from the ACTO member states that the Board considered and listed in adopting the 15 May 2019 Resolutions.¹⁴⁰ Specifically, the legal concerns and proposed joint governance structure were included in the 11 April 2019 letter from the Secretary General of ACTO to the ICANN Board Chair,¹⁴¹ and the letters from Ambassador Zaluar of Brazil to the

¹³⁷ See *id.* at Pg.5.

¹³⁸ See *id.* at Attachment, Pg. 17.

¹³⁹ See *id.*

¹⁴⁰ The Requestor’s 7 April 2019 Letter cited several models of joint governance, including the .SAS TLD governance model.

¹⁴¹ See <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-11apr19-en.pdf>.

ICANN Board of 23 April 2019¹⁴² and 7 May 2019.¹⁴³ Indeed, ACTO noted in its 11 April 2019 letter to the Board that the ACTO member states “have presented many times in the past years . . . their joint and clear position about the baseline for an agreement, i.e., a shared governance of the TLD.”¹⁴⁴ These letters were identified in the “What materials did the Board review” section to the 15 May 2019 Resolutions.¹⁴⁵

2. The Board considered the alternative governance models suggested by the Requestor and ACTO member states.

The Requestor assumes that because the Board did not accept the alternative governance models, it must not have considered them.¹⁴⁶ The fact that the Board did not accept the proposed joint governance models is not evidence that the Board failed to consider the proposals. As discussed in detail above, the Board did consider the alternative governance models proposed by the Requestor and ACTO member states when it adopted the 15 May 2019 Resolutions.

Further, the alternative governance models were not material to the question before the Board when it adopted the Resolutions. That is, pursuant to the 10 March 2019 Resolutions, the Board was to consider whether the Amazon corporation’s proposal was acceptable, not to compare the Amazon corporation’s proposal with alternatives proposed by other stakeholders.

¹⁴² See <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>.

¹⁴³ See <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-07may19-en.pdf>.

¹⁴⁴ <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-11apr19-en.pdf>.

¹⁴⁵ See, e.g., <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>; <https://www.icann.org/en/system/files/correspondence/glaser-to-chalaby-29apr19-en.pdf>. See also ICANN Reference Materials to Paper No. 2019-05-15-1c, Attachment B (<https://www.icann.org/en/system/files/bm/briefing-materials-2-redacted-15may19-en.pdf>) (describing 23 April 2019 letter from the Brazilian government to ICANN); 23 April 2019 letter from Brazilian government to ICANN (<https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>) (asserting that “the applied-for string would be operated as a closed .BRAND gTLD, which would foreclose the actual sharing of domains under the .AMAZON TLDs for purposes other than the protection and promotion of the brand”).

¹⁴⁶ See Request 19-1, § 8, at Pg. 7.

Based on the foregoing, the BAMC concludes that there is no evidence that the Board failed to consider material information in adopting the 15 May 2019 Resolutions.¹⁴⁷

B. The Board Did Not Adopt the 15 May 2019 Resolutions Based on False or Inaccurate Information.

1. The ICANN Board did not approve Amazon corporation's Specification 13 Applications when it adopted the 15 May 2019 Resolutions.

The Requestor claims that in adopting the 15 May 2019 Resolutions, “[t]he ICANN Board appears to blindly accept Amazon the Company’s representation that operating the contested string under a Specification 13 designation would be consistent with existing ICANN established best practice and would safeguard all parties’ best interests.”¹⁴⁸ According to the Request, “that is not the case,” and is therefore inaccurate information, because “only the trademark owner, its affiliates and licensees are permitted to use domain names in a Specification 13 (aka Brand) TLD,” and the Requestor “cannot see how Amazon Inc’s proposal to permit ACTO members to be beneficial registrants of the domain names is acceptable under the existing ICANN registry contractual framework.”¹⁴⁹

The Board’s determination in the 15 May 2019 Resolutions that ICANN org should “continue processing” the .AMAZON applications “according to the policies and procedures of the New gTLD Program” was not a determination that the Amazon corporation is automatically entitled to move forward to delegation of the .AMAZON TLDs, nor did the Board’s action constitute approval of the Amazon corporation’s Specification 13 applications to operate

¹⁴⁷ In connection with the shared governance model, the Request also asks that “ICANN Org direct SSAC to prepare [a] report for the ICANN Board to address the security and stability concerns raised by Amazon the Company in connection with the concurrent use proposal made by the Colombia government.” Request 19-1, § 9, at Pg. 11. However, a Request for Reconsideration is not the appropriate forum in which to request such relief. *See* Bylaws Art. 4, § 4.2. A Request for Reconsideration is likewise not the appropriate forum for the Requestor’s request that the ICANN Board “be provided with a confidential briefing document on the approximately thirty-seven Specification 13 requests that were either ‘Not Approved or Withdrawn.’” Request 19-1, § 9, at Pg. 11.

