

28 November 2018

Dear GAC Chair Manal Ismail,

I am writing to you as ICANN's CEO and President, to inform you of some issues and facts related to the facilitation process associated with the application for a .AMAZON top-level domain. As you are aware, ICANN has been conducting this facilitation process consistent with and according to the ICANN60 Government Advisory Committee (GAC) communiqué advice with the participation of the Amazon Cooperation Treaty Organization (ACTO) and Amazon, the corporation (Amazon Corporation) and the applicant for .AMAZON. I will refer to myself throughout the letter as ICANN's CEO.

Unfortunately, at this time, we regret to inform you that this facilitation process has been unsuccessful. The facilitation has not been able to reach its desired conclusion. I was hoping to meet with the ACTO countries in Bolivia following an invitation from ACTO's Secretary General. This visit and meeting were scheduled for 29 November 2018. I was hoping to be able to explain any misunderstandings and or statements made by ICANN which might have been misinterpreted, during that meeting, however, we have received a letter dated 22 November indicating that the ACTO Member Countries requested that this scheduled meeting be postponed.

In the following letter, I want to clarify to you and to the GAC Members the main necessary details of the ICANN facilitation process during the previous 12 months, and re-emphasize that we, acting on behalf of ICANN Board, have been doing our best during the facilitation process in order to protect both of the following: the legitimate public policy interest of ACTO's countries, as well as the legitimate interest of Amazon Corporation. Our facilitation process aimed to help the concerned parties to mutually benefit to the maximum extent possible in the use of the .AMAZON top-level domain, after five years not being delegated for any legitimate use to anyone.

As you know ICANN Board was eager to report back to the GAC about the positive progress of the facilitation process over the different GAC-Board meetings in the last 12 months. We believed that the GAC has been regularly informed during the past year, of the progress that was being made.

Our purpose in highlighting the below facts is to explain to the GAC from our perspective some details about that facilitation process and how we have reached the point of the facilitation process reaching a point of possible failure. Here are some of those key facts:

On May 14, 2014, ICANN Board has followed the GAC advice of the Durban Communiqué of July 18, 2013 and decided to not proceed with the Amazon Corporation applications for .AMAZON TLDs in different language scripts. We had only one applicant, Amazon Corporation, which filed three applications for .AMAZON top-level domains in three language scripts.

On October 6, 2015, the Amazon Corporation issued an initial proposal to the ACTO member states to attempt to address the concerns leading to the Durban 2013 consensus GAC Advice. This proposal was rejected by the ACTO member states in their mutual discussions with Amazon Corporation.

On March 1, 2016, Amazon Corporation filed a Notice of Independent Review (IRP) following the ICANN Bylaws mandated accountability mechanism with ICANN's designated dispute resolution provider, the International Centre for Dispute Resolution (ICDR). The IRP challenged the ICANN Board Resolution of May 14, 2014, which as set forth above accepted the GAC's Advice on not delegating .AMAZON.

On 10 July 2017, the IRP ruled that the ICANN Board should reconsider the 14 May resolution.

On 1 November 2017, during the ICANN60 in Abu Dhabi, the GAC issued Advice to the Board requesting that it help facilitate an agreement between the concerned ACTO Member States and Amazon Corporation, and to support further work that would allow the Amazon application to move forward in alignment with the GAC Advice at that time. The ICANN Board followed on from this GAC request by tasking the ICANN CEO to lead this facilitation process.

The ICANN CEO immediately started the facilitation process in Abu Dhabi during ICANN60, by meeting with all concerned parties present from ACTO Member States and Amazon Corporation. First proposals were already starting to be discussed at that time.

ICANN CEO then continued the facilitation process commencing regular meetings with the concerned parties and especially with the representative from Brazil (in particular during the Internet Governance Forum in Geneva in December 2017, in Puerto Rico during ICANN61 in March 2018, in Panama City during ICANN62 in June 2018, in Barcelona at ICANN63 in October 2018 and during a series of other occasions throughout 2018. Since ACTO is not a member/observer of the GAC, the GAC representative from Brazil was a focal point during this facilitation process.

ICANN CEO has followed up the dialogue about any new proposals from Amazon Corporation and the related detailed questions from ACTO in February 2018 on the latest proposals at that time during the facilitation process and also followed Amazon Corporation's answers to these questions.

The representative of Brazil attended the GAC - Board meetings several times and reported positively about the progress in the facilitation process organized by ICANN between the ACTO countries and Amazon Corporation. Regular calls between our senior executives at ICANN and the representative of Brazil to follow up on progress of the facilitation process were organized to answer any questions and clarify any ambiguities related to the process and updated proposals from Amazon Corporation.

We appreciate the efforts by the technical committee of ACTO in repetitive meetings over the months, and ICANN has also been following up on any feedback of the different proposals for nearly one year until Sep 2018.

On 5 Sep 2018, ACTO sent its response letter to ICANN on the latest Amazon Corporation proposal at that time, which reflected its dissatisfaction with the latest proposal and referred back to some proposals and discussions between the concerned parties which were not accepted back in 2015. These 2015 discussions did not come up in ICANN's presence during the facilitation process of 2018 and we are informed they contained some proposals that have been rejected during the 2015 discussions.

After receiving this 5 Sep 2018 letter from ACTO to ICANN, Amazon Corporation then started working on a new enhanced proposal that would consider most reservations of ACTO and include some Public Interest Commitments (PICs) in the new proposal according to the New gTLD Program (which follow the rules laid out in ICANN's New gTLD Applicant Guidebook). We are aware that the GAC is familiar with the PICs from its advice and constructive dialogue about the PICs during the implementation of ICANN's New gTLD Program.

