



September 7, 2017

VIA E-MAIL (steve.crocker@icann.org)

ICANN Board of Directors
c/o Mr. Steve Crocker, Chairman
12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094

Re: .AMAZON Applications

Dear Chairman Crocker and Members of the ICANN Board of Directors:

We write as the ICANN Board considers the July 10, 2017 Final Declaration of the Independent Review Process Panel (IRP) in *Amazon EU S.à.r.l. v. ICANN*¹ regarding the .AMAZON Applications. Because the Panel concluded that the Board acted in a manner inconsistent with its Bylaws, we ask the Board to immediately approve our long-pending .AMAZON Applications.² Such action is necessary because there is no sovereign right under international or national law to the name “Amazon,”³ because there are no well-founded and substantiated public policy reasons to block our Applications, because we are committed to using the TLDs in a respectful manner, and because the Board should respect the IRP accountability mechanism.

First, the Board should recognize that the IRP Panel carefully examined the legal and public policy reasons offered by the objecting governments and found each to be insufficient or inaccurate.⁴ The Board should respect the IRP Panel conclusions.

Second, for the last 5 years, Amazon has repeatedly offered to work with the concerned governments to find an amicable solution, offering to explore how we can best use .AMAZON for our business purposes while respecting the people, culture, history, and ecology of the Amazonia region. Although those governments consistently declined our offers, we remain willing to adhere to our July 4, 2013 Public Interest Commitment (PIC) to the .AMAZON Applications.⁵ This binding commitment, which provides a practical solution, underscores why acting towards approving these applications immediately is in the public interest.

¹ <https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>.

² We recognize that approval of our .AMAZON Applications requires the Board to not follow the GAC Advice. ICANN Bylaws, § 12.2(a)(x), (xi); Final Declaration, § 125 at 52-53.

³ “The legal claim of Brazil and Peru is without merit.” *Amazon EU S.à.r.l. v. ICANN*, Final Declaration, § 108.b at 44 (July 10, 2017); see also §§ 46, 101 at 19-20, 41; Expert Report of Heather Ann Forrest, Dr. (iur) § 5 at 8-18 (Feb. 26, 2015), at <https://www.icann.org/en/system/files/files/irp-amazon-export-report-forrest-02mar16-en.pdf>.

⁴ Final Declaration, §§ 108-10 at 44-46.

⁵ That proposed PIC covered limiting registration of certain culturally sensitive terms, engaging in ongoing discussions to identify other culturally sensitive terms, and formalizing our non-objection to future applications for .AMAZONAS, .AMAZONIA, and .AMAZONICA. <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf>.

Finally, the Board last acted in 2014 – before the IANA transition and the resulting changes to ICANN’s Bylaws. The Board should take this opportunity to demonstrate to everyone – including those who objected to the IANA transition on the grounds that it would give too much control to governments – that ICANN is appropriately responsive to the accountability measures that the multistakeholder community required as part of the transition.

Almost one year ago, Chairman Crocker heralded the ICANN multistakeholder community’s dedication and commitment in developing a broadly supported, consensus proposal to enhance ICANN’s transparency and accountability – a proposal that preserved “the existing multistakeholder system while laying the foundation for a more accountable and equitable balance within the ICANN ecosystem.” With the .AMAZON Applications, the Board should publicly and clearly honor this commitment to transparency and accountability. In contrast, permitting the GAC to veto TLD applications that received perfect application evaluation scores (41/41) based upon reasons that are neither well-founded nor merit-based directly contravenes ICANN’s oft-stated and critically important commitment to serving the public interest, as determined by rules agreed to by the multi-stakeholder community.

The ICANN-authorized IRP, the ICANN-selected Community Objection dispute resolution provider, and the ICANN-selected legal expert have rejected every reason put forth for denying the .AMAZON Applications. The Board should not grant Brazil and Peru a fourth, and the GAC a third, opportunity to try to further delay the global public interest benefits associated with .AMAZON. It is now time for the Board to approve the .AMAZON Applications. (A full timeline of our applications is in the Appendix.)