¹⁴⁸ Request 19-1, § 8, at Pg.6.

¹⁴⁹ *See id.* § 8, at Pg.6.

as .BRAND TLDs. In adopting the 15 May 2019 Resolutions, the Board acknowledged that the .AMAZON applications still needed to go through the remaining application processes in accordance with the Applicant Guidebook. For example, the Board noted that, “[i]f the .AMAZON applications are able to complete the AGB processes and move forward into delegation, the Board expects that ICANN Contractual Compliance will – as with any other registry agreement – diligently monitor the Amazon corporation’s compliance with the terms of their registry agreements, including the PICs that are essential to today’s decision.”¹⁵⁰

The Board’s 15 May 2019 Resolutions were limited to addressing whether the Amazon corporation’s April 2019 Proposal was “not inconsistent with” the GAC’s 2017 advice to the Board to “facilitate[e] negotiations between [ACTO] member states and the Amazon corporation with a view to reaching a mutually acceptable solution” which would “allow for the use of .amazon as a top level domain name.”¹⁵¹ While the Board was aware of the Amazon corporation’s intention of operating .AMAZON TLDs as .BRAND TLDs,¹⁵² the 15 May 2019 Resolutions did not take a position on the propriety of any Specification 13 application because individual Specification 13 applications are evaluated and approved or denied by ICANN org¹⁵³ The BAMC notes that the Amazon corporation had not submitted a formal Specification 13 application for the .AMAZON TLDs at the time the Board approved the 15 May 2019 Resolutions. Because the Board did not take a position on the propriety of any Specification 13 application, it did not rely on any “representations” about Specification 13, and therefore those

¹⁵⁰ Resolution 2019.05.15.13 (<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.c>).

¹⁵¹ *Id.*

¹⁵² Letter from Amazon to ICANN Board at Pg. 3, 17 April 2019 (<https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>).

¹⁵³ See .BRAND TLD Application Process, Pgs. 6-7 (<https://newgtlds.icann.org/en/applicants/agb/base-agreement-spec-13-application-form-15jul14-en.pdf>).

representations do not support the Requestor’s claim that the Board relied on inaccurate information when it enacted the 15 May 2019 Resolutions.

2. Specification 13 status is not necessarily incongruent with the proposed PICs.

The Requestor claims that Amazon corporation’s proposed PICs would automatically be incongruent with any Specification 13 application submitted by the Amazon corporation. The BAMC does not agree. Specification 13 requires, among other things, that only the Registry Operator (here, this would be the Amazon corporation), “its Affiliates or Trademark Licensees are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD.”¹⁵⁴ There is no prohibition on allowing third parties to *use* domain names in a .BRAND TLD, which was what the Amazon corporation proposed to do.¹⁵⁵ Specifically, the Amazon corporation proposed to

permit use of the .AMAZON TLD by ACTO through providing nine (9) domain names in the .AMAZON TLD for ACTO’s designation to itself and its eight member states as it sees fit, for non-commercial purposes. . . . Registration of the Permitted Domain Names shall be made by Registry Operator through the Registry Operator’s chosen registrar[,] . . . will be registered in the name of the Registry Operator[,] . . . and will be delegated onto servers selected and controlled by Registry Operator. . . . The Permitted Domain Names may (i) point to websites hosted by Registry Operator or its Affiliates (“ACT Name Websites”) or (ii) redirect to existing websites, where the Registry Operator or its Affiliates host the redirect.¹⁵⁶

The Requestor states that it advised the Board of the conflict between Amazon corporation’s Specification 11 and 13 designations in the Requestor’s 7 April 2019 Letter. This letter was not addressed to the Board; nevertheless, the BAMC notes that the Requestor actually concedes in

¹⁵⁴ Applications to Qualify for Specification 13 to the Registry Agreement (<https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/specification-13-applications>).

