

## **Amazon Resolution and Rationale**

### **PROPOSED RESOLUTION:**

Whereas, in 2012, Amazon EU S.à r.l. (Amazon corporation) applied for .AMAZON and two Internationalized Domain Name (IDN) versions of the word 'Amazon' (the Amazon Applications). The Amazon Applications were the subject of GAC Early Warnings submitted by the governments of Brazil and Peru (with the endorsement of Bolivia, Ecuador and Guyana), which put the Amazon corporation on notice that these governments had a public policy concern about the applied-for strings.

Whereas on 3 May 2013, the Amazon Cooperation Treaty Organization (ACTO) Member States Foreign Affairs Ministers issued a declaration through which ICANN was informed of the role of ACTO and its member states in consideration of the Amazon Applications.

Whereas, in July 2013, in the Durban Communiqué, the Amazon Applications were the subject of consensus GAC Advice that stated that the Amazon Applications should not proceed. On 14 May 2014, the Board (via the New gTLD Program Committee) accepted that advice and directed ICANN organization to not proceed with the Amazon Applications.

Whereas, on 6 October 2015 the Amazon corporation submitted a proposal to the ACTO member states in an attempt to come to a solution that could benefit both parties. This proposal was rejected by the ACTO member states.

Whereas, in July 2017, the Amazon corporation prevailed in an Independent Review Process (IRP) filed in 2016. The IRP 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."

Whereas, following consideration of the IRP Declaration, the Board asked the GAC for additional information as it relates to the merits-based public policy reason regarding the GAC's advice that the Amazon Applications should not proceed.

Whereas, in its November 2017 Abu Dhabi Communiqué, 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.”

Whereas, on 4 February 2018, the ICANN Board accepted the GAC advice from the Abu Dhabi Communiqué and directed the President and CEO “to facilitate negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation.”

Whereas, on 15 March 2018, with its Puerto Rico Communiqué, the GAC noted that it “does not have any additional information to provide to the Board on this matter, beyond referring to the GAC Abu Dhabi Communiqué” wherein it advised the Board to continue facilitating additional negotiations regarding the Amazon Applications.

Whereas, on 5 September 2018, ACTO responded to the Amazon corporation's February 2018 proposal (which modified its October 2017 proposal) declaring that "...[t]he Amazon countries have concluded that the [February 2018] proposal does not constitute an adequate basis to safeguard their immanent rights relating to the delegation of the '.amazon' TLD."

Whereas, on 16 September 2018, the ICANN Board directed the President and CEO “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, 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.” (16 September 2018 Resolution.)

Whereas, in a 19 October 2018 letter, ACTO welcomed the Board's 16 September 2018 Resolution and invited the President and CEO to meet the Amazon countries representatives in Bolivia, which the President and CEO accepted.

Whereas, on 25 October 2018, the Board directed 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. At the same time, the Board also directed the President and CEO to provide regular updates to the Board on the status of the Amazon Applications.

Whereas, on 5 November 2018, ACTO filed Reconsideration Request 18-10 seeking reconsideration of Board resolution 2018.10.25.18.

Whereas, on 22 November 2018, ACTO rescinded its invitation for the President and CEO to join ACTO countries representatives in Bolivia at the end of November 2018 "in the interest of maintaining a constructive and positive dialogue."

Whereas, on Friday 23 November 2018, Amazon corporation submitted its latest proposal to ACTO outlining the commitments the company is prepared to undertake with respect to the Amazon Applications in order to ensure the interests of the ACTO member states are fully considered, including the underlying proposed Public Interest Commitments (PICs).

Whereas, on 21 December 2018, the BAMC carefully considered the merits of Reconsideration Request 18-10 and all relevant materials and recommended that Request 18-10 be denied because the Board adopted the Resolution based on accurate and complete information and because the Board's adoption of the Resolution was consistent with ICANN's commitments and core values.