We are aware that governmental pressure on the Board in connection with matters of Internet governance, although unrelated to the .AMAZON Applications, is of concern to ICANN. Such pressure does not change the truth – that for four years Brazil and Peru have been unable to provide legally and factually sound reasons for rejecting the .AMAZON Applications. If the Board yields to such pressure, it will undermine ICANN’s leadership in advancing the multistakeholder approach to Internet governance. In fact, rejection of the .AMAZON Applications after they received perfect application evaluation scores will undoubtedly be used by those stakeholders who were (and are) skeptical of ICANN’s ability to remain independent of governmental overreach to question and challenge ICANN’s ongoing legitimacy.

Board rejection of the .AMAZON Applications may also adversely impact any new gTLD subsequent procedure. Globally, hundreds (if not thousands) of brands have names similar to regions, land formations, mountains, towns, cities, and other geographic places, and the uncertainty of ICANN’s sui generis protection of geographic names will deter these potential .BRAND applicants. Other applicants will also have reason to doubt the certainty and predictability of the gTLD subsequent procedure. After all, if an application that receives a perfect score, clears all third-party objections, passes Geographic Names Panel review, and is the subject of a favorable IRP Panel decision can be rejected because of an arbitrary GAC veto, no gTLD applicant can be certain of its application’s prognosis.

The ICANN Board should now approve the .AMAZON Applications, mindful of the Panel's recommendations. ICANN's Bylaws and Core Values mandate such a decision. The Board should not request or consider any further GAC advice on the .AMAZON Applications. The GAC had ample time and opportunity to develop and reach consensus on "well-founded, merits-based public policy reasons for denying [our] applications." It did not because it could not then, and it cannot now, as recognized by the IRP. The Board also does not need to wait for policy recommendations from the new Subsequent Procedures PDP WG Geographic Names Work Track; that work, while important, does not impact the .AMAZON Applications, which we properly submitted under the Applicant Guidebook.

We request the opportunity to present to the Board and answer questions about the .AMAZON Applications before the Board acts on them, as well as an opportunity to review and respond to any subsequent submission by the GAC, Brazil, Peru, or any other party in connection with the .AMAZON Applications. We filed these applications over 5 years ago. Since then, multiple independent and objective experts have repeatedly found that our .AMAZON Applications are consistent with ICANN rules and existing law. The IRP Panel heard arguments on the length of time the applications have been pending and recommended that the Board should act "promptly." It is now time for the Board to act promptly and allow our .AMAZON Applications to proceed. That is the only decision that is consistent with the global public interest, the IRP Final Declaration, and the rule of law.

Sincerely,



Scott Hayden
Vice President, Amazon



Brian Huseman
Vice President, Amazon

Appendix

Because the Board last acted on the .AMAZON Applications in 2014, we provide a short factual summary.