¹⁵⁵ *See id.*

¹⁵⁶ Letter from Amazon to ICANN Board at Pgs. 9-11, 17 April 2019 (<https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>).

the letter that the proposed PICs do not inherently conflict with Specification 13. That is, the Requestor does *not* assert that the proposed PICs *actually* violate Specification 13, but rather, the Requestor posits that the proposed PICs “violate the spirit of the Specification 13 guidance and the best practice of ICANN Org in approving Specification 13 requests.”¹⁵⁷ Because Specification 13 does not prohibit the type of use (without third-party registration) that the Amazon corporation proposed, the Requestor’s assertions about the “spirit” of Specification 13 are misplaced and not grounds for reconsideration.¹⁵⁸

Finally, the Requestor’s concerns about Specification 13 appear to arise from a belief that, if the Amazon corporation applies for and receives Specification 13 status for the .AMAZON TLDs, such status will nullify or diminish the effect of the PICs.¹⁵⁹ While the BAMC understands the Requestor’s concerns, such fear is unfounded and premature at this stage. Amazon corporation’s Specification 13 status has no bearing on its Specification 11 PICs. The approval of a Specification 13 to an eventual registry agreement and the designation of a TLD as a .BRAND TLD does not nullify the Registry Operator’s Specification 11 PICs. A Registry Operator will be contractually bound by its Specification 11 commitments and its Specification 13 obligations, if applicable. Each Specification has its own enforcement

¹⁵⁷ Request 19-1, Attachment, at Pg. 2.

¹⁵⁸ The Requestor asks that the Board either confirm that the plan proposed by the Amazon corporation is consistent with ICANN’s policies and practices or, alternatively, reconsider the Resolutions if the plan is inconsistent with ICANN’s policies and practices. Request 19-1, §§ 8–9, at Pg. 7, 11. As a preliminary matter, a Request for Reconsideration is not the appropriate forum in which to ask the Board to “confirm” the Board’s determination; in evaluating a Request for Reconsideration, the BAMC and Board consider whether the Board’s action—here, the Resolutions—contradicted ICANN’s established policies and procedures, not whether the Amazon corporation’s proposal contradicted those procedures. *See* Bylaws Art. 4, § 4.2. The BAMC concludes that the Resolutions are consistent with ICANN’s established policies and procedures, and with ICANN’s Bylaws. As a result, Reconsideration is not warranted, and the BAMC concludes that the Board need not issue the requested confirmation in the course of its consideration of Request 19-1.

¹⁵⁹ *See* Request 19-1, § 8, at Pg. 6 (“[W]e cannot see how Amazon Inc’s[] proposal to permit ACTO members to be beneficial registrants of the domain names is acceptable . . . the fact remains that the ACTO members would be the beneficial registrants and would thus violate the terms of Specification 13.”).

mechanisms. A Registry Operator’s failure to operate in compliance with its Specification 11 PICs shall be subject to the Public Interest Commitment Dispute Resolution Procedure.¹⁶⁰ Similarly, upon a Registry Operator’s failure to satisfy the requirements of Specification 13, “(i) the TLD shall immediately cease to be a .BRAND TLD, (ii) Registry Operator shall immediately comply with the provisions of the [Registry] Agreement as no longer modified by [] Specification 13 [] and (iii) the provisions of [the] Specification 13 [] shall thereafter no longer have any effect.”¹⁶¹ Thus, if an actual conflict should arise between the Amazon corporation’s Specifications 11 and 13, there are safeguards in place to address such conflicts.

C. The Board’s Adoption of the Resolutions Was Consistent with ICANN’s Bylaws.

The Requestor claims that the Board adopted the Resolutions in contravention of the ICANN Bylaws because “the agenda for the 15-May-2019 ICANN Board meeting was published one (1) day in advance of the actual meeting.”¹⁶² In the Requestor’s view, this violated Article 3.4 of the ICANN Bylaws, which states, “At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.”¹⁶³

As the Requestor acknowledges, “the bylaws provide some latitude” with respect to this provision by including “qualifiers like ‘as is practicable.’”¹⁶⁴ In this case, the 15 May 2019 meeting was set to address the urgent matter of the GNSO EPDP Recommendations on the

¹⁶⁰ Base Specification 11, updated 31 July 2017 (<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.pdf>); Public Interest Commitment Dispute Resolution Procedure (<https://www.icann.org/resources/pages/picdrp-2014-01-09-en>; <http://newgtlds.icann.org/en/applicants/agg/picdrp-19dec13-en.pdf>.)

¹⁶¹ Base Specification 13, updated 31 July 2017 (<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-specification-13-31jul17-en.pdf>).

¹⁶² Request 19-1, § 8, at Pg. 9.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

Temporary Specification for gTLD Registration Data, because the Temporary Specification was set to expire.¹⁶⁵ Given the circumstances, the agenda for the meeting was not finalized until 14 May 2019, when it was promptly posted as soon as practicable. Therefore, the timing of when the agenda was posted was consistent with the Bylaws.