Whereas, on 26 January 2019, the Board adopted the BAMC recommendation and denied Reconsideration Request 18-10. The Board reiterated that Resolution 2018.10.25.18 was taken with the clear intention to grant the President and CEO the authority 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, but that, in the

event they 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.

Whereas, the Board also encouraged a high level of communication between the President and CEO and the relevant stakeholders, including the representatives of the Amazonian countries and the Amazon corporation, and directed the President and CEO to provide the Board with updates on the facilitation process in anticipation of revisiting the status of the Amazon Applications at its meeting at ICANN64.

Whereas, following the Board's decision on Reconsideration Request 18-10, on 28 January 2019, ACTO again invited the President and CEO to attend a meeting in Brasilia between 12 and 19 February 2019 to talk with ACTO member states regarding the Amazon Applications; ICANN's President and CEO accepted the invitation and the meeting was scheduled for 19 February 2019.

Whereas, on 13 February 2019, ACTO cancelled the upcoming meeting in Brasilia, and provided no new dates, but indicated that the cancellation has "no connection whatsoever with neither the substance nor the agenda of the postponed meeting."

Whereas, the President and CEO acknowledged the cancellation on 15 February 2019 and noted his hopes that "this dialogue continues in one form or another, taking into consideration the tight timeframe before the next ICANN Board meeting in Kobe at ICANN64 from 9-14 March 2019."

Whereas, on 28 February 2019, ACTO requested that the Board not take a final decision on the Amazon Applications in Kobe, and welcomed the President and CEO's willingness to engage in discussions, preferably before 9 March 2019, but ACTO did not suggest a time for such discussions.

Whereas, on 3 March 2019, the President and CEO acknowledged ACTO's request that he "personally resume the mediation between the ACTO member countries and the Amazon corporation before 9 March 2019" and he invited them to join him "and the Amazon corporation on a conference call early next week to work at reaching a mutually

agreeable solution between the interested parties.” ACTO indicated that it was not available to participate.

Whereas, the President and CEO facilitated discussions with various ACTO member states over the period of a year. The President and CEO has also made repeated attempts since October 2018 to engage in further facilitation discussions with ACTO member states. Despite repeated attempts, additional facilitation discussions were scheduled, but did not take place. The ICANN Board now therefore considers that it has complied with the operative GAC advice on this matter in the November 2017 Abu Dhabi Communiqué 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.”

Whereas, no mutually agreed solution has been identified to date by the ACTO member states and the Amazon corporation regarding the Amazon Applications.

Whereas, since ICANN org’s attempts to engage in facilitation discussions have not resulted in either any meaningful discussions, or a mutually acceptable solution, the Board does not think that any further facilitation efforts by ICANN org will be fruitful.

Whereas, the Board acknowledges ACTO’s request, and requests on behalf of ACTO member states Brazil, Colombia, Ecuador and Peru, for additional time to try to work out a solution with the Amazon corporation, and hopes that the parties themselves can arrive at a mutually acceptable solution.

Whereas, the Board is also cognizant of the time that has lapsed since the Amazon Applications were submitted in 2012, and since the Amazon corporation prevailed in its Independent Review Process against ICANN in July 2017.

Whereas, the Board recognizes the need to balance concerns of all those involved, and that it should act fairly and transparently at all times. The Board believes 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 regarding those Applications.

Resolved (2019.03.10.XX), the Board calls 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.

Resolved (2019.03.10.XX), if the ACTO member states and the Amazon corporation do reach a mutually acceptable solution regarding the Amazon Applications, and that solution is not inconsistent with any of ICANN's policies and procedures surrounding the New gTLD Program, ICANN org will continue processing the Amazon Applications according to the policies and procedures governing the 2012 round of the New gTLD Program.

Resolved (2019.03.10.XX), if the ACTO member states and the Amazon corporation are unable to reach a mutually acceptable solution regarding the Amazon Applications in the next four (4) weeks, but both ACTO member states and the Amazon corporation mutually agree to and request an extension of that time period, the Board will honor that request.

