

3 December 2018

Ambassador Jacqueline Mendoza  
Secretary General  
Amazon Cooperation Treaty Organization - ACTO

Dear Ambassador Mendoza,

I am writing to respond to your letters addressed to me as ICANN's Chairman of the Board dated 5 November 2018 (also addressed to ICANN's President and CEO Mr. Göran Marby) and 26 November 2018, relating to the ongoing discussions surrounding the .AMAZON and related internationalized top-level domain names (TLDs).

Over the past year the Board has been following, through the ICANN organization, the facilitation process between the ACTO team and the Amazon Corporation. We recognise the tremendous effort and good will of the eight ACTO member states and the Amazon Corporation in their endeavour to reach a workable solution, and we note the concerns expressed in your two letters.

#### **Current Status of the .AMAZON Applications**

Before addressing your concerns, I wish to summarize the current status of the .AMAZON TLDs as follows:

- .AMAZON TLDs have not yet been delegated.
- The Board Resolution of 25 October 2018 granted the ICANN President and CEO the authority to progress the facilitation process between the ACTO Member States and the Amazon Corporation with the goal of reaching a mutually agreeable solution before proceeding to delegation of the TLDs.
- The President and CEO's comments, made contemporaneously with the vote and confirmed in the Board Resolution and rationale, clearly highlight the intention for further discussion and dialogue.

Given that the Brazilian Governmental Advisory Committee (GAC) representative has repeatedly reported to the GAC on the positive status of the facilitation process (as set out in the GAC's Communiqués over the past 12 months) the Board is, naturally, disappointed that its Resolution and the President and CEO's comments, which were well intended, seem to have been considered by ACTO Member States as usurping this facilitation process.

#### **Mr. Göran Marby's letter of 20 November 2018**

On 20 November 2018, Mr. Marby responded to your 5 November letter by stating some historical facts and clarifying some important issues relating to the .AMAZON applications. The ICANN Board endorses that response and was looking forward to hearing the results of the meeting that you had invited Mr. Marby to attend in Bolivia

on 29 November 2018. While we acknowledge your request for the ICANN Board to retract the Resolution it passed on 25 October 2018 and the Reconsideration Request seeking the same, we had hoped that the meeting in Bolivia would address ACTO's concerns.

The ICANN Board was surprised that in your 22 November 2018 letter to Mr. Marby, ACTO postponed the Bolivia meeting. We still do hope that the meeting will be re-scheduled as soon as possible.

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

We note that in your 26 November letter you requested that we forward to ACTO the most recent proposal from the Amazon Corporation. We understand that the terms of the proposal had been shared during a discussion with the representative from Brazil (as described in the 28 November 2018 [letter from Mr. Marby to Ms. Manal Ismail](#), Chair of ICANN's Governmental Advisory Committee) and we are informed that the Amazon Corporation sent that proposal to you in writing on 23 November 2018. Hopefully you have received it and it provides the additional information needed for ACTO's consideration. If the proposal has not been received, please let us know and we will see that it is provided to you.

### **Board Resolution**

With respect to your concern over the Resolution passed by the Board on 25 October 2018, as Mr. Marby pointed out to Ms. Ismail in his 28 November 2018 letter, this Board action was taken with the clear intention that there was to be further discussion and dialogue with the goal of achieving agreement from the parties prior to delegation of the .AMAZON and related top-level domain names. Indeed, the specific language of the key Resolution reads as follows:

Resolved (2018.10.25.18), the Board directs the President and CEO, or his designee(s), to remove the "Will Not Proceed" status and resume processing of the .AMAZON applications according to the policies and procedures governing the 2012 round of the New gTLD Program. This includes the publication of the Public Interest Commitments, as proposed by the Amazon Corporation, according to the established procedures of the New gTLD program.

Moreover, the following was noted in the rationale for the resolutions approved by the ICANN Board on 25 October 2018, regarding the use of the Public Interest Commitments (PICs):

Since the Board's [16] September 2018 resolution, the Amazon Corporation, in effort to show its appreciation for the concerns of the ACTO member states regarding the use and governance of the .AMAZON TLDs, has submitted proposed Public Interest Commitments (PICs) that could be inserted into Specification 11 of its Registry Agreement with ICANN. As part of the Registry Agreements, these PICs would be enforceable through standard Contractual

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

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

MARBY: ...I would like to start with a statement where I recognize both Amazon the company and the countries in the ACTO regions who has over a year deliberately worked together to find a solution which is workable for -- who both takes into account the historical interest of the peoples in the Amazonia as well as the interest of the company. And instead of going through the whole ... written text, what we in practice ha(ve) done is, through (a) facilitation process, constructed a shared delegation of .AMAZON where the company has or will provide commitments to the ACTO countries how the .AMAZON will be used in the future. ...And the decision is today is to delegate it, to forward it to me to finalize those discussions between the company and those countries. And I'm also formally saying yes to the invitation to go to Brazil from the ACTO countries to ... finish off the last round of discussions.