D. No Meeting Was Scheduled with the RySG to Discuss a Potential Process to Modify PICs.

The Request asserts that ICANN staff has violated ICANN Bylaws requiring ICANN to “operate to the maximum extent feasible in an open and transparent manner” by “schemul[ing] a session . . . with the ICANN Registry Stakeholder Group at the upcoming [ICANN65]” to discuss a “proposed change process whereby a Registry Operator could amend previously committed to Public Interest Commitments” and by holding the session as a “closed session open only to ICANN staff and the [RySG].”¹⁶⁶ The Request asks that sessions on this topic “be open for observation by interested third parties” and that “ICANN delay any Registry Agreement execution with Amazon the Company until the current PIC modification process underway with the [RySG] is successful[ly] concluded or terminated.”¹⁶⁷

However, the asserted violation and requested relief are based on an incorrect premise, as no such session was scheduled for ICANN65. The meeting with the RySG and ICANN org staff was not scheduled to include discussion of a process for modifying previously agreed to PICs. Instead, the focus of the meeting was the process for *enforcing* PICs (the PIC Dispute Resolution Process, or PICDRP). Accordingly, Request 19-1 does not identify a violation of ICANN Bylaws, policies, or procedures with respect to the meeting with the RySG and ICANN org staff.

¹⁶⁵ <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.b>.

¹⁶⁶ Request 19-1, § 8, at Pg. 10.

¹⁶⁷ *Id.*

VII. Recommendation

The BAMC has considered the merits of Request 19-1 and, based on the foregoing, concludes that neither the Board nor the staff took action without consideration of material information, based on false or inaccurate relevant information, or in contradiction of ICANN's Bylaws. Accordingly, the BAMC recommends that the Board deny Request 19-1.

ICANN BOARD PAPER NO. 2019.09.08.2c

TITLE: **GAC Advice: Marrakech Communiqué (June 2019)**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) issued its [Marrakech Communiqué](#) on 27 June 2019. The Communiqué includes no new consensus advice but follow-up to previous advice issued to the ICANN Board. The follow-up to previous advice concerns the .AMAZON applications, Two-Character Country Codes as Second Level Domain Names, and WHOIS and Data Protection. As the GAC did not provide any new consensus advice, the Board and the GAC did not hold a clarification call for the ICANN65 Marrakech Communiqué.

The Board is being asked to approve the GAC-Board Scorecard to address the GAC’s follow-up to previous advice in the Marrakech Communiqué. The draft Scorecard is attached to this briefing paper. The draft Scorecard includes: the text of the GAC follow-up to previous advice; the Board’s understanding of the GAC follow-up to previous advice; the GNSO Council’s review of the follow-up to previous advice in the Marrakech Communiqué as presented in a 19 July 2019 [letter](#) to the Board (included for Board review only and will not be part of the final scorecard); and the Board’s proposed response to the GAC follow-up to previous advice.

ICANN ORG RECOMMENDATION:

The ICANN org recommends that the Board adopt the attached scorecard to address the GAC’s follow-up to previous advice in the June 2019 Marrakech Communiqué.

PROPOSED RESOLUTION:

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN65 meeting in Marrakech, Morocco and issued a [communiqué](#) on 27 June 2019 (“Marrakech Communiqué”), which contains follow-up to previous advice but no new consensus

advice. The follow-up to previous advice concerns the .AMAZON applications, Two-Character Country Codes as Second Level Domain Names, and WHOIS and Data Protection.

Whereas, in a 19 July 2019 [letter](#), the GNSO Council provided its feedback to the Board concerning the follow-up to previous advice contained in the Marrakech Communiqué.

Whereas, the Board developed a scorecard to respond to the GAC’s follow-up to previous advice in the Marrakech Communiqué, taking into account previous dialogue between the Board and the GAC on the topics as well as the information provided by the GNSO Council.

Resolved (2019.09.08.xx), the Board adopts the scorecard titled “GAC Advice – Marrakech Communiqué: Actions and Updates (8 September 2019)” **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY BOARD]** in response to items of GAC follow-up to previous advice in the Marrakech Communiqué.

PROPOSED RATIONALE:

Article 12, Section 12.2(a)(ix) of the ICANN Bylaws permits the GAC to “put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.” In its Marrakech Communiqué (27 June 2019), the GAC issued follow-up to previous advice to the Board on .AMAZON applications, Two-Character Country Codes as Second Level Domain Names, and WHOIS and Data Protection. The GAC did not provide any new items of consensus advice. The ICANN Bylaws require the Board to take into account the GAC’s advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. Any GAC advice approved by a full consensus of the GAC (as defined in the Bylaws) may only be rejected by a vote of no less than 60% of the Board, and the GAC and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The Board is taking action today on all follow-up items in the Marrakech Communiqué.

The Board's actions are described in the scorecard dated 8 September 2019 **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY THE BOARD]**.

