

ICANN BOARD PAPER NO. 2019.05.15.1a

TITLE: GAC Advice: Kobe Communiqué (March 2019)

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered advice to the ICANN Board in its [Kobe Communiqué](#) issued 14 March 2019. The advice concerns WHOIS and Data Protection Legislation and the ICANN Board Consideration of the CCT Review Recommendations. The GAC also provided a follow-up to previous advice regarding Subsequent Rounds of New gTLDs.

The Kobe Communiqué was the subject of an exchange between the Board and the GAC on 15 April 2019. The purpose of the exchange was to ensure common understanding of the GAC advice provided in the communiqué. Meeting notes from the call are available here: <https://gac.icann.org/sessions/icann64-kobe-communiqu-clarification-call-with-the-icann-board>.

The Board is being asked to approve the GAC-Board Scorecard to address the GAC's advice in the Kobe Communiqué. The draft Scorecard is attached to this briefing paper. The draft Scorecard includes: the text of the GAC advice; the Board's understanding of the GAC advice following the 15 April 2019 dialogue with the GAC; the GNSO Council's review of the advice in the Kobe Communiqué as presented in a 23 April 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 advice.

ICANN ORG RECOMMENDATION:

The ICANN org recommends that the Board adopt the attached scorecard to address the GAC's advice in the March 2019 Kobe Communiqué.

PROPOSED RESOLUTION:

Whereas, the Governmental Advisory Committee (GAC) met during the ICANN64 meeting in Kobe, Japan and issued advice to the ICANN Board in a [communiqué](#) on 14 March 2019 (“Kobe Communiqué”).

Whereas, the Kobe Communiqué was the subject of an [exchange](#) between the Board and the GAC on 15 April 2019.

Whereas, in a 23 April 2019 [letter](#), the GNSO Council provided its feedback to the Board concerning advice in the Kobe Communiqué relevant to WHOIS and Data Protection Legislation and the ICANN Board Consideration of the CCT Review Recommendations.

Whereas, in a 24 April 2019 [letter](#), the GAC provided additional guidance on its advice regarding the GNSO’s Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data.

Whereas, the Board developed a scorecard to respond to the GAC’s advice in the Kobe Communiqué, taking into account the dialogue between the Board and the GAC and the information provided by the GNSO Council.

Whereas, the Board has reviewed the [previously deferred GAC advice](#) from the San Juan Communiqué, and is taking action on one of the items of advice in the current scorecard “GAC Advice – Kobe Communiqué: Actions and Updates (15 May 2019)”.

Resolved (2019.05.15.xx), the Board adopts the scorecard titled “GAC Advice – Kobe Communiqué: Actions and Updates (15 May 2019)” **[INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY BOARD]** in response to items of GAC advice in the Kobe Communiqué and the San Juan 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 Kobe Communiqué (14 March 2019), the GAC issued advice to the Board on WHOIS and Data Protection Legislation and the ICANN Board Consideration of the CCT Review

Recommendations. The GAC also provided a follow-up to previous advice regarding Subsequent Rounds of New gTLDs. 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 polices. 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 items in the Kobe Communiqué, including the items related to WHOIS and data protection legislation and the ICANN Board consideration of the CCT Review Recommendations. The Board is also taking action on one item from the San Juan Communiqué which was previously deferred.

The Board will continue to defer consideration of four other items from the San Juan Communiqué, including: three advice items related to GDPR and WHOIS and one advice item related to IGO reserved acronyms, pending the results of a feasibility study initiated by ICANN org and further discussion with the GAC. The Board will consider if further action is needed following these discussions.

The Board's actions are described in the scorecard dated **15 May 2019 [INSERT LINK TO FINAL GAC ADVICE SCORECARD ADOPTED BY THE BOARD].**

In adopting its response to the GAC advice in the Kobe Communiqué, the Board reviewed various materials, including, but not limited to, the following materials and documents:

- San Juan Communiqué (15 March 2018): <https://www.icann.org/en/system/files/correspondence/gac-to-icann-15mar18-en.pdf> [PDF, 239 KB]
- Kobe Communiqué (14 March 2019): <https://gac.icann.org/content-generic-migrated/public/icann64%20gac%20communiqué%CC%81.pdf> [PDF, 156 KB]

- The GNSO Council’s review of the advice in the Kobe Communiqué as presented in the 23 April 2019 letter to the Board:
<https://www.icann.org/en/system/files/correspondence/drazek-et-al-to-chalaby-23apr19-en.pdf>
- The GAC’s additional guidance regarding the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data:
<https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-24apr19-en.pdf>

The adoption of the GAC 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: 15 May 2019

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ICANN BOARD PAPER NO. 2019.05.15.1b

TITLE: **GNSO EPDP Recommendations on the
Temporary Specification for gTLD Registration
Data**

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

EXECUTIVE SUMMARY:

The Board is being asked to adopt a set of GNSO policy recommendations relating to gTLD Registration Data (the Recommendations). On 4 March 2019, the GNSO Council [voted](#) and approved with the required GNSO Supermajority support all the Recommendations contained in the [Final Report](#) from the team that was chartered to conduct an Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data (Temporary Specification).

The Recommendations, if adopted by the Board, will impose obligations on contracted parties. The GNSO Council's vote in favor of these Recommendations satisfies the voting threshold required by Section 11.3(i)(xv) of the ICANN Bylaws regarding the formation of Consensus Policies. Under the ICANN Bylaws, the Council's Supermajority support for the Recommendations obligates the Board to adopt the Recommendations unless, by a vote of more than two-thirds, the Board determines that the Recommendations are not in the best interests of the ICANN community or the ICANN organization.

The Board's consideration of these Recommendations is a significant milestone on both substantive and procedural fronts. The Recommendations are the product of ICANN's first Expedited Policy Development Process. The EPDP Team, representing all ICANN stakeholder groups, constituencies, and several advisory committees, considered some of the most complex policy and legal issues facing contracted parties today. The EPDP Team delivered Recommendations to address those issues following a compressed period of significant effort on the part of the EPDP Team and the broader community.

The Recommendations maintain many requirements from the Temporary Specification. Where the EPDP Team recommended changes from the Temporary Specification, the EPDP Team believed such changes are necessary to comply with the European General Data Protection Regulation (GDPR). The Recommendations as approved, adopted, and implemented will be a Consensus Policy governing gTLD registration data, applicable to all ICANN contracted parties.

The Board's action on all of the Recommendations is in the best interests of the org and the community and will serve the global public interest by allowing ICANN org and gTLD registry operators and registrars to continue to comply with existing ICANN contractual requirements and community-developed policies concerning gTLD registration data (including WHOIS) in light of the GDPR. That determination of best interests, however, also necessitates that the Board is not in yet in a position to adopt parts of two Recommendations out of the twenty-nine Recommendations in the Final Report, as the Board has identified a need for additional consultation between the Board and the GNSO Council prior to Board adoption. The Board provides detailed information on the reasons why it is not adopting portions of these two Recommendations at this time and identifies unresolved questions related to the Recommendations' compliance with the GDPR, matters that are expected to be considered by the community in Phase 2, and/or the Recommendations' impact on existing requirements for gTLD registry operators and registrars.

