

INDEPENDENT REVIEW PROCESS

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

AMAZON EU S.À R.L.,)	ICDR CASE NO. 01-16-0000-7056
)	
Claimant,)	
)	
and)	
)	
INTERNET CORPORATION FOR ASSIGNED)	
NAMES AND NUMBERS,)	
)	
Respondent.)	
_____)	

WITNESS STATEMENT OF AKRAM ATALLAH

I, Akram Atallah, declare:

Witness Background

1. I am the Interim President and Chief Executive Officer for the Internet Corporation for Assigned Names and Numbers (“ICANN”), a position I have held since 16 March 2016. Before that, I was the President, Global Domains Division of ICANN from July 2013. Before that, I was Chief Operating Officer of ICANN from September 2010. In these roles, I have been extensively involved in the design and operation of ICANN’s New gTLD Program. A major part of my responsibilities has been to gather information for and to brief ICANN Board's New gTLD Program Committee Board, as well as other Board committees, on matters pertinent to their oversight and decision-making responsibilities. I have personal knowledge of the matters set forth herein and am competent to testify as to those matters.

Role of the GAC Under the ICANN Bylaws

2. The Governmental Advisory Committee (“GAC”) is an advisory committee established by Article XI, Section 2(1) of ICANN’s Bylaws. Accompanying Exhibit R-1 is a current version of ICANN’s Bylaws, as amended 11 February 2016. The version of Article XI, Section 2(1) of the Bylaws in Exhibit R-1 was in effect throughout 2013.

3. According to the Bylaws, membership in the GAC is open to all “national governments,” and also to “Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations” when invited by the GAC. *See* Bylaws Art. XI, § 2(1)(b). The Bylaws establish this role for the GAC:

a. The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

Bylaws Art. XI, § 2(1)(a).

4. The Bylaws discuss how the GAC advises the Board, and how the Board responds to that advice:

i. The Governmental Advisory Committee may 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.

j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

k. If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

Bylaws Art. XI, § 2(1)(i)-(k). As can be seen, the Bylaws require the Board to take the GAC's advice duly into account and must consult with the GAC in the event it does not follow GAC advice.

5. The GAC has adopted Operating Principles that provide additional principles about how the GAC formulates advice for the ICANN Board of Directors and the effect of that advice after the Board receives it. The GAC Operating Principles have been amended from time to time. The version of the GAC Operating Principles in effect in 2013 is accompanying Exhibit R-2.

6. The GAC Operating Principles cover advice to the Board in Principles 46-48:

ARTICLE XII – PROVISION OF ADVICE TO THE ICANN BOARD

Principle 46

Advice from the GAC to the ICANN Board shall be communicated through the Chair.

Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board. (Footnote omitted).

Principle 48

The GAC may deliver advice on any other matter within the functions and responsibilities of ICANN, at the request of the ICANN Board or on its own initiative. The ICANN Board shall consider any advice from the GAC prior to taking action.

The New gTLD Program

7. Following several years of extensive discussions and analysis by Internet stakeholders acting through the ICANN process, ICANN's Generic Names Supporting Organization ("GNSO") issued a Final Report to the Board on the Introduction of New Generic Top-Level Domains, dated 11 September 2007. A copy of that report is available at <http://gns0.icann.org/en/issues/new-gtlds/council-report-to-board-pdp-new-gtlds-11sep07.pdf>, and is accompanying Exhibit R-3.

8. Addressed to the ICANN Board, the report recommended that new generic top-level domains ("gTLDs") be introduced to the Internet Domain-Name System ("DNS"). It also set forth various principles, recommendations, and guidelines for the introduction. After public comment, on 26 June 2008 the ICANN Board adopted the GNSO's policy recommendations for the introduction of new gTLDs and directed the ICANN staff to complete its detailed implementation plan, to be provided to the Board for the Board and community to approve before the new gTLD introduction process would be launched. *See* Resolutions 2008.06.26.02 and 2008.06.26.03, Adopted Board Resolutions (26 Jun. 2008), Complainant Ex. C-3.

9. The ICANN staff prepared an implementation plan in the form of an "Applicant Guidebook" ("AGB" or "Guidebook"). A first draft of the Guidebook, entitled "New gTLD

Program: Draft Applicant Guidebook (Draft RFP),” was posted on ICANN’s website on or about 24 October 2008. Comments were invited, and a subsequent draft was prepared to address the comments. This process was repeated many times as public comments were incorporated. The result was a final version dated 4 June 2012, Complainant Exhibit C-20.