- Amazon.com, Inc. was founded in 1994. Amazon⁶ serves hundreds of millions of customers globally. Amazon's websites enable it and third parties to sell millions of products and services. In addition, for example, Amazon manufactures and sells electronic devices (e.g., Kindle e-book readers, Fire TV sticks, and Echo voice controlled devices); serves developers and enterprises through Amazon Web Services; serves authors, independent publishers, musicians, filmmakers, and software application developers who publish and sell content in the Kindle Store or via other programs offered by Amazon; serves viewers of smart, bold, and innovative television series and movies through Amazon Studios; and serves customers who want predictable, fast, guaranteed, and unlimited shipping with our Prime express shipping membership program.
- Amazon owns 2375 registered AMAZON-formative trademarks in 170 countries, including 43 in Brazil and Peru. Amazon also owns almost 26,000 second-level domain names containing the AMAZON brand, including the domain names amazon.com, amazon.com.br, amazon.pe, and amazon.com.ar.
- We are unaware of any objections or complaints from either Brazil or Peru that our business model, our name, our trademarks, or our domain names have negatively impacted the Amazonia region.
- In 2012, we applied for 76 new gTLDs.⁷ Our .AMAZON Applications received no public comments. ICANN awarded the .AMAZON Applications perfect Initial Evaluation scores. ICANN's Geographic Names Panel determined that .AMAZON is not a "geographic name [under the criteria] contained in the Applicant Guidebook" so the TLDs were not prohibited and did not require governmental support.
- In November 2012, the GAC representatives of Brazil and Peru issued a GAC Early Warning against the .AMAZON applications. The Early Warning contained several rationales: (i) the .AMAZON applications should not proceed because it would prevent use of the TLD for the "protection, promotion and awareness raising" of the "Amazon biome;" (ii) the .AMAZON string "matches part of the name, in English, of the Amazon Cooperation Treaty Organization (OTCA); and (iii) the string had "not received support from the governments of the countries in which the Amazon region is located."
 - The IRP Panel concluded these statements were not "well-founded public policy concerns that justify the denial of the applications."⁸ The Applicant Guidebook makes clear that there is no material harm simply because a TLD is delegated to

⁶ We use "Amazon" to refer to Amazon EU S.à.r.l, its parent and its Affiliates.

⁷ Amazon has signed 52 Registry Agreements with ICANN, which makes us the second largest Registry Operator by number of TLDs. One of these is .YAMAXUN ("amazon" in Chinese Pinyin), which was not the subject of GAC advice and for which we signed the Registry Agreement in December 2014, obtained a Registry Code of Conduct exemption in September 2015 and delegated in October 2015.

⁸ Final Declaration, § 106 at 43.

another.⁹ A “one word match is not likely to be misleading.”¹⁰ ICANN’s own expert found that there is “no inherent governmental right in geographic terms” and ICANN’s Geographic Names Panel determined that .AMAZON is not a geographic name.¹¹

- Amazon attempted repeatedly to reach an amicable resolution with the governments of Brazil and Peru by meeting or communicating in good faith with their representatives or OTCA more than a dozen times over the past five years. We put forward a variety of proposals – ranging from committing to supporting future gTLD applications for .AMAZONAS, .AMAZONIA, or .AMAZONICA (matching the names used by region residents), to blocking within the .AMAZON gTLDs terms representing governments or governmental organizations or of specific cultural sensitivity, to reserving certain domains in .AMAZON for redirection to official governmental websites. The Brazilian and Peruvian governments have not accepted these proposals and have not put forward any meaningful counterproposal.
- An arbitration panel rejected Community Objections filed against the .AMAZON Applications by the ICANN-selected Independent Objector because the .AMAZON Applications would not pose a material detriment to the Amazonia region or the people who live there. (That panel also upheld our challenge to the Independent Objector’s independence based on his legal representation of the Brazilian and Peruvian governments.)
- The NGPC-commissioned legal expert concluded that Brazil and Peru had no legally recognized right under “international, or even regional or national law” to the name “amazon” that required ICANN to reject the .AMAZON Applications.
- Brazil and Peru led the GAC’s efforts in Durban to reach consensus against the .AMAZON Applications, and were the only two countries to offer reasons for that advice – reasons the IRP Panel characterized as less specific than the Early Warning or “not well-founded.” In fact, Peru asserted that .AMAZON was a geographic name on the ISO 3166-2 list, and has never corrected that misstatement.¹² Especially in light of many changes that have occurred since the GAC decision at Durban, there is no basis to assume that the GAC’s position today would be the same as at the Durban meeting.

⁹ Final Declaration, § 109, at 45.

¹⁰ Final Declaration, § 108(d) at 45.

¹¹ Final Declaration, § 108(b) at 44.

¹² Final Declaration, § 108(a) at 44.