Resolved (2019.03.10.XX), if the ACTO member states and the Amazon corporation do not mutually agree to an extension of that time period, or if after an extension, no mutual agreement is reached, the Board asks that within the two (2) weeks following (by 21 April 2019 or the extended date), the Amazon corporation submit a proposal on how it will address the ACTO member states continuing concerns regarding the Amazon Applications. Upon receipt of that proposal, the Board will determine if it is acceptable in accordance with policies and procedures governing the 2012 round of the New gTLD Program.

Resolved (2019.03.10.XX), if the Amazon corporation's proposal is acceptable to the Board, 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.

Resolved (2019.03.10.XX), if the Amazon corporation's proposal is not acceptable to the Board, the Board might take two different approaches: (i) the Board might refer the proposal back to the Amazon corporation for additional work; or (ii) the Board might determine not to delegate the strings associated with the Amazon Applications.

Resolved (2019.03.10.XX), the Board directs the President and CEO to notify the GAC, ACTO, its members states and the Amazon corporation of this resolution as soon as practicable.

**PROPOSED RATIONALE:**

The Board is taking this action today in recognition of all input received relating to Amazon corporation's new gTLD applications for .AMAZON and two related Internationalized Domain Names (IDNs) (Amazon Applications). The Board recognizes the need to balance concerns of all those involved, and to act fairly and transparently at all times. The Board believes 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 regarding those Applications.

**Background:**

On 3 May 2013, the ACTO Member States Foreign Affairs Ministers issued a declaration through which ICANN was informed of the role of ACTO and its member states in consideration of the Amazon Applications.

In July 2013, in the Durban Communiqué, the Amazon Applications were the subject of consensus GAC Advice that stated that the Amazon Applications should not proceed. On 14 May 2014, the Board (via the New gTLD Program Committee) accepted that advice and directed ICANN organization to not proceed with the Amazon Applications.

Following that resolution, ICANN org updated the Amazon Applications to a “Will Not Proceed” status.

In October 2015, the Amazon corporation submitted a proposal to the Amazon Cooperation Treaty Organization (ACTO) member states in an attempt to come to a solution that could benefit both the Amazon corporation and concerned ACTO member states. However, this proposal was rejected by the ACTO member states. Subsequently, in March 2016, the Amazon corporation began an Independent Review Process (IRP) against ICANN. The IRP ended in July 2017 with the IRP Panel finding the Amazon corporation to be the prevailing party. The IRP 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."

Following the outcome of the IRP, the Board asked the GAC for additional information as it relates to the merits-based public policy reason regarding the GAC’s advice that the Amazon Applications should not proceed.

In its November 2017 Abu Dhabi Communiqué, 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.”

Subsequently, acting on the GAC advice in the Abu Dhabi Communiqué, the ICANN Board stated in its Abu Dhabi GAC Advice Scorecard that it “asked the ICANN org President and CEO to facilitate negotiations between the Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation.”<sup>1</sup>

On 4 February 2018, the ICANN Board accepted the GAC advice from the Abu Dhabi Communiqué and directed the President and CEO “to facilitate negotiations between the

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<sup>1</sup> See: <https://www.icann.org/en/system/files/files/resolutions-abudhabi60-gac-advice-scorecard-04feb18-en.pdf>.



Amazon Cooperation Treaty Organization’s (ACTO) member states and the Amazon corporation.”

Shortly thereafter, on 15 March 2018, with its Puerto Rico Communiqué, and in response to the Board’s inquiry following the IRP, the GAC noted that it “does not have any additional information to provide to the Board on this matter, beyond referring to the GAC Abu Dhabi Communiqué” wherein it advised the Board to continue facilitating additional negotiations.

On 16 September 2018, the ICANN Board directed the President and CEO “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, 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.” (16 September 2018 Resolution.)

In response, in a 19 October 2018 letter, ACTO welcomed the Board’s 16 September 2018 Resolution and invited the President and CEO to meet the Amazon countries representatives in Bolivia, which the President and CEO accepted.