The Annex to this submission provides the background and further details with regard to these recommendations.

ICANN ORG'S RECOMMENDATIONS:

ICANN org recommends that the Board take the actions noted below, and direct the President and CEO to implement and execute an implementation plan for the Recommendations. ICANN org recommends that the Board:

1. Adopt all Recommendations of the EPDP Team, except as noted below.
2. Not adopt Recommendation 1, Purpose 2 at this time, in light of the EPDP Team's characterization of this as a placeholder, and the need to consider recent

input from the European Commission. Based on the views presented in the European Commission's 17 April 2019 and 3 May 2019 letters, ICANN org is concerned that Purpose 2, as stated in the EPDP Team's Final Report, may require further refinement to ensure that it is consistent with and facilitates a predictable and consistent user experience compliant with applicable law. ICANN org is continuing to evaluate this proposed purpose and plans to request additional guidance from the DPAs regarding the interplay between legitimate and proportionate access to registrant data and ICANN's SSR mission

3. Not adopt the part of Recommendation 12 at this time that allows registrars the option to delete data in the Organization field. The Board should request that, as part of Phase 2, the EPDP consider the extent to which deletion (as opposed to redaction) that results in loss of or changes to the name of the registrant is in the public interest and consistent with ICANN's mission.

In adopting Recommendation 7, the Board should note that the Purposes contained in the Final Report (Recommendation 1) provide the legal basis for processing the aggregate minimum data set under this Recommendation.

The Board should request that the EPDP Phase 2 Team consider whether the suggested corrections contained in the Registry Stakeholder Group's comments and the accompanying chart in Appendix G more accurately reflect the Phase 1 consensus and should be adopted.

The Board should confirm its understanding, with respect to Recommendation 7, that the Recommendation does not overturn the Thick WHOIS Transition Policy for .com, .net, and .jobs. Consistent with Recommendation 27, the Board should direct ICANN org to work with the Implementation Review Team to examine and transparently report on the extent to which these Recommendations require modification of existing Consensus Policies, including the Thick WHOIS Transition Policy. Where modification of existing Consensus Policies is required, the Board should call upon the GNSO Council to promptly initiate a PDP to review and recommend required changes to Consensus Policies.

The Board should also direct the President and CEO to continue to evaluate the impacts of the Recommendations, taking into account any additional legal analysis and inputs from Data Protection Authorities; to ensure that the implementation of the Recommendations reflects ICANN's own and original purpose in ensuring the security, stability, and resiliency of the Domain Name System; and to align and/or adjust the implementation plan for these Recommendations based on that evaluation in consultation with the Implementation Review Team, the GNSO Council, and/or Board, as appropriate.

PROPOSED RESOLUTION:

Whereas, on 17 May 2018, the ICANN Board adopted the Temporary Specification for gTLD Registration Data pursuant to the procedures in the Registry Agreement and Registrar Accreditation Agreement concerning the establishment of temporary policies;

Whereas, following the adoption of the Temporary Specification, and per the procedure for Temporary Policies as outlined in the Registry Agreement and Registrar Accreditation Agreement, a Consensus Policy development process as set forth in ICANN's Bylaws needs to be initiated immediately and completed within a one-year time period from the implementation effective date (25 May 2018) of the Temporary Specification;

Whereas, the GNSO Council approved the EPDP Initiation Request (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-initiation-request-19jul18-en.pdf>) and the EPDP Team Charter (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>) on 19 July 2018;

Whereas, the EPDP followed the prescribed EPDP procedures as stated in the Bylaws, resulting in a Final Report delivered on 20 February 2019;

Whereas, the EPDP Team reached consensus on all but two recommendations in relation to the issues outlined in the Charter;

Whereas, the GNSO Council reviewed and discussed the recommendations of the EPDP Team and approved all Recommendations on 4 March 2019 by a GNSO Supermajority vote (see <https://gns0.icann.org/en/council/resolutions#20190304-1>);

Whereas, the GNSO Council vote exceeded the required voting threshold set forth in the ICANN Bylaws to impose new Consensus Policies on ICANN contracted parties;

Whereas, after the GNSO Council vote, a public comment period was held on the approved Recommendations, and the majority of comments focused on issues that were the subject of lengthy debates during the EPDP Team’s Phase 1 work and the Recommendations on these topics represent carefully-crafted compromises. Several of these issues have already been confirmed as requiring further review and consideration during phase 2 of the EPDP Team’s work (<https://www.icann.org/public-comments/epdp-recs-2019-03-04-en>);

Whereas, the European Commission [submitted a public comment](#) 17 April 2019 and sent ICANN org a follow-up letter on [3 May 2019](#), which indicated that Purpose 2, as stated in Recommendation 1, may require further refinement to ensure that it is consistent with and facilitates a predictable and consistent user experience compliant with applicable law;

Whereas, the GAC was requested to raise any public policy concerns that might occur if the proposed policy is adopted by the Board (<https://www.icann.org/en/system/files/correspondence/chalaby-to-ismail-08mar19-en.pdf>);

Whereas, the GAC [responded](#) to the Board’s notice, stated in the response that “the GAC would welcome the ICANN Board’s adoption the EPDP Phase 1 policy recommendations as soon as possible[,]” and did not raise any public policy concerns that might occur if the recommended Consensus Policy is adopted by the Board;

Whereas, in its 30 May 2018 resolution, the Board adopted the scorecard titled “[GAC Advice – San Juan Communiqué: Actions and Updates \(30 May 2018\)](#)” in which the

Board deferred consideration of four advice items pending further discussion with the GAC as requested by the GAC in its [17 May 2018](#) letter to the ICANN Board Chair;

Whereas, ICANN org continues to evaluate the Recommendations and plans to request additional guidance from the Data Protection Authorities regarding the interplay between legitimate and proportionate access to registrant data and ICANN's SSR mission;

Whereas, the [Thick WHOIS Transition Policy](#) requires gTLD registrars to migrate to the relevant registry operator all required fields of existing domain names that are available in the registrar database;

Whereas, the Recommendations, at Recommendation 7, state that data elements collected and generated "must be transferred from registrar to registry provided an appropriate legal basis exists and a data processing agreement is in place," and that transfer is optional for contact information;

Whereas, the Recommendations state, at Recommendation 12, that the Organization field will be published if that publication is acknowledged or confirmed by the registrant, and that the registrar may redact or delete the contents of that field if the registrant does not confirm;

Whereas, a registrar's deletion of the contents of the Organization field may result in a loss of information about the registrant's identity;

Whereas, ICANN org analyzed the Recommendations and, based on current information and subject to further inputs from Data Protection Authorities and legal analysis, believes the Recommendations (with the possible exceptions of Recommendation 1, Purpose 2 and the option to delete data in the Organization field in Recommendation 12) do not appear to be in conflict with (a) the GDPR, (b) existing requirements for gTLD registry operators and registrars, or (c) ICANN's mandate to ensure the stability, security and resiliency of the Internet's DNS;