To elaborate further, the objective of this newest Amazon Corporation proposal was to address public policy concerns expressed by ACTO countries, better serve people from the Amazon Region with shared governance and shared use of the top-level domains while improving use and visibility of the TLDs according to Amazon Corporation plans as well as avoiding any misuse of the top-level domains.

This proposal with its above-mentioned principles has been shared by our executive representative in his conversation with the Brazil representative before the ICANN Board meeting of 25 October 2018 and there was an encouragement that this was moving in the right direction. In particular, this encouragement occurred in a meeting between ICANN's CEO and the Brazil representative on 19 October in Barcelona.

The new Amazon Corporation proposal has been developed during a 12-month facilitation process that ICANN was leading and evolved from many discussions and ideas with all concerned parties, exchange of letters with Q&A in February 2018 between ACTO, ICANN and Amazon Corporation. This was the best effort that ICANN could achieve at that moment in October 2018 including the PICs.

On 25 October 2018, with full knowledge of the above, the ICANN Board made its decision to remove the "will not proceed" status on the TLD application and instructed ICANN's CEO to move this discussion forward.

The specific language of the key resolution reads as follows:

Resolved (2018.10.25.18), the Board directs the President and CEO, or his designee(s), 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 Commitments, as proposed by the Amazon Corporation, according to the established procedures of the New gTLD program.

The following was noted in the rationale for the Resolutions approved by the ICANN Board on 25 October 2018, regarding the use of the PICs:

Current Proposal from the Amazon Corporation

Since the Board's September 2018 resolution, the Amazon corporation, in effort to show its appreciation for the concerns of the ACTO member states regarding the use and governance of the .AMAZON TLDs, has submitted proposed Public Interest Commitments (PICs) that could be inserted into Specification 11 of its Registry

Agreement with ICANN. As part of the Registry Agreements, these PICs would be enforceable through standard Contractual Compliance mechanisms, as well as through the PIC Dispute Resolution Procedure (PICDRP). Should an ACTO member state believe that the Amazon corporation (as Registry Operator) is not complying with one of the PICs in one of its Registry Agreements, the ACTO member state would be able submit a complaint via the Contractual Compliance or the PICDRP. ICANN would then begin the review process, and, if found to be noncompliant, the Amazon corporation would need to take measures to remediate the issue.

The rationale also includes the following:

As the ICANN org has informed the Board that the parties have identified a path forward, the Board takes this action today to allow the .AMAZON applications to move forward in a manner that would align with GAC advice and inputs on this topic.

During the discussion by the ICANN Board of the Resolution, ICANN CEO stated on the record, the following (in pertinent part):

MARBY: ...I would like to start with a statement where I recognize both Amazon the company and the countries in the ACTO regions who has over a year deliberately worked together to find a solution which is workable for -- who both takes into account the historical interest of the peoples in the Amazonia as well as the interest of the company.

And instead of going through the whole ... written text, what we in practice ha(ve) done is, through (a) facilitation process, constructed a shared delegation of .AMAZON where the company has or will provide commitments to the ACTO countries how the .AMAZON will be used in the future. ...And the decision is today is to delegate it, to forward it to me to finalize those discussions between the company and those countries. And I'm also formally saying yes to the invitation to go to Brazil from the ACTO countries to ... finish off the last round of discussions.

The above comments from the ICANN CEO, made contemporaneous to the vote and as confirmed in the resolution and rationale, clearly indicate that there was to be further discussion and dialogue with both the Amazon Corporation and the ACTO Member States, and that the goal was to have the parties agree, before delegation. That is why the discussions in Bolivia were to occur with the ACTO Member States. The Board granted the ICANN CEO the authority to enter into those discussions, and to bring the matter to a final resolution.

On 5 November 2018, ACTO sent a Reconsideration Request to ICANN related to the 25 October 2018 Board Resolution. This reconsideration request was placed on hold following discussions with the Representative of Brazil who indicated that it would be better taken up following the meeting with ACTO members in Bolivia, and that the ACTO Member States do not expect any action prior to the Bolivia meeting. Now that this meeting has been cancelled and no other scheduled, ICANN will publish

the Reconsideration Request and move it through the appropriate Bylaws-mandated accountability mechanism processes.

On Friday 23 November 2018 Amazon Corporation submitted its latest proposal to Ambassador Mendoza, Secretary General, ACTO, outlining the commitments the company is prepared to undertake with respect to the .AMAZON TLDs in order to ensure the interests of the Amazon Cooperation Treaty Organization are fully considered and satisfied, including the underlying proposed Public Interest Commitments (PICs).

We would like to thank the representative from Brazil, directly in this letter, as he has provided us with great support in understanding the issues of the ACTO Member States and in the facilitation process, and identifying a path forward to allow ICANN to perform this role. He has also been clear throughout this process that the ACTO Member States would make the determination of whether any solution is mutually acceptable, which has been the primary goal of the facilitation.

I hope that the above clarifications will be of help for the GAC leadership and members. We remain open to assist and facilitate this matter, should it be considered useful. Please feel free to share with me and the Board any question about our letter related to this ICANN facilitation process.

With my best regards,



Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)

cc: Secretary General, ACTO

Annex 1: Exchange of Q&A of February 2018

Annex 2: Letter from ACTO to ICANN postponing ICANN CEO visit to ACTO meeting in Bolivia