On 25 October 2018, the Board directed 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. At the same time, the Board also directed the President and CEO to provide regular updates to the Board on the status of the Amazon Applications.

#### *Previous Amazon Corporation Proposals*

Since October 2015, the Amazon corporation has submitted various proposals to the ACTO member states in an effort to reach a mutually agreeable solution with respect to the Amazon Applications. Amazon corporation’s initial October 2015 proposal was rejected by the ACTO member states, which led the Amazon corporation to initiate and IRP against ICANN in March 2016. Following resolution of the IRP, in October 2017 at

ICANN60 the Amazon corporation presented to the GAC a new proposal for a “practical compromise.”

In February 2018, following dialogue facilitated by ICANN org between the Amazon corporation and ACTO member states, the Amazon corporation proposed four main courses of action that included: (i) helping with the global visibility of the Amazonia region and its peoples as well as to protect their cultural heritage; (ii) helping to prevent the misuse of domain names associated with the Amazonia region and its peoples; (iii) creating a Steering Committee to oversee implementation of the agreement; and, (iv) engaging in goodwill efforts by providing the ACTO member states credits for use of Amazon corporation services and products up to US\$5,000,000. Additionally, the Amazon corporation proposed helping the ACTO member states create an informational program to help publicize the benefits of the agreement.

#### *ACTO Stated Concerns and Response to Amazon Proposals*

The ACTO member states concerns regarding the use of the Amazon Applications center on the ability for countries and individuals in the Amazon region to use the domain names for public interest purposes. In October 2017, following the IRP Panel Final Declaration on the Amazon Applications, the ACTO member states issued a statement, reaffirming:

...that the name Amazon, in any language, is part of the cultural heritage and identity of the Amazon countries, and that its use as a first level domain name, unless otherwise agreed by the Amazon countries, shall be reserved for the promotion of the interests and rights of the Amazon peoples and their inclusion in the information society.

On 5 September 2018, following an updated proposal submitted by the Amazon corporation in February 2018, including after clarifications sought by the ACTO member states in understanding the proposal, the ACTO member states sent a letter to the Board stating that, with regard to the delegation of .AMAZON, that this “requires consent of the Amazon countries” and that they “have the right to participate in the governance of the

‘.amazon’ TLD”. Additionally, the ACTO member states declared that “the proposal does not constitute an adequate basis to safeguard their immanent rights relating to the delegation of the ‘.amazon’ TLD.” The member states did mention, however, that they were willing “to engage with the ICANN Board...with a view to safeguarding their rights as sovereign states.”

On 12 October 2018, the Ministry of Foreign Affairs of Colombia sent a letter to ICANN noting concerns with the Amazon corporation proposal and reiterated the position of the ACTO members states, as noted above.

#### *Latest Proposal from the Amazon Corporation*

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 Applications, submitted proposed Public Interest Commitments (PICs) that could be inserted into Specification 11 of its Registry Agreements 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).<sup>2</sup> 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 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.<sup>3</sup> The Amazon corporation developed this proposal through the facilitation process led by the ICANN org over the course of 2018. The Amazon corporation communicated this proposal to ACTO on 26 November 2018.<sup>4</sup>

#### *Correspondence between ICANN, ACTO, and the GAC following Board Resolution 2018.10.25.18*

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<sup>2</sup> See: <https://www.icann.org/resources/pages/picdrp-2014-01-09-en>.

<sup>3</sup> See: <http://newgtlds.icann.org/en/applicants/agb/picdrp-19dec13-en.pdf>.

<sup>4</sup> As noted in the letter from ACTO to the ICANN Board on 7 December 2018 (see footnote 2): <https://www.icann.org/en/system/files/correspondence/mendoza-to-icann-board-07dec18-en.pdf>.

Following Board resolution 2018.10.25.18, ACTO sent a letter to the Board on 5 November 2018, explaining that “the positions held by the Amazon countries appear to have been erroneously interpreted” and submitted Reconsideration Request 18-10, calling for “annulment of the 25 October 2018 resolution.”<sup>5</sup> In the letter, ACTO also called for “a process mediated by the ICANN President and CEO...to discuss a mutually acceptable solution.” ACTO also invited ICANN’s President and CEO to attend a meeting in Bolivia on 29 November 2018.