Whereas, ICANN org analyzed the Recommendations and, based on current information and subject to further inputs from Data Protection Authorities and legal analysis, believes the Recommendations (with the possible exceptions of Recommendation 1, Purpose 2 and the option to delete data in the Organization field in Recommendation 12) are in the public interest;

Whereas, in a 3 May 2019 letter, the European Commission stated: “we have constantly urged ICANN and the community to develop a unified access model that applies to all registries and registrars and provides a stable, predictable, and workable method for accessing non-public gTLD registration data for users with a legitimate interest or other legal basis as provided for in the General Data Protection Regulation (GDPR). The European Commission considers this to be both vital and urgent, and we urge ICANN and the community to develop and implement a pragmatic and workable access model in the shortest timeframe possible, to which we will contribute actively[]”;

Whereas, the Board developed a scorecard to facilitate its consideration of the Recommendations, titled “Scorecard: EPDP Phase 1 Recommendations” in which it identified issues to consider in implementation of the Phase 1 Recommendations and in Phase 2 as work continues, informed by the valuable inputs from all parties.;

Whereas, the Board understands that any action on these Recommendations other than adoption requires the Board, pursuant to Section 6, Annex A-1 of the ICANN Bylaws, to (i) articulate the reasons for its determination in a report to the Council and (ii) to submit the Board statement to the Council;

Resolved (2019.05.15.xx), the Board adopts the GNSO Council Policy Recommendations for a new Consensus Policy on gTLD Registration Data as set forth in section 5 of the Final Report in accordance with Sections a and b of the attached scorecard titled “Scorecard: EPDP Phase 1 Recommendations” (see <https://gns0.icann.org/en/drafts/epdp-gtld-registration-data-specs-final-20feb19-en.pdf>).

Resolved (2019.05.15.xx), the Board directs the President and CEO to develop and execute on an implementation plan for the adopted Recommendations that is consistent

with the guidance provided by the GNSO Council and to continue communication with the community on such work.

Resolved (2019.05.15.xx), the Board determines that, at this time, Recommendation 1, Purpose 2 is not in the best interests of the ICANN community or ICANN.

Resolved (2019.05.15.xx), the Board determines that, at this time, Recommendation 12, with respect to the option to delete data in the Organization field, is not in the best interests of the ICANN community or ICANN.

Resolved (2019.05.15.xx), the Board does not adopt Recommendation 1, Purpose 2, at this time. The Board articulates its reasons for not adopting Recommendation 1, Purpose 2, at this time in the below rationale, and will submit to the GNSO Council a formal Board Statement incorporating the rationale for discussion as soon as feasible, as specified in Annex A-1, Section 6 of the ICANN Bylaws. The Board looks forward to a productive discussion with the GNSO Council on the concerns raised and will consider any further Supplemental Recommendation arising out of this discussion process in line with the Board's obligations.

Resolved (2019.05.15.xx), the Board does not adopt Recommendation 12, with respect to the option to delete data in the Organization field, at this time. The Board articulates its reasons for not adopting Recommendation 12, with respect to the option to delete data in the Organization field, at this time in the below rationale, and will submit to the GNSO Council a formal Board Statement incorporating the rationale for discussion as soon as feasible, as specified in Annex A-1, Section 6 of the ICANN Bylaws. The Board looks forward to a productive discussion with the GNSO Council on the concerns raised and will consider any further Supplemental Recommendation arising out of this discussion process in line with the Board's obligations.

Resolved (2019.05.15.xx), the Board directs the President and CEO, or his designee(s), to continue to evaluate the impacts of the Recommendations to ICANN org and the contracted parties in light of the GDPR and the impacts of the Recommendations on existing ICANN policies and agreements, taking into account any additional legal

analysis and inputs from Data Protection Authorities; to align and/or adjust the implementation plan for these Recommendations based on that evaluation in consultation with the Implementation Review Team, the GNSO Council, and/or Board, as appropriate; and to ensure that the implementation of the Recommendations reflects ICANN's own and original purpose in ensuring the security, stability, and resiliency of the Domain Name System.

Resolved (2019.05.15.xx), the Board confirms its understanding, with respect to Recommendation 7, that the Recommendation does not repeal or overturn existing Consensus Policy including, in this case, the Thick Whois Policy, and directs ICANN org to work with the Implementation Review Team to examine and transparently report on the extent to which these Recommendations require modification of existing Consensus Policies, including the Thick WHOIS Transition Policy.

Resolved (2019.05.15.xx), the Board adopts the scorecard titled "Scorecard: EPDP Phase 1 Recommendations" and directs the President and CEO, or his designee, to take the actions as identified therein, including in implementation of the Phase 1 Recommendations and in support of Phase 2 as work continues, informed by the valuable inputs from all parties.

Resolved (2019.05.15.xx), the Board confirms that based on the 24 April 2019 [letter](#) from the GAC, the Board's adoption of the Recommendations and acceptance and continued deferral of some of the GAC advice from the San Juan Communiqué is not inconsistent with GAC advice.

Resolved (2019.05.15.xx), the Board continues to support the multistakeholder policy development efforts in Phase 2 and encourages the community to continue to support this important work on an expeditious basis, including on all topics that were identified for additional consideration in Phase 2.

PROPOSED RATIONALE:

Why the Board is addressing the issue?

On 17 May 2018, the ICANN Board adopted the Temporary Specification for gTLD Registration Data pursuant to the procedures in the Registry Agreement and Registrar Accreditation Agreement concerning the establishment of temporary policies.

Following the adoption of the Temporary Specification, and per the procedure for Temporary Policies as outlined in the Registry Agreement and Registrar Accreditation Agreement, a Consensus Policy development process as set forth in ICANN's Bylaws needs to be initiated immediately and completed within a one-year time period from the implementation effective date (25 May 2018) of the Temporary Specification.

The GNSO Council had a number of discussions about next steps to clarify issues around scope, timing and expectations, including a meeting between the GNSO Stakeholder Group and Constituency Chairs on 21 May 2018, the Council meeting on 24 May 2018, a meeting between the ICANN Board and the GNSO Council on 5 June 2018 and an extraordinary GNSO Council meeting on 12 June 2018. The GNSO Council approved the EPDP Initiation Request (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-initiation-request-19jul18-en.pdf>) and the EPDP Team Charter (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>) on 19 July 2018.

The EPDP Team was formed and held its first meeting on 1 August 2018, followed by the publication of the Charter-required “Triage” Report on 15 September 2018 and its Initial Report on 21 November. The EPDP Team reached full consensus / consensus on the recommendations contained in the Final Report apart from two recommendations (#2 and #16).

On 4 March 2019, the GNSO Council voted to approve with the required GNSO Supermajority support all the recommendations contained in the Final Report from the Team that had been chartered to conduct an Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data. This included even those recommendations for which there was divergence within the EPDP Team. Please see Annex A for a summary of all the approved recommendations.

The EPDP Team on the Temporary Specification for gTLD Registration Data was [chartered](#):

“to determine if the Temporary Specification for gTLD Registration Data should become an ICANN Consensus Policy, as is or with modifications, while complying with the GDPR and other relevant privacy and data protection law.”