10. The following table lists the various drafts:

Date	Draft
24 Oct 2008	New gTLD Program: Draft Applicant Guidebook (Draft RFP)
18 Feb 2009	Draft Applicant Guidebook, Version 2
30 May 2009	Excerpts Organized Per Module (Partial revision by update)
2 Oct 2009	Draft Applicant Guidebook, Version 3
15 Feb 2010	Revisions to some excerpts
31 May 2010	Draft Applicant Guidebook, Version 4
12 Nov 2010	gTLD Applicant Guidebook, Proposed Final Version
15 Apr 2011	gTLD Applicant Guidebook, April 2011 Discussion Draft
30 May 2011	gTLD Applicant Guidebook
9 Sep 2011	gTLD Applicant Guidebook, Version 2011-09-19
11 Jan 2012	gTLD Applicant Guidebook, Version 2012-01-11
4 Jun 2012	gTLD Applicant Guidebook, Version 2012-06-04

Evolution of the Guidebook’s Provisions Governing the GAC’s Role

11. The first version of the Guidebook (published 24 Oct 2008) did not fully specify procedures under which GAC advice on applications would be implemented in the process of evaluating applications that raised public policy matters. The first draft of the Guidebook is accompanying Exhibit R-4. Instead, the first draft only required ICANN to consult the GAC regarding gTLDs intended to represent geographical entities. Indeed, the following excerpt is the only mention of the GAC in the first version of the Guidebook:

2.1.1.4.1 Requirements for Strings Intended to Represent Geographical Entities

The evidence of support or non-objection from the relevant government or public authority should include a signed letter of support or non-objection from the minister with the portfolio responsible for domain name administration, ICT, foreign affairs or the Office of the Prime Minister or President of the relevant jurisdiction. If there are reasons for doubt about the authenticity of the communication, **ICANN will consult with the diplomatic authorities or members of ICANN’s Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact with their administration for communications.**

(Emphasis supplied).

12. In various communications, the GAC raised concerns with the Board about the limited procedures to receive GAC advice on applications, as contemplated by early versions of the Guidebook. Relatedly, the GAC proposed amendments that would elaborate on its role in the gTLD process. The GAC’s proposals included, for example, allowing governments to utilize the Independent Objector to voice their objections and allowing the GAC to perform an initial review of gTLD applications. *See* ICANN Board-GAC Consultation: Objection Procedures, Sensitive Strings, Early Warning (21 Feb. 2011), Ex. R-5; GAC indicative scorecard on new gTLD outstanding issues listed in the GAC Cartagena Communiqué, Ex. R-6.

13. In early 2011, in light of the GAC’s various concerns and suggestions, several meetings took place between the ICANN Board and the GAC to define the GAC’s involvement in the Guidebook and gTLD application process in more detail. Following a meeting that took place on 28 February and 1 March 2011, the GAC and the Board agreed that a “procedure for GAC review will be incorporated into the new gTLD process. The GAC may review the posted applications and provide advice to the ICANN Board.” *See* Letter from Mr. Peter Dengate Thrush to Ms. Heather Dryden regarding Documenting the Board/GAC Brussels consultation, Complainant Ex. C-13. Following additional consultations between ICANN’s Board and the GAC, the Board agreed on several recommendations, including that “[t]he current application evaluation process flow be augmented GAC Early Warning and GAC Advice on New

gTLDs can be applied to any application, e.g., sensitive, community, sector, or geographic strings of any type.” *See* New gTLD Program Explanatory Memorandum: GAC and Government Objections; Handling of Sensitive Strings; Early Warning (15 Apr. 2011) at 2, Ex. R-7; *see also* Revised ICANN Notes on: the GAC New gTLD Scorecard, and GAC Comments to Board Response at 3, Ex. R-8.

14. On 15 April 2011, ICANN released a version of the Guidebook, which greatly elaborated on the role of GAC advice in the New gTLD Program. *See* Applicant Guidebook (15 April 2011 version), Ex. R-9. This version of the Guidebook contained a new section 3.1, formally stating the GAC’s role in evaluating gTLD applications:

3.1 GAC Advice on New gTLDs

ICANN’s Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

ICANN’s transparency requirements indicate that GAC Advice on New gTLDs should identify objecting countries, the public policy basis for the objection, and the process by which consensus was reached. To be helpful to the Board, the explanation might include, for example, sources of data and the information on which the GAC relied in formulating its advice.

GAC Advice may take several forms, among them:

- I. If the GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, that will create a strong presumption for ICANN

that the application should not be approved. In the event that the ICANN Board determines to approve an application despite the consensus advice of the GAC, the GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. In the event the Board determines not to accept the GAC Advice, the Board will provide a rationale for its decision.

II. If the GAC provides advice that does not indicate the presence of a GAC consensus, or any advice that does not state that the application should not proceed, such advice will be passed on to the applicant but will not create any presumption that the application should be denied, and such advice would not require the Board to undertake the process for attempting to find a mutually acceptable solution with the GAC should the application be approved. Note that in any case, that the Board will take seriously any other advice that GAC might provide.