Subsequently, on 20 November 2018, ICANN’s President and CEO accepted the invitation for the Bolivia meeting “to explain the new proposal, listen and address any issues of concern from your side, correct any misconceptions or misinterpretations and take and this matter forward in a constructive way.”<sup>6</sup> The letter also notes that “[t]he new proposal has been developed during a 12 months facilitation process held by the ICANN organization and evolved from many discussions and ideas with all concerned parties, exchange of letters with Q&A back in February/March 2018 between ACTO technical committee, ICANN organization and Amazon Corp.”

On 22 November 2018, ACTO responded to ICANN’s President and CEO, stating that the meeting had been postponed at the request of the member countries “in the interest of maintaining a constructive and positive dialogue.”<sup>7</sup> The letter also requested a response from the Board to the ACTO letter of 5 November 2018 and stated that “any dialogue or related discussions with ACTO be conducted only via the ACTO Permanent Secretariat.”

On 26 November 2018, ACTO sent a letter to the ICANN Board “to express [its] extreme concern about the letter dated 20<sup>th</sup> November 2018 sent by the ICANN President and CEO...”<sup>8</sup> The letter from ACTO states that the 20 November letter “contained a series of assertions about the status of the TLD .AMAZON which could not be endorsed by the member countries’ views.” Additionally, the letter reminds of “the importance, in order to ensure proper accountability and conform to ACTO’s Charter, that all official contacts

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<sup>5</sup> See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05nov18-en.pdf>.

<sup>6</sup> See: <https://www.icann.org/en/system/files/correspondence/marby-to-mendoza-20nov18-en.pdf>.

<sup>7</sup> See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-marby-22nov18-en.pdf>.

<sup>8</sup> See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-26nov18-en.pdf>.

in the context of the facilitation process at any stage be conducted via the ACTO Permanent Secretariat, exclusively.”

On 28 November 2018, ICANN’s President and CEO sent a letter to the GAC Chair explaining that the facilitation process advised by the GAC in its Abu Dhabi Communiqué “has not been able to reach its desired conclusion.”<sup>9</sup> The letter provides clarification on the details of the facilitation process and notes that “[ICANN org], acting on behalf of ICANN Board, [has] been doing [its] 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.”

On 3 December 2018, the ICANN Board Chair responded to ACTO regarding the status of the Amazon Applications, the letter from ICANN President and CEO of 20 November 2018, the Amazon corporation proposal, the 25 October 2018 Board resolution, and Reconsideration Request 18-10, which the Board stated would begin processing as it had been on-hold pending the Bolivia meeting, which was subsequently cancelled.<sup>10</sup>

On 7 December 2018, ACTO responded to the Board, acknowledging receipt of the 3 December 2018 letter and noting that the ACTO member countries “firmly refute the latest communications by the ICANN President and CEO regarding an alleged ‘facilitation process’ associated with the .AMAZON applications dated 20 and 28 November 2018...”<sup>11</sup> The member states also stated that they “will not take any further steps on this case before the reconsideration request is decided upon and the decision properly and duly communicated.”

On 18 December 2018, the ICANN Board Chair acknowledged receipt of the 7 December 2018 letter, noted that the Reconsideration Request is being processed and reiterated that “...the Board believes that the recent turn of events is truly unfortunate and sincerely hopes that we can put any misunderstanding behind us and move forward together in a constructive and positive manner.”<sup>12</sup>

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<sup>9</sup> See: <https://www.icann.org/en/system/files/correspondence/marby-to-ismail-28nov18-en.pdf>.

<sup>10</sup> See: <https://www.icann.org/en/system/files/correspondence/chalaby-to-mendoza-03dec18-en.pdf>.

<sup>11</sup> See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-icann-board-07dec18-en.pdf>.