As part of its deliberations on this issue, the EPDP Team was tasked to consider, at a minimum, the specifically-identified questions related to the Temporary Specification, which were outlined in the EPDP Charter. These questions related to the different sections of the Temporary Specification, and included, for example, the purposes for processing gTLD registration data, and the collection, transfer, and publication of gTLD registration data as outlined in the Temporary Specification.

The policy recommendations, if approved by the Board, will impose obligations on contracted parties. The GNSO Council’s vote in favor of these items satisfies the voting threshold required by Section 11.3(i)(xv) of the ICANN Bylaws regarding the formation of consensus policies. Under the ICANN Bylaws, the Council’s Supermajority support for the EPDP recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN org.

If the Board determines that its adoption of one or more of the Recommendations is not in the best interests of the ICANN community or ICANN, the Board shall articulate its reasons for this determination in a report to the Council. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Recommendation and communicate that conclusion to the Board.

What is the proposal being considered?

The ICANN Board is considering the adoption of the Recommendations outlined in section 5 of the EPDP Team Final Report (see <https://gns0.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data->

[specs-final-20feb19-en.pdf](#)), which would establish a new Consensus Policy on gTLD Registration Data.

Which stakeholders or others were consulted?

External

As mandated by the GNSO's PDP Manual, the EPDP Team reached out shortly after its initiation to ICANN's Supporting Organizations and Advisory Committees as well as the GNSO's Stakeholder Groups and Constituencies to seek their input on the Charter questions. See

<https://community.icann.org/display/EOTSFGRD/Request+for+Early+Input+-+1+August+2018> for all the responses received (these were from the Business Constituency, the Intellectual Property Constituency, the Governmental Advisory Committee, the Non-Commercial Stakeholder Group, the Registrars Stakeholder Group, the Registries Stakeholder Group, the Security and Stability Advisory Committee, and the At-Large Advisory Committee).

Also as mandated by the GNSO's PDP Manual, the EPDP Team's Initial Report was published for public comment following its release on 21 November 2019 (see: <https://www.icann.org/public-comments/epdp-gtld-registration-data-specs-initial-2018-11-21-en>). All the public comments received were compiled into a uniform Public Comment Review Tool and reviewed by the EPDP Team (see <https://community.icann.org/display/EOTSFGRD/Public+Comment+Review+Tool>). As required by the ICANN Bylaws, public comment was also requested prior to ICANN Board consideration (see <https://www.icann.org/public-comments/epdp-recs-2019-03-04-en>).

In addition, the Working Group held three face-to-face meetings: the first meeting was held in Los Angeles from 24 – 26 September 2018, the second meeting was held during the ICANN public meeting in Barcelona from 20 – 25 October 2018, and the third meeting was held in Toronto from 16 – 18 January 2019. The EPDP Team's second face-to-face meeting in Barcelona included open community sessions. Transcripts, documents, and recordings of all EPDP Team meetings can be found on the EPDP Team wiki space at:

<https://community.icann.org/display/EOTSFGRD/EPDP+on+the+Temporary+Specification+for+gTLD+Registration+Data>.

During the course of its work, the EPDP Team recognized some of the issues under discussion required the expertise of legal counsel. A sub-group of the EPDP Team, the EPDP Legal Committee, worked together to identify the preferred qualifications and experience the EPDP Team was seeking. ICANN org, in following its standard procedure which includes a conflict of interest assessment, identified Ruth Boardman of Bird & Bird as the outside legal counsel dedicated to this effort. Ruth Boardman jointly heads the International Privacy and Data Protection Group of Bird & Bird.

The [full legal memos](#) are available for review, but the topics which received further guidance from legal counsel have been provided below:

1. Applicability of GDPR Art. 6.1.b reference “to which the data subject is party” and “necessary for performance of a contract.”
2. Potential liability of a registered name holder’s incorrect self-identification of a natural or legal person, which ultimately results in public display of personal data.
3. Meaning of “informing” the data subject with respect to provision of separate administrative and technical contact.
4. Accuracy of data requirements under GDPR.
5. Is the data provided by the Registered Name Holder (“RNH”) for the “City” field in the RNH’s address personal data?
6. Applicability of territorial scope under GDPR.
7. Transfer of registration data from registrars to registries (Thick WHOIS).

The EPDP Team also reviewed the [European Data Protection Board’s \(“EDPB”\) advice](#) on the Temporary Specification in detail.

Lastly, the following [list of resources](#), which includes previously received guidance on RDDS, privacy law, ICANN policies, et. al., was made available for EPDP Team review and reference.

In recognition of the EPDP Team's condensed timeline, the GNSO Council chose to invite two liaisons from ICANN org to participate directly within the EPDP Team: one liaison from ICANN's Legal Team and one liaison from ICANN's Global Domains Division. The ICANN Org liaisons attended most of the EPDP Team calls, joined the EPDP Team for its face-to-face meetings, and provided background information and [answers to questions](#) from the EPDP Team.

What concerns or issues were raised by the community?

The GNSO's Stakeholder Groups and associated Constituencies were given the opportunity to provide additional statements, which were annexed to the Final Report. Below, please find a high-level summary of the concerns noted within the statements.

The At-Large Advisory Committee noted the following concerns that it believed were not adequately addressed by the EPDP Team:

- Maximizing access to RDDS information for those involved with cybersecurity and consumer protection;
- Maximizing stability and resiliency of a trustworthy DNS;
- Protecting and supporting individual Internet users; and
- Protecting Registrants.

The Business Constituency and Intellectual Property Constituency noted their position on the importance of reasonable consideration by contracted parties of requests for lawful disclosure of non-public registration data, including requests made within the context of consumer protection, cybersecurity, intellectual property, or law enforcement within the lawful disclosure purpose (Purpose 2).

The Governmental Advisory Committee noted its concerns that the Final Report does not sufficiently recognize the benefits of the WHOIS database.

The Internet Service Providers and Connectivity Providers Constituency noted its concerns with consent being given in a compliant fashion and that the current language in the Final Report may not address consent in a GDPR-compliant manner.

The Non-Commercial Stakeholder Group also noted its concerns with Purpose 2, noting its position that disclosure to third parties is not a valid ICANN purpose for processing domain name registrants' data and could ultimately be overruled by the law. The Non-Commercial Stakeholder Group also noted its concerns with Purpose 7, as it could result in an increase to the number of data elements in the RDDS or WHOIS, some of which could contain personal information. The Non-Commercial Stakeholder Group stated that these additional data elements should not be escrowed. The Non-Commercial Stakeholder Group dissented on Recommendation 2, noting its position that ICANN's Office of the Chief Technology Officer has repeatedly stated that it does not need access to the personal information of domain name registrants to do its work. The Non-Commercial Stakeholder Group also noted its position that rules with respect to RDDS should be universally applied and uniformly applicable; therefore, Recommendation 16, which permits but does not require registrars to apply geographic differentiation to registered name holders, does not align with a uniform, global Internet.

