



April 23, 2019

**By Email**

Mr. Cherine Chalaby  
Chair, Board of Directors  
ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094

Dear Chairman Chalaby and members of the ICANN Board of Directors,

In advance of the ICANN Board's May 3-5 meeting, Amazon writes to provide further information to assist the Board as it decides the .AMAZON matter. Specifically, Amazon briefly addresses some of the points made by ACTO's proposal of April 18 and Brazil's letter to ICANN of April 23.

As a critically important threshold matter, it must be recognized that, as clearly stated by the Panel in the IRP Final Declaration in [Amazon EU S.à.r.l. v. ICANN \(.AMAZON\)](#),<sup>1</sup> the issue before the Board is to: *"make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications."*

No one, including the GAC, ACTO, or any of its member states, has articulated a well-founded, merits-based public policy reason upon which the Board could deny Amazon's applications. Indeed, as per the IRP Final Declaration, the public policy reasons espoused by certain countries were without merit.<sup>2</sup> Amazon, as the lone applicant for the .AMAZON TLDs, has proposed a Public Interest Commitment (PIC) solely out of respect for the concerns previously expressed by ACTO and its member states and to promote the spirit of compromise. Amazon's proposed PIC is an enhancement to its applications and should be considered as such by ICANN's Board. The various (and even conflicting) proposals by ACTO and its member states demonstrates that no amount of extended negotiation time can ever result in an acceptable outcome that will satisfy their demands.

ACTO's Proposed PIC

Although this is not a proceeding in which ICANN is to choose between Amazon's proposed PIC and any other proposed PIC, Amazon nevertheless takes this opportunity to further explain its serious concerns with ACTO's proposed PIC, as sent to ICANN on April 18. This proposal is ACTO's first since this matter's inception in 2012 and does not reflect any mutual agreement with Amazon.

As Amazon noted in its email on April 18, ACTO's proposed PIC is not acceptable to Amazon. ACTO's proposed PIC fails to take into account the nature and character of a .BRAND TLD, would create confusion and potentially dilute our brand recognition, and deprive Amazon of significant uses of its applied-for TLDs. Indeed, it seems that core aspects of ACTO's proposed PIC are contrary to international intellectual property law, raise substantial security concerns, and are otherwise impractical and inappropriate. As outlined below, ACTO's proposed PIC further evidences how far apart Amazon and ACTO are from a mutually acceptable solution – indeed farther apart than when the parties began these discussions during the ICANN 60 meeting and then continued those discussions during the ICANN 61, 62, 63 and 64 meetings.

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

<sup>2</sup> <https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>

At its core, ACTO's proposed PIC co-opts commercial use of the .AMAZON TLDs – a significant departure from ACTO's oft-stated goal of merely ensuring no misuse of the TLDs and protecting the culture and heritage of the people of the Amazonia region. By expanding the definition of terms Amazon must not use,<sup>3</sup> drastically increasing the number of terms Amazon must block,<sup>4</sup> and creating an open-ended list of terms that ACTO and its member states can use for any purpose (including commercially),<sup>5</sup> ACTO's proposed PIC will inappropriately restrict our future business plans, dilute and curtail our globally famous trademark, and create significant consumer confusion. It is wholly disproportionate to ACTO's stated goal of safeguarding the culture and heritage of the Amazonia region.

ACTO and its member states chose not to apply for any TLD, including .AMAZON. ACTO and its member states will not suffer any material detriment if they are unable to share ownership and governance of the .AMAZON TLDs.<sup>6</sup> In its [Expert Determination](#)<sup>7</sup> denying the Independent Objector's community objection against the .AMAZON TLDs, the panelist observed that the Amazonia region governments have multiple available options for actively governing and commercially using a TLD: "[w]ere a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. 'Amazonia' springs to mind."<sup>8</sup>

Additional fundamental flaws in ACTO's proposed PIC include:

*ACTO proposes the domain names should be allocated to, and operated by, ACTO and its member states.*

As Amazon has noted previously, ACTO's proposal would foreclose Amazon's ability to secure .BRAND status (through Specification 13) for the .AMAZON TLDs. Further, our Information Security organization believes that operating the .AMAZON TLDs under Specification 13 is essential for maintaining security and customer trust. Approving ACTO's proposal renders any Specification 13 application moot, and puts the ICANN Board in the position of selecting a business model for a new gTLD applicant.

*ACTO now proposes we should allocate country names to its member states.*

ACTO now proposes use of member state country names as domain names. Specification 5 of the Registry Agreement requires a Registry Operator to withhold country names from reservation and apply separately to release them. Absent such applications, country names must remain reserved. To avoid consumer confusion, in light of the global reach of our business, Amazon does not intend to apply to release these country names, but instead intends to withhold all country names from registration in accordance with the Registry Agreement.

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<sup>3</sup> The expansion includes "terms that have major, international or well-recognized importance to the cultural or natural heritage of the Amazon Region, or terms that can cause confusion or mislead about matters that can be reasonably associated with the cultural or natural heritage of the Amazon Region." Brazil's April 23 letter expands this list to include even more all-encompassing terms as: ingredients, animals, and travel sites. Both are significantly broader than our definition, which focuses on safeguarding hundreds of terms that have "a primary and well-recognized significance to the Culture and Heritage of the Amazonia region."

<sup>4</sup> ACTO proposes blocking up to 54,000 domain names (4500 domains x 4 translations x 3 TLDs).

<sup>5</sup> See FN 3.

<sup>6</sup> The Applicant Guidebook is clear that "[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment." (Section 3.5.4 at 3-24.)