In adopting its response to the GAC follow-up to previous advice in the Marrakech Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- Board resolution of 27 January 2019 regarding the Barcelona Communiqué:
<https://www.icann.org/resources/board-material/resolutions-2019-01-27-en#2.c>
- Board resolutions of 15 May 2019 regarding the Kobe Communiqué and .AMAZON: <https://www.icann.org/resources/board-material/resolutions-2019-05-15-en#1.a>
- Marrakech Communiqué (27 June 2019):
<https://www.icann.org/en/system/files/correspondence/gac-to-icann-27jun19-en.pdf> [PDF, 135 KB]
- The GNSO Council's review of the follow-up to previous advice in the Marrakech Communiqué as presented in the 19 July 2019 letter to the Board:
<https://www.icann.org/en/system/files/correspondence/drazek-et-al-to-chalaby-19jul19-en.pdf>

The adoption of the GAC follow-up to previous advice as provided in the scorecard will have a positive impact on the community because it will assist with resolving the advice from the GAC concerning gTLDs and other matters. There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. This is an Organizational Administrative function that does not require public comment.

Signature Block:

Submitted by: Christine Willett; David Olive

Position: Vice President, gTLD Operations;
Senior Vice President, Policy Development Support

Date Noted: 8 September 2019

Email: christine.willett@icann.org; david.olive@icann.org

GAC Advice – Marrakech Communiqué: Board Action (8 September 2019)

GAC Advice Item	Advice Text
None.	The Board notes that the GAC has not included consensus advice in the Marrakech Communiqué – please see below for follow-up to previous advice items.

GAC Advice – Marrakech Communiqué: Follow-up to Previous Advice (8 September 2019)

GAC Follow-up on Previous Advice Item	Follow-up on Previous Advice Text	Board Understanding	Board Response
<p>1. .AMAZON applications</p>	<p>The GAC asks the Board to explain in writing whether and why it considers that its decision to proceed with the .AMAZON applications, based on a proposal that the eight Amazon countries considered did not address their concerns, complies with GAC Advice.</p> <p><u>RATIONALE:</u> During the meeting with the ICANN Board, several GAC members expressed their concerns about the recent Board decision to find the Amazon corporation proposal of 17 April 2019 acceptable and directing the ICANN org to continue processing of the .AMAZON applications according to the policies and procedures of the New gTLD Program. Concerns were also expressed with the possibility of the outcome in the .AMAZON case becoming a precedent for similar cases for delegation of sensitive strings that the GAC has stressed as raising public policy concerns in future.</p> <p>Several members referenced the ICANN60 Abu Dhabi Communiqué, where:</p>	<p>The Board understands the GAC wishes for the ICANN Board to explain in writing whether and why the ICANN Board considers that its decision to proceed with the .AMAZON application, based on a proposal that the eight Amazon countries considered did not address their concerns, complies with GAC Advice.</p>	<p>In its 15 May 2019 resolution, the Board directed the ICANN org President and CEO “to continue processing the .AMAZON applications according to the policies and procedures of the New gTLD Program in accordance with Board resolutions 2019.03.10.01-.07 and in recognition of all input received relating to the .AMAZON applications.”</p> <p>In the rationale of this resolution, the Board provided information on the Board’s decision-making process leading up to the resolution. Specifically, the Board stated that it “recognizes the need to balance concerns of all those involved, and to act fairly and transparently at all times. Indeed, the Board has considered the concerns raised regarding the .AMAZON applications at every stage of their processing through the New gTLD Program. However, the Board was also cognizant of the time that lapsed since the .AMAZON applications were submitted in 2012, and since the Amazon corporation prevailed in its Independent Review Process (IRP) against ICANN in July 2017. Since that time, the ICANN Board and org engaged with the Governmental Advisory Committee (GAC), ACTO, and the Amazon corporation in pursuit of a mutually acceptable solution, as evidenced by the numerous meetings, proposals, and letters received on the topic of the .AMAZON applications over the past few years.”</p> <p>Further, the Board noted in the rationale that “[i]n reviewing the proposal from the Amazon corporation, the Board considered whether it had done its due diligence and had the relevant material to make a decision regarding the proposal, whether the Board's actions followed established processes and were in accordance with ICANN Bylaws, and</p>