The Registries Stakeholder Group noted its concerns with the workbooks in Annex D being incorporated by reference into the Final Report. It also noted concerns with Recommendations 7 and 27, noting its position that the language does not reflect the consensus of the EPDP Team, and additionally noted concerns with Recommendation 2, noting it is out of scope for this EPDP.

The Security and Stability Advisory Committee noted its position that, contrary to the text of Recommendations 16 and 17, registrars should be required to differentiate based on geographic location and between natural and legal persons after a suitable implementation period. This request for differentiation is based on a balancing of cost to contracted parties with the costs on the parties who rely upon domain registration data for the wide array of legitimate purposes.

Submissions to the public comment forum following GNSO Council approval of the recommendations (see <https://www.icann.org/public-comments/epdp-recs-2019-03-04-en>), focused on topics such as purposes for processing gTLD registration data,

responsible parties, over-application of GDPR, data redaction, data accuracy, legal vs. natural persons, geographic differentiation and phase 2 of the EPDP.

The above summary represents some noted points of impact among the affected Constituencies and Stakeholder Groups. The Board understands that these issues and concerns were raised during the EPDP Team's deliberations and that, in accordance with the PDP Process defined in the GNSO PDP Manual and the ICANN Bylaws, the EPDP Team delivered a Final Report to the GNSO Council and the Council approved the report and Consensus Policy Recommendations.

Notwithstanding the concerns identified above, there was broad community support for the Recommendations, as reflected by the consensus support of the EPDP Team for 27 of the 29 Recommendations and the GNSO Council's supermajority vote to adopt all Recommendations.

Please refer to the full statements in Annex G of the [Final Report](#) for further information.

What significant materials did the Board review?

Rationale Text Superseded

What factors did the Board find to be significant and are there positive or negative community impacts?

The Board takes this action today to adopt, with the exceptions noted below, the Recommendations developed following the GNSO Expedited Policy Development Process (EPDP) as set out in Annex A-1 of the ICANN Bylaws. These Recommendations received the required GNSO Supermajority support of the GNSO

Council. As outlined in the ICANN Bylaws, the Council's supermajority support obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the recommended policy is not in the best interests of the ICANN community or ICANN. This Board action will initiate ICANN org's implementation of the Board-adopted Recommendations as a new Consensus Policy, in consultation with an Implementation Review Team.

In taking action today to adopt the Recommendations, with the exceptions noted below, the Board notes that there are a few areas where consideration should be taken during the implementation phase to ensure that the resulting policy: (a) serves ICANN's public interest mandate; (b) safeguards the security, stability, and resiliency of the DNS; and (c) protects registrants. These areas, addressed in additional detail in the EPDP Phase 1 Recommendations Scorecard, include:

1. Data Retention (Recommendation 15). The Board understands that this recommendation modifies existing data retention requirements. The Board understands that the EPDP Team is committed to additional work in Phase 2 on the topic of data retention. The Board directs ICANN org to undertake a review to identify instances where personal data is needed beyond the life of the registration, as recommended by the EPDP Team.

Rationale Text Superseded

In taking action today, the Board also notes the following:

1. Purposes for Processing of gTLD Registration Data (Recommendation 1). This recommendation defines seven ICANN purposes for processing gTLD registration data, six of which the Board adopts at this time. The Board notes that ICANN purposes are governed by consensus policies developed by the ICANN community and are not solely pursued by ICANN org.
2. Transfer of gTLD Registration Data From Registrars to Registry Operators (Recommendation 7). The Board confirms its understanding that Recommendations do not repeal or overturn existing Consensus Policy including, in this case, the Thick WHOIS Transition Policy. Consistent with Recommendation 27, the Board directs ICANN Org to work with the Implementation Review Team to examine and transparently report on the extent to which these Recommendations require modification of existing Consensus Policies. Where modification of existing Consensus Policies is required, we call upon the GNSO Council to promptly initiate a PDP to review and recommend required changes to Consensus Policies.

in adopting Recommendation 7, the Board notes that the Purposes contained in the Final Report, at Recommendation 1, provide the legal basis for processing the aggregate minimum data set under this Recommendation. The Board requests that the EPDP Phase 2 team consider whether the suggested corrections contained in the Registry Stakeholder Group's comments and the accompanying chart in Appendix G more accurately reflect the Phase 1 consensus and should be adopted.

3. Legal Versus Natural (Recommendation 17). The Board adopts this recommendation and continues to defer GAC advice in this area based on the [24 April 2019 letter](#) from the GAC. The Board notes that the Recommendation states that the EPDP Team “will determine and resolve the Legal vs. Natural issue in Phase 2.”

4. Reasonable Access (Recommendation 18). The Board understands that this Recommendation provides a mechanism for third parties with legitimate interests to access non-public gTLD registration data and obligates the contracted parties to disclose the requested non-public data if the request passes the balancing test.

The adopted Recommendations provide flexibility to address these matters identified above in consultation with the Implementation Review Team and during the EPDP-recommended negotiations with contracted parties. If any issues arise during implementation that would adversely impact ICANN org's ability to implement these Recommendations (e.g. if it is determined that implementation of one or more Recommendations would not serve ICANN's public interest mandate, safeguard the security, stability, and resiliency of the DNS, or protect registrants), ICANN org should escalate these concerns to the Board, as appropriate.

The Board has determined that because additional consultation with the GNSO Council and/or additional guidance from the Data Protection Authorities is needed to inform its consideration of the following Recommendations, it is not in the best interests of the ICANN community or ICANN to adopt these portions of Recommendations at this time:

1. Purpose 2 (Recommendation 1). The Final Report notes that this purpose is a placeholder pending additional work in Phase 2.

The Board does not adopt this Recommendation at this time in light of the EPDP Team's characterization of this as a placeholder and the need to consider recent input from the European Commission. Based on the views presented in the recent letters from the European Commission, Purpose 2, as stated in the EPDP Team's Final Report, may require further refinement to ensure that it is consistent with and facilitates ICANN's ability to deliver a predictable and consistent user experience compliant with applicable law. The Board's concern is that if the wording of purpose 2 is deemed inconsistent with applicable law, the impact might be elimination of an ICANN purpose. There are clear ICANN

purposes that ICANN should be able to employ under existing legal frameworks to deploy a unified method to enable those with a legitimate and proportionate interest to access non-public gTLD registration data, although such purposes may need to be restated or further refined based on additional legal, regulatory or other input. The Board directs ICANN org to continue to evaluate this proposed purpose and to request additional guidance from the DPAs, regarding the legitimate and proportionate access to registrant data and ICANN's Security, Stability, and Resiliency mission.

Similar concerns were raised by the Coalition for Online Accountability in their 14 May 2019 letter to the ICANN Board.

2. The Organization Field (Recommendation 12). The Board understands that implementation of this Recommendation, with respect to the option for registrars to delete the contents of the field if the registrant does not confirm the data for publication, may result in the loss of the ability to identify the registrant.

The Board requests that as part of Phase 2, the EPDP consider the extent to which deletion (as opposed to redaction) that results in loss of or changes to the name of the registrant is in the public interest and consistent with ICANN's mission. The Board looks forward to discussing this issue more in depth with the GNSO Council under the mandated Bylaws process.