Mr. Marby's comments clearly highlight the intention for further discussion and dialogue. That is why the discussions were to occur with the ACTO Member states in Bolivia.

### **Reconsideration Request**

In light of the cancellation of the Bolivia meeting, and given that no further meeting has been set, the ICANN organization has now taken the Reconsideration Request submitted by ACTO off-hold and is progressing it through the normal process. You can find the request posted on ICANN's website at <https://www.icann.org/resources/pages/reconsideration-18-10-acto-request-2018-11-29-en>. Procedural information regarding the ICANN Reconsideration Request process is provided in the Annex at the end of this letter, for your reference and convenience.

We will be dealing with your request for the annulment of the Board Resolution of 25 October 2018 as we evaluate the ACTO Reconsideration Request.

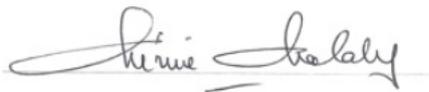
## Looking Ahead

In his letter of 20 November 2018, Mr. Marby stated: “If there has been any misunderstanding in our exchanges and communication I would like to express my sincere apologies and look to a constructive way forward, and to work together to implement the Board Resolution of 25 October 2018 and recognize the hard work that you have dedicated to this in the past five years for the mutual benefit of all the concerned parties.”

On behalf of the Board, I wish to echo the sentiment expressed above by Mr. Marby. This recent turn of events is therefore truly unfortunate and the Board sincerely hopes that we can put any misunderstanding behind us and move forward together in a constructive and positive manner.

Let me assure you that we continue to be available, as the Governmental Advisory Committee advised, to help facilitate the discussions between the ACTO member states and the Amazon Corporation to the extent such facilitation could be useful. It is our strong desire and hope that all the parties can come to a mutually agreeable resolution soon.

Sincerely,



Cherine Chalaby  
Chair, ICANN Board of Directors

cc: Ms. Manal Ismail  
Chair, ICANN Governmental Advisory Committee

Transmitted via email to the following:

Ambassador Jacqueline Mendoza  
Secretary General  
Amazon Cooperation Treaty Organization - ACTO  
Contact Informat on Redacted

With cc to:  
Chief of Staff, Cesar Delascasas  
Contact Informat on Redacted

## ANNEX

### Procedural Information Regarding ICANN Reconsideration Request Process

Please refer to ICANN Reconsideration Request page at <https://www.icann.org/resources/pages/accountability/reconsideration-en> for complete information

The Reconsideration process looks at whether an action or inaction taken by ICANN organization or the ICANN Board: (1) violated the Bylaws, Articles of Incorporation, or established policy or procedures; (2) did not consider material information; or (3) relied on false or inaccurate information. Once a Reconsideration Request has been submitted, the next step is for ICANN's Board Accountability Mechanisms Committee (BAMC) to take an initial look at the Request to verify that it properly sets out one or more of the above three criteria as the basis for the request. The BAMC also checks to see if the Request explains how the party has been harmed by the action/inaction. This process should take approximately seven to ten days.

ICANN organization will notify you if the BAMC determines ACTO's Reconsideration Request does not satisfy the necessary criteria. If the BAMC decides that the Request does satisfy this initial review, then the Request will be sent to the ICANN Ombudsman to provide additional input for the BAMC to consider. The Ombudsman can either: (1) provide a recommendation to the BAMC; or (2) recuse himself from reviewing the Request (because the Ombudsman has taken a position in the past relating to the issues in the Request).

Once the Ombudsman either recuses himself, or provides a recommendation, then the BAMC will evaluate the Request and provide a recommendation to the full ICANN Board. Once the BAMC provides its recommendation to the Board, the party that filed the Request has 15 days to respond to the recommendation. This is optional, but it provides the party an opportunity to present any additional material for the Board to consider in its evaluation of the Request and the BAMC Recommendation.

Thereafter, the full Board will consider the Reconsideration Request, including the BAMC Recommendation and all other related materials. The Board will then adopt a resolution(s) which will contain its final determination on the Request. The Board's decision should be taken within 135 days from the date that the Request was submitted.