GAC Follow-up on Previous Advice Item	Follow-up on Previous Advice Text	Board Understanding	Board Response
	<p>a) in section “V. Follow-up on Previous Advice”, with regard to the “Application for .amazon and related strings”, “[t]he GAC expressed the need to find a mutually acceptable solution in the case of the .Amazon gTLD applications for the countries affected and for the Amazon corporation”; and</p> <p>b) in section “VII. GAC Consensus Advice to the Board”, with regard to “Applications for .amazon and related strings”, “[t]he GAC recognizes the need to find a mutually acceptable solution for the countries affected and the Amazon corporation to allow for the use of .amazon as a top level domain name”.</p> <p>Several members also referenced the letter the GAC sent to the Board on 15 March 2018 in response to the Board’s request for “new or additional information to provide to the Board regarding the GAC’s advice that the Amazon applications should not proceed”, where it was stated that “the GAC does not have any additional information to provide to</p>		<p>whether the actions taken by the Board are within ICANN's mission. The Board also considered issues of fairness and whether the parties had been given sufficient time to reach a reasonable solution.</p> <p>“Ultimately, the Board determined that it has done its due diligence based on its review of the .AMAZON applications and the concerns raised throughout every stage of the life of the applications.¹⁴ Specifically, the Board took into account how the .AMAZON applications fit into the broader New gTLD Program. The Amazon corporation applied for the .AMAZON applications in 2012, pursuant to the Applicant Guidebook (AGB). The Applicant Guidebook, which either in part or in whole was subject to over 50 comment periods within ICANN, was also developed over three years of intensive community discussion. The GAC raised over 80 discrete issues which were addressed in an intensive face-to-face consultation, and issues such as protections for geographic names, as well as the abilities for individual governments to flag concerns and for the GAC to provide advice to the Board on applications, were added to the AGB. ICANN committed to funding objections raised by governments, if needed.</p> <p>“The .AMAZON applications were first evaluated pursuant to the AGB and determined not to be geographic names set aside for protections or requiring governmental approval. As discussed above, there were "Early Warnings" submitted by individual governments against the .AMAZON applications, and there was an additional challenge raised, a Community Objection brought by the Independent Objector, Alain Pellet. The Independent Objector raised issues it saw as of concern to the inhabitants of the Amazonian region, including human rights related concern. Following the AGB process, an independent expert panelist considered the Independent Objector's arguments, and ultimately</p>

GAC Follow-up on Previous Advice Item	Follow-up on Previous Advice Text	Board Understanding	Board Response
	<p>the Board on this matter, beyond referring to the GAC Abu Dhabi Communique.” Some members did not necessarily agree with the basis of these concerns as articulated above nor with the interpretation of GAC advice on this subject.</p> <p>On another note, some GAC members during the discussion with the ICANN Board, urged all parties to exhaust all means consistent with applicable procedures to facilitate a mutually acceptable solution.</p> <p>This request for a written response from the Board should be considered a follow-up to the GAC-Board discussion during ICANN65 and should not be construed as new GAC Advice on this matter.</p>		<p>dismissed the objection based on a detailed decision issued in January 2014 wherein the human rights and other arguments were considered. Both the Independent Objector and the expert panelist are noted for their scholarship in this area.</p> <p>“The GAC, in its July 2013 Durban Communiqué, advised the Board on a consensus basis that the .AMAZON applications should not proceed. The Board followed that advice and, ultimately, the IRP discussed at length above was filed. Based on the IRP Final Declaration, the Board re-engaged with the GAC and sought additional advice and clarification. The resulting GAC advice from Abu Dhabi is now the operable GAC advice on this issue, wherein the GAC advised the Board to “[c]ontinue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name.” The Board accepted that advice and has been acting in accordance with the advice in every subsequent decision on the .AMAZON applications—from the October 2018 decision to allow the .AMAZON applications to proceed through the AGB process, through the January 2019 decision on ACTO's Reconsideration Request, and in the March 2019 decision to allow another four weeks of discussions between the parties in addition to the year of facilitation that has passed since the Board's acceptance of the Abu Dhabi advice.</p> <p>“The Board has therefore met the GAC advice from Abu Dhabi, in that the ICANN org President and CEO facilitated discussions between the two parties for over a year. Likewise, the Board has received sufficient input and had the necessary materials to make this decision, as listed below. Even when the Board received a letter from Drs. van Ho and Doyle of the Schools of Law at the Universities of Essex and Middlesex,</p>