<sup>7</sup> <https://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>

<sup>8</sup> The Board may recall that Amazon has repeatedly offered since 2013 to assist ACTO and its member states in acquiring (or not objecting to) a TLD for their own use.

ACTO now proposes to make the steering committee part of the PIC, and the steering committee does nothing to alleviate the above concerns.

Any form of steering committee that is authorized to take a binding decision as to the administration or operation of the .AMAZON TLDs, or to how we use the .AMAZON TLDs, is not viable from a business perspective.

As we stated in our April 17 letter:

*Under international law, a brand must continually control how its trademark is used in connection with its business. As such, Amazon cannot share ownership or management of the .AMAZON TLDs because, as we discuss in detail above, we intend to operate the TLDs as .BRAND TLDs under Specification 13 to the Registry Agreement. This is consistent with our applications in 2012, our IRP filings in 2016-17, and our statements to ACTO since at least early 2018.*

Furthermore, by making the steering committee part of the PIC, ACTO virtually guarantees that every disagreement within the steering committee will result in a PICDRP, a burden that will fall to ICANN to adjudicate every time.

ACTO proposes third-party adjudication mechanisms.

ACTO's proposal to permit a non-ICANN arbitration panel to terminate our registry agreement would lead to business uncertainty about domain name availability, invite intervention from a third party in our business operations, and potentially lead to years of unresolved cases with uncapped arbitration awards and expenses. ACTO's additional proposal that the UNESCO World Heritage Center adjudicate disputes about domain names subject to its overly broad definition of terms is vague and unlikely to fall within UNESCO's mission.

A PICDRP is the only proper adjudication mechanism, as it is an ICANN process created specifically for PIC enforcement. Reliance on third-party adjudication mechanisms is unnecessary and contravenes the ICANN community's wishes.

### Brazil's April 23 Letter

At the outset, Amazon notes that Brazil's April 23 letter represents the viewpoint of only one ACTO member state. Nonetheless, Amazon responds below.

First, in light of the April 21 deadline set forth in the Board's March 10 Resolution, it is incorrect to suggest that our filing was untimely and prejudicial. Instead, we waited 10 days beyond April 7 to give ACTO a chance to reply while avoiding a submission on the long holiday weekend. Furthermore, Amazon notes that Brazil's Ministry of Foreign Affairs' April 17 statement supporting an extension of time fails to acknowledge the extensive work and discussions, including by ICANN leadership, that started during ICANN 60 in late 2017 and continued until earlier this month.

Second, ACTO's April 18 proposal, which Brazil endorsed, is far more problematic than individual ACTO member state proposals, for reasons outlined above. Put simply, the parties are even farther apart now than before. Indeed, it is abundantly clear to Amazon from review of Brazil's April 23 letter, ACTO's April 18 proposal, and quotes from Brazilian officials in an April 18 New York Times article,<sup>9</sup> that ACTO and its member states are seeking untenable and inappropriate commercial use of the .AMAZON TLDs.

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<sup>9</sup> Shasta Darlington, "Battle for .amazon Domain Pits Retailer Against South American Nations," New York Times (Apr. 18, 2019), available at <https://www.nytimes.com/2019/04/18/world/americas/amazon-domain-name.html>

There is no longer GAC consensus advice opposing the delegation of the .AMAZON TLDs to Amazon, despite Brazil's contention. As ICANN itself has noted,<sup>10</sup> the GAC's consensus advice in the Abu Dhabi Communiqué, advising the Board to "continue facilitating negotiations," superseded previous GAC Advice in the Durban Communiqué.

### Conclusion

Amazon thanks the Board, the ICANN Staff, especially Göran Marby, and the other members of ICANN's senior leadership team, for its engagement on this matter. It is now time, after seven years, for the Board to approve Amazon's applications.

Amazon's .AMAZON applications met all the criteria established by the ICANN community via the Applicant Guidebook,<sup>11</sup> which was developed during a lengthy deliberative process with input from the entire community, including governments. Its development reflects the multi-stakeholder decision-making process at its best.

There are no well-founded or merits-based public policy reasons to deny our applications.

Our PIC is a meaningful, voluntary concession by Amazon and a true commitment to the multi-stakeholder model of internet governance as effectuated by ICANN and its community. This PIC represents a significant concession for Amazon, as: (1) international trademark law does not recognize that Amazon's use of its famous brand would create confusion with any geographic meanings of the term "Amazon", (2) the term "Amazon" is not a protected geographic name, and (3) it is a self-imposed limitation that no other .BRAND has been required to adopt. This commitment fully encompasses all three TLDs and ensures the TLDs will not be misused. We are fully committed to the multi-stakeholder model, and we believe that granting our proposal, which takes into consideration the views of affected governments and the GAC, can serve as a success story for ICANN and internet governance generally.

ACTO's new, last-minute proposal moves even farther away from a reasonable compromise solution and is an attempt to co-opt or "take over" our applications, our commercial interests, and our globally famous international brand. We, therefore, cannot accept ACTO's proposed PIC and no extension of time is warranted.

We respectfully request that the Board accept our proposed PIC in conjunction with our applications at its May 3-5 meeting and move forward to contracting and delegating the .AMAZON TLDs to Amazon.

Sincerely,



Brian Huseman  
Vice President, Public Policy

<sup>10</sup> Rationale for Resolutions 2018.10.25.18-2018.20.25.19, available at <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.d>

<sup>11</sup> These criteria included a determination that .AMAZON was not a geographic name, as defined.