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

There may be fiscal impacts on ICANN associated with the creation of a new gTLD Registration Policy. The implementation plan should take into account costs and timelines for implementation. The internal ICANN org implementation team has formed and has begun to review the recommendations to analyze the implementation requirements. ICANN org considers the scope of effort required for this implementation to be significant and extensive.

The implementation of these recommendations will result in changes to registry and registrar systems, and accordingly, the costs to contracted parties were discussed by the EPDP Team during the drafting of the recommendations.

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

Failure to implement the recommendations could hamper the identification of those responsible for the administration of domain names on the Internet. In cases where those domain names are being used for abusive purposes, e.g., phishing, botnet command and control, malware distribution, etc., the ability of anti-abuse actors to block the abuse could be limited, thereby posing security, stability, and resiliency risks to the DNS and the Internet as a whole.

Implementing the recommendations should provide for access to registration information for legitimate purposes to accredited entities as per GDPR requirements. While not returning the ability to obtain registration data access to the status quo ante prior to the implementation of GDPR, the recommendations would permit GDPR-compliant access aimed at being in support of security, stability, and resilience of the DNS.

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

Public comment has taken place as required by the ICANN Bylaws and GNSO Operating Procedures in relation to GNSO policy development.

Is this within ICANN's mission? How does this action serve the public interest?

Consideration of community-developed policy recommendations is within ICANN's mission as defined at Article 1, section 1.1(i) of the ICANN Bylaws. This action serves the public interest, as ICANN has a core role as the 'guardian' of the Domain Name System.

Signature Block:

Submitted by:

Position:

Date Noted:

Email:

Rationale Text Superseded

ICANN BOARD PAPER NO. 2019-05-15-1c

TITLE: New gTLD Applications for .AMAZON

PROPOSED ACTION: For Board Consideration and Approval

EXECUTIVE SUMMARY:

On 10 March 2019, the Board took resolutions 2019.03.10.01-.07 where it laid out next steps for discussions between the Amazon Cooperation Treaty Organization (ACTO) and the Amazon corporation on the use of the .AMAZON top-level domain and related IDNs (“.AMAZON applications”). The Board set a timeframe for ACTO and the Amazon corporation to either: (1) reach a mutually acceptable solution; (2) mutually request an extension of time; or (3) for the Amazon corporation to submit a proposal on how it will address the ACTO member states continuing concerns regarding the .AMAZON applications.¹

As of 13 May 2019, there is no mutually acceptable solution between ACTO and the Amazon corporation, and they have not mutually sought a further extension of time to reach a solution. Within the time designated, on 17 April 2019,² the Amazon corporation submitted its proposal to the ICANN Board including how it will address the ACTO member states continuing concerns. That proposal is embodied in a set of proposed Public Interest Commitments, or PICs.³

The Board is now obligated to consider the Amazon corporation’s proposal in line with resolutions 2019.03.10.05-.07, which laid out next steps in the event that no mutually acceptable solution was reached. The Board must consider whether the proposal is acceptable to the Board and whether the proposal is inconsistent with any outstanding formal advice received on the .AMAZON Applications. If the proposal is acceptable and not inconsistent with outstanding advice, the Board is to direct the ICANN org to continue processing the Amazon Applications according to the policies and procedures governing the 2012 round of the New gTLD Program. If the proposal is not acceptable,

¹ See: <https://www.icann.org/resources/board-material/resolutions-2019-03-10-en#1.a>

² See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>.

³ ACTO also submitted its own language for PICs on 18 April 2019. See: [English Translation] <https://www.icann.org/en/system/files/correspondence/moreira-to-chalaby-18apr19-en.pdf>; [Original Spanish] <https://www.icann.org/es/system/files/correspondence/moreira-to-chalaby-18apr19-es.pdf>.

the Board can either refer the proposal back to the Amazon corporation, or determine not to delegate the strings associated with the .AMAZON applications.

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 (AGB)⁴, previous GAC advice, the Amazon corporation Independent Review Process (IRP) Final Declaration⁵, and recent correspondence from the Amazon corporation, ACTO, and two researchers from the Universities of Essex and Middlesex.⁶

At the Istanbul workshop, the ICANN Board considered that the Amazon corporation proposal is not inconsistent with any outstanding GAC advice. Additionally, the ICANN Board and organization have not been provided any other information as to why the .AMAZON applications should not proceed in the New gTLD Program. Based on this, and in accordance with Board resolution 2019.03.10.05, this paper recommends a resolution for Board consideration to continue to move the .AMAZON applications toward delegation.

ICANN ORG RECOMMENDATION:

The ICANN org recommends that the Board adopt the proposed resolution directing the President and CEO to continue processing of the .AMAZON applications according to the policies and procedures of the New gTLD program, including publication of the Amazon corporation's proposed Public Interest Commitments (PICs) for public comment.⁷

BACKGROUND:

Update on Discussions between ACTO and the Amazon corporation:

Since the Board took resolutions 2019.03.10.01-.07, ACTO and the Amazon corporation have been involved in active discussions—without facilitation by ICANN

⁴ See: <https://newgtlds.icann.org/en/applicants/agb>.

⁵ See: <https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>.

⁶ See REFERENCE MATERIALS ATTACHMENT B.

⁷ See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>.

org⁸—regarding the .AMAZON applications, in pursuit of finding a mutually acceptable solution. The Board has received numerous pieces of correspondence from both parties since March 2019 detailing status of the discussions as well as concerns from both sides. For transparency, all of these letters have been made publicly available on the ICANN Correspondence page.⁹

The Board resolution called for the two parties to engage with each other in order to come to a mutually acceptable solution within four weeks of the resolution, [i.e. on] 7 April 2019. The resolution also provided the opportunity for the Amazon corporation and ACTO to file a joint request for an extension of time, should the four weeks not be sufficient. However, by the deadline of 7 April 2019, neither a joint request for more time nor a joint proposal for a mutually acceptable solution had been received by the Board.

On 8 April 2019, the Board wrote to the Amazon corporation and ACTO to inform the two parties that, without a joint request for an extension, as provided for in resolution 2019.03.10.04, the Amazon corporation would have until 21 April 2019 to “submit a proposal on how it will address the ACTO member states continuing concerns regarding the Amazon Applications.”¹⁰

On 11 April 2019, ACTO wrote to the Board to request an extension until ICANN65. The Board replied on 15 April 2019 that a “mutual proposal for more time...should...extend the date no later than 7 June 2019.”¹¹ However, this extension was not agreed to by the Amazon corporation, and on 17 April 2019, the Amazon corporation submitted its proposal via correspondence to the Board.¹² The Amazon corporation also wrote to the Board on 19 April 2019 and 23 April 2019 to express to the Board that the extension of time is not “warranted” and that the Board should consider the Amazon corporation’s proposal at its Istanbul workshop from 1-3 May

⁸ See: <https://www.icann.org/en/system/files/correspondence/marby-to-ismail-11mar19-en.pdf>.

⁹ See: <https://www.icann.org/resources/pages/correspondence>. See also REFERENCE MATERIALS ATTACHMENT B.