GAC Follow-up on Previous Advice Item	Follow-up on Previous Advice Text	Board Understanding	Board Response
			<p>respectively, setting out potential additional human rights concerns in moving forward with the .AMAZON applications, the Board considered this new input in light of the required AGB process and the substantial human rights-related briefings raised earlier in the application evaluation process, and identified that there were no new issues raised that hadn't already been considered across the long and intensive path that the .AMAZON applications have followed.”</p> <p>The Board understands that some GAC members have concerns regarding this resolution but hopes that the above provides additional insight into the reasons why the Board has taken the action that it has.</p> <p>Finally, the Board notes the Reconsideration Request from the Government of Colombia regarding the Board’s 15 May 2019 resolution. The BAMC issued a recommendation to deny the request on 14 August 2019. The full Board will consider in due course, and the Board will update the GAC following the resolution of this Reconsideration Request.</p>
<p>2. Two-Character Country Codes as Second Level Domain Names</p>	<p>The GAC remains concerned that GAC advice on the procedure for the release of country codes at the second level under new gTLDs was not taken into consideration as intended, and advises that meaningful steps be taken to ensure this does not happen in the future. Moreover, the GAC notes the provision of a search tool by ICANN. GAC Members have highlighted that the effectiveness of the tool is still being evaluated.</p>	<p>The Board understands that the GAC remains concerned that GAC advice on the procedure for the release of country codes at the second level under new gTLDs was not taken into consideration as intended. The Board notes the GAC’s request that meaningful steps be taken to ensure this does not happen in the future. The Board also notes that GAC members are evaluating the effectiveness of the search tool developed by ICANN org.</p>	<p>The Board is aware of the ongoing concerns among some GAC members regarding the consideration of GAC advice on the procedure for the release of two-character country codes at the second level under new gTLDs. The ICANN org has provided detailed explanations of its process and the Board’s consideration of relevant GAC Advice in a memo to the GAC dated 22 January 2019 as well as in a Historical Overview of the process. The Board also notes that during the BGIG meeting at ICANN65 in Marrakech it was discussed that the BGIG meeting at ICANN66 in Montreal could be used to discuss the two-character search tool. Between now and ICANN66, the Board recommends that GAC members</p>

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3. WHOIS and Data Protection	The GAC recalls its GAC Kobe Communiqué Advice and welcomes the actions being taken on the 2 nd phase of the EPDP.	The Board understands the GAC reaffirms its GAC Kobe Communique advice on WHOIS and Data Protection Legislation and notes the GAC welcomes the actions being taken on the 2 nd phase of the EPDP.	The Board appreciates the GAC’s follow-up on the Kobe advice. The Board recalls its response to the Kobe Communique, in which the Board noted that “while it cannot guarantee the end result, because the EPDP is a community procedure that determines its own processes...[t]he Board shall convey the request[s] via its Liaisons to the EPDP and via its communications with the GNSO Council.” Additionally, as noted in the Board’s response to the Kobe Communique, the Board continues to understand that “the GAC is requesting the ICANN Board to do all that it can, within its authority and remit and subject to budgetary constraints, to facilitate the work of the EPDP.”

GAC Advice – Marrakech Communiqué: Board Action (8 September 2019)

GAC Advice Item	Advice Text
None.	The Board notes that the GAC has not included consensus advice in the Marrakech Communiqué – please see below for follow-up to previous advice items.

GAC Advice – Marrakech Communiqué: Follow-up to Previous Advice (8 September 2019)

GAC Follow-up on Previous Advice Item	Follow-up on Previous Advice Text	Board Understanding	Board Response
<p>1. .AMAZON applications</p>	<p>The GAC asks the Board to explain in writing whether and why it considers that its decision to proceed with the .AMAZON applications, based on a proposal that the eight Amazon countries considered did not address their concerns, complies with GAC Advice.</p> <p><u>RATIONALE:</u> During the meeting with the ICANN Board, several GAC members expressed their concerns about the recent Board decision to find the Amazon corporation proposal of 17 April 2019 acceptable and directing the ICANN org to continue processing of the .AMAZON applications according to the policies and procedures of the New gTLD Program. Concerns were also expressed with the possibility of the outcome in the .AMAZON case becoming a precedent for similar cases for delegation of sensitive strings that the GAC has stressed as raising public policy concerns in future.</p> <p>Several members referenced the ICANN60 Abu Dhabi Communiqué, where:</p>	<p>The Board understands the GAC wishes for the ICANN Board to explain in writing whether and why the ICANN Board considers that its decision to proceed with the .AMAZON application, based on a proposal that the eight Amazon countries considered did not address their concerns, complies with GAC Advice.</p>	<p>In its 15 May 2019 resolution, the Board directed the ICANN org President and CEO “to continue processing the .AMAZON applications according to the policies and procedures of the New gTLD Program in accordance with Board resolutions 2019.03.10.01-.07 and in recognition of all input received relating to the .AMAZON applications.”</p> <p>In the rationale of this resolution, the Board provided information on the Board’s decision-making process leading up to the resolution. Specifically, the Board stated that it “recognizes the need to balance concerns of all those involved, and to act fairly and transparently at all times. Indeed, the Board has considered the concerns raised regarding the .AMAZON applications at every stage of their processing through the New gTLD Program. However, the Board was also cognizant of the time that lapsed since the .AMAZON applications were submitted in 2012, and since the Amazon corporation prevailed in its Independent Review Process (IRP) against ICANN in July 2017. Since that time, the ICANN Board and org engaged with the Governmental Advisory Committee (GAC), ACTO, and the Amazon corporation in pursuit of a mutually acceptable solution, as evidenced by the numerous meetings, proposals, and letters received on the topic of the .AMAZON applications over the past few years.”</p> <p>Further, the Board noted in the rationale that “[i]n reviewing the proposal from the Amazon corporation, the Board considered whether it had done its due diligence and had the relevant material to make a decision regarding the proposal, whether the Board’s actions followed established processes and were in accordance with ICANN Bylaws, and</p>