<sup>12</sup> See: <https://www.icann.org/en/system/files/correspondence/chalaby-to-mendoza-18dec18-en.pdf>.

On 18 December 2018, the ICANN President and CEO wrote to the GAC Chair to express “regret that the facilitation process associated with the application for the .AMAZON top-level domain (TLD) appears to have stalled.”<sup>13</sup> The letter noted the events occurring since ICANN63, and the ICANN President and CEO reiterated that “[t]his recent turn of events is...truly unfortunate, and I sincerely hope that we can put any misunderstanding behind us and move forward in a constructive and positive manner for the shared benefits of both parties.”

On 27 January 2019, the ICANN President and CEO wrote to the GAC chair again to provide an update on Reconsideration Request 18-10, noting that the BAMC recommendation had been adopted by the Board.<sup>14</sup> The President and CEO also noted that “the Board resolved that it will make a decision at ICANN64 on the next steps regarding the potential delegation of .AMAZON and related top-level domains” and that the Board “encourages a high level of communication between the ICANN President and CEO and the relevant stakeholders...between now and ICANN64”.

On 28 January 2019, ACTO wrote a letter to the GAC Chair asking for the GAC chair to “convey our invitation to the President and CEO...to come to Brasilia in order to meet and discuss with ACTO member countries.”<sup>15</sup>

On 13 February 2019, ACTO wrote to ICANN President and CEO cancelling the meeting in Brasilia scheduled for 19 February 2019, and noted that the cancellation had “no connection whatsoever with neither the substance nor the agenda of the postponed meeting.”<sup>16</sup>

On 15 February 2019, the President and CEO responded to the 13 February 2019 letter stating, “I deeply regret this late cancellation but welcome the initiative taken by ACTO to maintain a constructive dialogue with ICANN, with a view to reaching a mutually satisfactory solution regarding the delegation of the TLD ‘dot amazon’”.<sup>17</sup>

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<sup>13</sup> See: <https://www.icann.org/en/system/files/correspondence/marby-to-ismail-18dec18-en.pdf>.

<sup>14</sup> See: <https://www.icann.org/en/system/files/correspondence/marby-to-ismail-27jan19-en.pdf>.

<sup>15</sup> See: <https://www.icann.org/en/system/files/correspondence/lopez-to-ismail-28jan19-en.pdf>.

<sup>16</sup> See: <https://www.icann.org/en/system/files/correspondence/moreira-to-marby-13feb19-en.pdf>.

<sup>17</sup> See: <https://www.icann.org/en/system/files/correspondence/marby-to-moreira-15feb19-en.pdf>.

On 28 February 2019, ACTO requested that the Board not take a final decision on the Amazon Applications in Kobe, and welcomed the President and CEO's willingness to engage in discussions, preferably before 9 March 2019, but ACTO did not suggest a time for such discussions.

On 3 March 2019, the President and CEO acknowledged ACTO's request that he "personally resume the mediation between the ACTO member countries and the Amazon corporation before 9 March 2019" and he invited them to join him "and the Amazon corporation on a conference call early next week to work at reaching a mutually agreeable solution between the interested parties." ACTO indicated that it was not available to participate.

#### *Today's Decision*

The President and CEO facilitated discussions with various ACTO member states over the period of a year. The President and CEO has also made repeated attempts since October 2018 to engage in further facilitation discussions between the ACTO member states and Amazon corporation. Additional discussions were scheduled during this time period, but did not take place. The ICANN Board therefore considers that it has complied with the operative GAC advice on this matter in the November 2017 Abu Dhabi Communiqué 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."

Unfortunately, no mutually agreed solution has been identified to date by the ACTO member states and the Amazon corporation regarding the Amazon Applications. However, since ICANN org's more recent attempts to engage in facilitation discussions have not resulted in either any meaningful discussions, or a mutually acceptable solution, the Board does not think that any further facilitation efforts by ICANN org will be fruitful.