¹⁰ See: <https://www.icann.org/en/system/files/correspondence/chalaby-to-moreira-08apr19-en.pdf>

¹¹ See: <https://www.icann.org/en/system/files/correspondence/chalaby-to-moreira-15apr19-en.pdf>.

¹² See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>.

2019.¹³ In contrast, the Brazilian government wrote to the Board on behalf of ACTO to request “that the ICANN Board either refer that proposal back to the company for additional work with ACTO countries, or determine not to delegate the corresponding TLDs.”¹⁴

On 29 April 2019, ACTO issued a press release opposing the delegation of the “.amazon” top-level domain without their authorization.¹⁵ This press release coincided with a public note from the Brazilian Internet Steering Committee, CGI.br, on 30 April 2019, in which CGI.br also indicated that it opposes delegation of the top-level domain name “.AMAZON” exclusively to a private interest.¹⁶

Most recently, on 7 May 2019, the Brazilian Government wrote to the Board to reiterate ACTO’s stance on the .AMAZON applications as well as clarify any potential “misunderstandings” with regard to the ACTO member states’ proposal.¹⁷

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’ (.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, in March 2013, the Independent Objector filed a community objection against each of the .AMAZON applications, and the Amazon corporation prevailed in each of the objections as determined by the Objections Panel in January 2014.

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

¹³ See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-19apr19-en.pdf>; <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-23apr19-en.pdf>.

¹⁴ See: <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>.

¹⁵ See: <http://www.otca-oficial.info/news/details/506>.

¹⁶ See: <https://cgi.br/esclarecimento/public-note-regarding-the-request-for-the-amazon-top-level-domain-name/>.

¹⁷ See: <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-07may19-en.pdf>.

Committee) accepted that advice and directed ICANN org to not proceed with the .AMAZON applications.

Whereas, 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 parties. This proposal was rejected.

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, on 29 October 2017, the Board asked the GAC for additional information regarding the GAC's advice on the .AMAZON applications. 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 and directed the President and CEO "to facilitate negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation."

Whereas, in October 2017, the Amazon corporation presented the GAC and ACTO with a new proposal and submitted a further updated proposal in February 2018, and subsequently, the ACTO member states issued a statement on 5 September 2018, declaring that "...[t]he Amazon countries have concluded that the 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”.

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. 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 21 December 2018, the BAMC carefully considered the merits of 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, from February 2018 to October 2018, the President and CEO facilitated discussions with various ACTO member states, and following Board resolution 2018.10.25.18, the President and CEO continued to make repeated attempts to engage in further facilitation discussions with ACTO member states. However, despite these attempts, additional facilitation discussions were scheduled, but did not take place.

Whereas, in letters from 21 February 2019 and 5 March 2019, the Governments of Brazil and Ecuador, respectively, requested from the Board additional time to reach a solution with the Amazon corporation.

Whereas, the Board believed that allowing a further, short period of time before the Board made 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.

Whereas, on 10 March 2019, the Board accordingly took a resolution regarding the .AMAZON applications in which it provided ACTO and the Amazon corporation the opportunity “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.”

Whereas, the 10 March 2019 Board resolution also provided the option for an extension of the four weeks, should the two parties mutually agree on such an extension. However, without a joint request for an extension, the Board requested the Amazon corporation’s proposal be received by 21 April 2019.

Whereas, on 11 March 2019, the ICANN org President and CEO sent a letter to the GAC stating that the 10 March 2019 Board resolution marked the end of the facilitation process by the ICANN org President and CEO, a process which was advised by the GAC in its Abu Dhabi Communiqué.

Whereas, ACTO and the Amazon corporation have not submitted a joint request for more time or a joint proposal for a mutually acceptable solution.

Whereas, on 17 April 2019, the Amazon corporation submitted a proposal for Public Interest Commitments (PICs) related to the .AMAZON applications.

Whereas, while the Board recognizes the need to balance concerns of all those involved, and that it should act fairly and transparently at all times, it 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 considered the Amazon corporation proposal in light of all that has come before, including previous GAC advice and the Amazon IRP Final Declaration.

Whereas, the ICANN Board considers that it has complied with the operative GAC advice on this matter as stated 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, the Board has 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.

Resolved (2019.05.15.XX): 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.

Resolution Text Superseded

Resolution Text Superseded

PROPOSED RATIONALE:

Why is the Board addressing the issue?

The Board is taking this action today in accordance with Board resolutions 2019.03.10.01-.07 and in recognition of all input received relating to the .AMAZON applications. The Board 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 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. Since that time, the ICANN Board and org have 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. The Board believed that its March 2019 resolution allowing a further, short period of time—following over a year of facilitation by the ICANN org President and CEO—before the Board made a final decision about whether to move toward delegation of the .AMAZON applications was appropriate and in line with requests by ACTO member states for additional time. The Board considered that this additional time could lead to a mutually acceptable solution regarding those applications.

As of today, two months from the Board's March 2019 resolution, ACTO and the Amazon corporation have been unable to come to a mutually acceptable solution or agree on an extension of time for continued discussions. In light of this, the Board is now moving forward with the next steps laid out in Board resolution 2019.03.10.05 and is directing ICANN org to continue processing the .AMAZON applications toward delegation.

What is the proposal being considered?

The proposal under consideration is to allow ICANN to continue processing the .AMAZON applications according to the policies and procedures of the New gTLD

Program, which includes the publication of the Amazon corporation's proposed Public Interest Commitments (PICs) for public comment. In order to reach this decision, the Board also had to consider if the Amazon corporation's update to those proposed PICs was acceptable to the Board and not inconsistent with any outstanding formal advice received regarding the .AMAZON applications. In April 2019, in response to Board resolution 2019.03.10.01-.07, the Amazon corporation submitted its modified proposal for PICs.¹⁸ This 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 2018.¹⁹

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 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"

The Amazon corporation also notes 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

¹⁸ See: <https://www.icann.org/en/system/files/correspondence/huseman-to-chalaby-17apr19-en.pdf>.

¹⁹ See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05sep18-en.pdf>; <https://www.icann.org/en/system/files/correspondence/mendoza-to-icann-board-07dec18-en.pdf>;
See also REFERENCE MATERIALS ATTACHMENT B.

detective controls [to offer] the most comprehensive approach to security” related to the “provisioning and configuration of .AMAZON domains.”

What concerns or issues were raised?

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 regarding 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, after the Amazon corporation submitted an updated proposal in February 2018 and after the ACTO member states had submitted clarification questions to the Amazon corporation on the proposal, the ACTO member states sent a letter to the Board stating that, with regard to the delegation of .AMAZON, that such delegation “requires consent of the Amazon countries” and that the ACTO member states “have the right to participate in the governance of the ‘.amazon’ TLD”.²⁰ Additionally, the ACTO member states declared that “the [February 2018] 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 member states, as noted above.

²⁰ See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05sep18-en.pdf>.

On 25 October 2018, the Board took a resolution in which it directed the ICANN org President and CEO, or his designee(s), to remove the “Will Not Proceed” status and move forward with processing of the .AMAZON applications. Following this resolution, 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.”²¹ 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, which was subsequently postponed.