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	<p>a) in section “V. Follow-up on Previous Advice”, with regard to the “Application for .amazon and related strings”, “[t]he GAC expressed the need to find a mutually acceptable solution in the case of the .Amazon gTLD applications for the countries affected and for the Amazon corporation”; and</p> <p>b) in section “VII. GAC Consensus Advice to the Board”, with regard to “Applications for .amazon and related strings”, “[t]he GAC recognizes the need to find a mutually acceptable solution for the countries affected and the Amazon corporation to allow for the use of .amazon as a top level domain name”.</p> <p>Several members also referenced the letter the GAC sent to the Board on 15 March 2018 in response to the Board’s request for “new or additional information to provide to the Board regarding the GAC’s advice that the Amazon applications should not proceed”, where it was stated that “the GAC does not have any additional information to provide to</p>		<p>whether the actions taken by the Board are within ICANN's mission. The Board also considered issues of fairness and whether the parties had been given sufficient time to reach a reasonable solution.</p> <p>“Ultimately, the Board determined that it has done its due diligence based on its review of the .AMAZON applications and the concerns raised throughout every stage of the life of the applications.¹⁴ Specifically, the Board took into account how the .AMAZON applications fit into the broader New gTLD Program. The Amazon corporation applied for the .AMAZON applications in 2012, pursuant to the Applicant Guidebook (AGB). The Applicant Guidebook, which either in part or in whole was subject to over 50 comment periods within ICANN, was also developed over three years of intensive community discussion. The GAC raised over 80 discrete issues which were addressed in an intensive face-to-face consultation, and issues such as protections for geographic names, as well as the abilities for individual governments to flag concerns and for the GAC to provide advice to the Board on applications, were added to the AGB. ICANN committed to funding objections raised by governments, if needed.</p> <p>“The .AMAZON applications were first evaluated pursuant to the AGB and determined not to be geographic names set aside for protections or requiring governmental approval. As discussed above, there were "Early Warnings" submitted by individual governments against the .AMAZON applications, and there was an additional challenge raised, a Community Objection brought by the Independent Objector, Alain Pellet. The Independent Objector raised issues it saw as of concern to the inhabitants of the Amazonian region, including human rights related concern. Following the AGB process, an independent expert panelist considered the Independent Objector's arguments, and ultimately</p>

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	<p>the Board on this matter, beyond referring to the GAC Abu Dhabi Communique.” Some members did not necessarily agree with the basis of these concerns as articulated above nor with the interpretation of GAC advice on this subject.</p> <p>On another note, some GAC members during the discussion with the ICANN Board, urged all parties to exhaust all means consistent with applicable procedures to facilitate a mutually acceptable solution.</p> <p>This request for a written response from the Board should be considered a follow-up to the GAC-Board discussion during ICANN65 and should not be construed as new GAC Advice on this matter.</p>		<p>dismissed the objection based on a detailed decision issued in January 2014 wherein the human rights and other arguments were considered. Both the Independent Objector and the expert panelist are noted for their scholarship in this area.</p> <p>“The GAC, in its July 2013 Durban Communiqué, advised the Board on a consensus basis that the .AMAZON applications should not proceed. The Board followed that advice and, ultimately, the IRP discussed at length above was filed. Based on the IRP Final Declaration, the Board re-engaged with the GAC and sought additional advice and clarification. The resulting GAC advice from Abu Dhabi is now the operable GAC advice on this issue, wherein the GAC advised the Board to “[c]ontinue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name.” The Board accepted that advice and has been acting in accordance with the advice in every subsequent decision on the .AMAZON applications—from the October 2018 decision to allow the .AMAZON applications to proceed through the AGB process, through the January 2019 decision on ACTO's Reconsideration Request, and in the March 2019 decision to allow another four weeks of discussions between the parties in addition to the year of facilitation that has passed since the Board's acceptance of the Abu Dhabi advice.</p> <p>“The Board has therefore met the GAC advice from Abu Dhabi, in that the ICANN org President and CEO facilitated discussions between the two parties for over a year. Likewise, the Board has received sufficient input and had the necessary materials to make this decision, as listed below. Even when the Board received a letter from Drs. van Ho and Doyle of the Schools of Law at the Universities of Essex and Middlesex,</p>

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