That said, the Board acknowledges ACTO's request, and requests made on behalf of ACTO member states Brazil, Colombia, Ecuador and Peru, for additional time to try to work out a solution with the Amazon corporation and hopes that the parties themselves can arrive at a mutually acceptable solution. On the other hand, the Board is also cognizant of the time that has lapsed since the Amazon Applications were submitted in 2012, and since the Amazon corporation prevailed in its Independent Review Process against ICANN in July 2017.

As noted above, the Board recognizes the need to balance concerns of all those involved, and that it should act fairly and transparently at all times. The Board believes 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 regarding those Applications.

Accordingly, the resolutions set forth above, attempt to balance the various concerns and give the parties a bit more time, but not unlimited, to try to reach a mutually acceptable solution. And if not, the Board will consider a proposal from the Amazon corporation as set forth in the resolutions above.

### **Items considered by the Board**

In taking this action, the Board considered:

- The GAC Early Warning regarding the Amazon Applications of 20 November 2012.
- The GAC Advice from the GAC Durban and Abu Dhabi Communiqués regarding the Amazon Applications.
- The Amazon corporation's Proposals of 6 October 2015 and 7 February 2018;
- The IRP Panel Declaration in Amazon v. ICANN Independent Review Process;
- The Amazon corporation's October 2017 and February 2018 proposals to the GAC and ACTO member states;



- The NGPC's 14 May 2014 action on the Amazon Applications and the Board's 29 October 2017 and 4 February 2018 actions on the Amazon Applications;
- ACTO's 5 September 2018 letter and related annexes.
- The Amazon corporation proposed Public Interest Commitments (PICs) of September 2018
- Colombian Government's Letter of 12 October 2018
- ACTO Letters of 19 October, 5 November, 22 November, 26 November, 7 December 2018, and 28 January, 13 February, and 28 February 2019
- ICANN org and ICANN Board Letters of 20 November, 28 November, 3 December, 18 December 2018, and 27 January, 15 February and 2 March 2019
- CGI.br letter from 27 February 2019
- Letter sent to the GAC on behalf of Brazil, Colombia and Peru dated 7 March 2019.
- Letter sent to the GAC on behalf of Ecuador dated 5 March 2019.

## **Impacts**

This action is anticipated to have a small resource impact on ICANN org based upon the resources needed to meet the Board's direction. This action is in support of ICANN's mission, in that it furthers the New gTLD Program and anticipated expansion of the DNS. It is also in the public interest in its balancing the core values of introducing and promoting competition while recognizing governments' provision of public policy advice.

This action will not impact the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment except as otherwise stated above.

**Directors and Liaisons,**

**Attached below please find Notice of date and time for a Regular Meeting of the ICANN Board.**

**10 March 2019 – Regular Meeting of the ICANN Board of Directors - at 01:00 UTC (10:00am JST). This Board meeting is estimated to last approximately 60 minutes (if needed)**

**<https://www.timeanddate.com/worldclock/fixedtime.html?msg=Regular+Meeting+of+the+ICANN+Board&iso=20190310T10&p1=540&ah=1>**

**Some other time zones:**

**9 March 2019 – 5:00 pm PST Los Angeles**

**9 March 2019 – 8:00 pm EST Washington, D.C.**

**10 March 2019 – 2:00 am CET Brussels**

## **REGULAR MEETING OF THE ICANN BOARD**

### **Agenda**

**We currently do not have any agenda items for this meeting, but are formally Noticing it (as a placeholder) in the event that a Board Meeting is needed.**

**MATERIALS – You can access the Board Meeting materials, when available, in Google Drive here:**

Contact Information Redacted

**If you have trouble with access, please let us know and we will work with you to assure that you get access to the documents.**

**If call information is required, it will be distributed separately.**

**If you have any questions, or we can be of assistance to you, please let us know.**

**John Jeffrey**  
**General Counsel & Secretary, ICANN**  
**[John.Jeffrey@icann.org](mailto:John.Jeffrey@icann.org)**

Contact Information Redacted