On 21 December 2018, after the BAMC carefully considered the merits of 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.

On 16 January 2019, the Board considered the BAMC’s recommendation to deny Reconsideration Request 18-10 and accepted the recommendation. The Board also stated in its resolution 2019.01.16.03 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 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.”²² The Board’s decision to continue processing the .AMAZON applications remained in force.

Subsequent to resolution 2019.01.16.03, ACTO and the ICANN org President and CEO continued a dialogue in an effort to facilitate further discussions on the .AMAZON applications. On 28 February 2019, ACTO requested that the Board not take a final decision on the .AMAZON applications at ICANN64 in Kobe and welcomed the

²¹ See: <https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05nov18-en.pdf>.

²² See: <https://www.icann.org/resources/board-material/resolutions-2019-01-16-en#2.a>.

President and CEO’s willingness to engage in discussions, preferably before 9 March 2019, but ACTO did not suggest a time for such discussions.

Additionally, in a letter from 5 March 2019, the Government of Ecuador reiterated ACTO’s concerns and what the “sharing of governance of the .Amazon TLDs” means for ACTO, including:

“(1) provision is to be made to allow the control by the company Amazon Inc. of second-level domains that are relevant to its commercial interests (for instance, books.amazon, kindle.amazon, etc); (2) each Amazon country reserves for their use those domains that are relevant to its sovereignty and cultural heritage (for instance, those with geographical names, historical resonance, political implications etc); (3) a governance committee would be established where the eight Amazon countries would be given an opportunity to object to names encroaching on their sovereignty and culture while the company Amazon Inc would be able to expand its list of second-level domains in its fields of activity.”²³

Then, on 23 April 2019, following the Board’s resolution of 10 March 2019 and in response to the Amazon corporation’s modified proposal of 17 April 2019 (as detailed above), ACTO sent its own proposal for PIC language and noted several concerns with the Amazon corporation proposal. 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.”²⁴ ACTO states that the 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 the names of cities, towns, villages, rivers, culinary dishes, typical ingredients, animals and plants, touristic attractions, and travel-related services, among others.”

Also in its 23 April 2019 letter, ACTO provided responses to questions raised by the Amazon corporation regarding international trade law and perceived technical difficulties related to the ACTO member states’ proposal.²⁵ Finally, ACTO also noted that the AGB provided the ability for the GAC to oppose the .AMAZON applications

²³ See: <https://www.icann.org/en/system/files/correspondence/mena-to-ismail-05mar19-en.pdf>.

²⁴ See: <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-23apr19-en.pdf>.

²⁵ See Amazon’s letter from 23 April 2019:

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

and that “[t]o ignore [the AGB rules] would disregard the multi-stakeholder model of governance on which ICANN is based and, additionally, its own Bylaws, which expressly recognize ‘that governments and public authorities are responsible for public policy.’”²⁶

Finally, on 7 May 2019, the Brazilian Government wrote to the Board to reiterate ACTO’s stance on the .AMAZON applications and also stated that “some misunderstandings about the Amazon countries’ proposed solutions may have been conveyed to the ICANN Board” and that these need to be corrected.²⁷ Specifically, the Brazilian Government provided clarification on the role of the Steering Committee, which “should only have responsibilities over a limited number of issues” and “should allow equal representation of both sides”; the goal of “shared-used”, which is “to safeguard the natural and cultural heritage of the Amazon region and its peoples”; and, the “protected terms”, which “should only be broadened as to include names that can mislead or cause confusion in the public.”

Which stakeholders were consulted?

Following the IRP Panel’s Final Declaration in July 2017²⁸, in which the IRP panel 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,” the Board asked the GAC in October 2017 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.²⁹

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.”

²⁶ See REFERENCE MATERIALS ATTACHMENT B.

²⁷ See: <https://www.icann.org/en/system/files/correspondence/zaluar-to-chalaby-07may19-en.pdf>.

²⁸ See: <https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>. See also REFERENCE MATERIALS ATTACHMENT A.

²⁹ See: <https://www.icann.org/resources/board-material/resolutions-2017-10-29-en#2.a>.

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.”³⁰

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.

What factors did the Board find to be significant?

In 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 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.

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.³¹ 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.

³⁰ See: <https://www.icann.org/en/system/files/files/resolutions-abudhabi60-gac-advice-scorecard-04feb18-en.pdf>.

³¹ See REFERENCE MATERIALS ATTACHMENT A.

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 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.

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, as detailed above, 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.

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.³² 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, 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.

Additionally, 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. Further, seven years is sufficient time for the parties to reach a reasonable resolution, and in the interest of continued fairness of all parties, it is now time to move forward. If 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.

Finally, the Board determined that this action is in support of ICANN's mission, in that it furthers the New gTLD Program and anticipated expansion of the DNS. The action is also in the public interest in its balancing of core values of introducing and promoting competition while recognizing governments' provision of public policy advice.

What materials did the Board review?

In taking this action, the Board considered:

- The Applicant Guidebook for the New gTLD Program
- Background information on the applications and processing provided by ICANN org (Reference Materials Attachments A and B)

³² See REFERENCE MATERIALS ATTACHMENT B.

- 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 IRP Panel Declaration in .AMAZON Independent Review Process;
- 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;
- The Amazon corporation's previous proposals of October 2015, October 2017, February 2018, and November 2018;
- The Amazon corporation modified proposed Public Interest Commitments (PICs) of 17 April 2019
- ACTO proposed Public Interest Commitments (PICs) of 18 April 2019
- ACTO letters of 11 April, 18 April, 23 April, and 7 May 2019
- Amazon corporation letters of 9 April, 17 April, 19 April and 23 April 2019
- Drs van Ho and Doyle, Schools of Law at the Universities of Essex and Middlesex, respectively, letter of 22 April 2019
- ACTO press release of 29 April 2019
- CGI.br press release of 30 April 2019

Are there any fiscal or community 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.

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

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

Is this either a defined policy process within ICANN's Supporting Organizations or ICANN's Organizational Administrative Function decision requiring public comment or not requiring public comment?

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

Submitted by: John Jeffrey; Cyrus Namazi

Position: ICANN General Counsel and Secretary;
Senior Vice President, Global Domains Division

Date Noted: 15 May 2019

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Directors and Liaisons,

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

15 May 2019 – Special Meeting of the ICANN Board of Directors – at 20:00 UTC. This Board meeting is estimated to last approximately 60 minutes.

<https://www.timeanddate.com/worldclock/fixetime.html?msg=Special+Meeting+of+the+ICANN+Board.&iso=20190515T20&p1=1440&ah=1>

Some other time zones:

**15 May 2019 – 01:00 pm PDT Los Angeles
15 May 2019 – 04:00 pm EDT Washington, D.C.
15 May 2019 – 10:00 pm CEST Brussels
16 May 2019 – 05:00 am JST Tokyo**

SPECIAL MEETING OF THE ICANN BOARD

Main Agenda

- GAC Advice: Kobe Communiqué (March 2019)
- EPDP Related Resolution
- AOB

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.

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