III. If the GAC advises ICANN that GAC consensus is that an application should not proceed unless remediated, this will raise a strong presumption for the Board that the application should not proceed. If there is a remediation method available in the Guidebook (such as securing government approval), that action may be taken. However, material amendments to applications are generally prohibited and if there is no remediation method available, the application will not go forward and the applicant can re-apply in the second round.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will endeavor to notify the relevant applicant(s) promptly and the applicant will have a period of 21 calendar days in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application.

15. Section 3.1's procedures for GAC advice on applications were indicated to be separate and independent from other aspects of the process for evaluation applications, including Initial Evaluation (String Reviews and Applicant Reviews), Extended Evaluation (at an applicant's request), Public Objection and Dispute Resolution Process (comprising String Confusion Objections, Legal Rights Objections, Limited Public Interest Objections, and Community Objections, including those brought by the Independent Objector).

16. The 15 April 2011 version of the Guidebook also contained several other revisions

related to the GAC's role, including:

(a) the addition of the GAC Early Warning System;

(b) an admonition that, with respect to Geographic Names Requiring Government Support, "ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, ICANN will comply with a legally binding order from a court in the jurisdiction of the government or public authority that has given support to an application."

17. The 15 April 2011 version of the Guidebook was promptly posted to ICANN's website so all applicants – including Amazon – would have notice of these important changes.

18. In response to the new version of the Guidebook, the GAC stated "that further discussions [were] needed between the GAC and the ICANN Board to find a mutually agreed and understandable formulation for the communication of actionable GAC consensus advice regarding proposed new gTLD strings." Accompanying Exhibit R-10 is the GAC comments on the Guidebook (15 April 2011 version).

19. The separate role of GAC Advice was reflected in section 3.2 (discussing various types of Public Objections) of the draft Guidebook, published in May 2011, which states:

As described in section 3.1 above [concerning GAC advice], ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

Accompanying Exhibit R-11 is the Guidebook, 30 May 2011 version.

20. Shortly thereafter, in a letter to the ICANN Board, the GAC recommended that ICANN remove references indicating that "future GAC early warnings and advice must contain particular information or take a specified form," to provide flexibility in view of the many contexts in which advice could be given. *See* Letter from Ms. Heather Dryden to Mr. Peter Dengate Thrush, Singapore Communiqué Annex (18 Jun. 2011), Ex. R-12. At a June 2011

meeting between the Board and GAC, the Board addressed the GAC's concerns and clarified that there was "absolutely no intention to direct to the GAC either its processes or the wording it should use in corresponding and giving advice to the board." Accompanying Exhibit R-13 is the Transcript of ICANN New gTLDs and Applicant Guidebook Meeting with Board/GAC, dated 19 June 2011. The ICANN Board then formally instructed ICANN staff to "to remove references indicating that future Early Warnings or Advice must contain particular information or take specified forms" from the Guidebook. Accompanying Exhibit R-14 is the Singapore Approved Board Resolutions, dated 20 June 2011. All of the exhibits mentioned in this paragraph were posted on ICANN's website soon after they were created, so that they were available to members of the public.

21. At the ICANN Dakar Meeting in October 2011, the GAC "further discussed and decided on the formulation of GAC advice for inclusion in Module 3 of the Applicant Guidebook." The GAC Dakar Communiqué recommended a formal mechanism for "GAC members [to] raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors." Accompanying Exhibit R-15 is the GAC Dakar Communiqué.

22. ICANN published a new version of the Guidebook in January 2012. The new version incorporated advice from the GAC Dakar Communiqué, and included the following language: "if the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved." Accompanying Exhibit R-16 is a Summary of Changes to the New gTLD Applicant Guidebook, which was posted on ICANN's website or about 11 January 2012. The current version of the Guidebook incorporates

the language recommended by the GAC Dakar Communiqué. Complainant Exhibit C-20 is the New gTLD Applicant Guidebook, dated 4 June 2012.

23. The provisions for GAC advice in the final version of the Guidebook can be summarized as follows: The GAC’s role is to “provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.” The GAC’s special advisory role is accompanied by an Early Warning mechanism through which public-policy concerns of governments regarding an application can be (but are not necessarily) expressed soon after the application is made public. As stated in Section 1.1.2.4 of the Guidebook, “This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.” This provides the applicant with an opportunity to work with governments to address the concerns, or alternatively to withdraw the application. If the concerns are not ameliorated, “GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.” Guidebook, § 3.1. If the Board receives GAC advice stating a consensus among the GAC members that a particular application should not proceed, it will “create a strong presumption for the ICANN Board that the application should not be approved.” Guidebook, § 1.1.2.7.

The New gTLD Program Committee

24. To further facilitate the implementation of the gTLD program, the ICANN Board created the New gTLD Program Committee (“NGPC”) in April 2012:

In order to have efficient meetings and take appropriate actions with respect to the New gTLD Program for the current round of the Program and as related to the Applicant Guidebook, the Board decided to create the “New gTLD Program Committee” in

accordance with Article XII of the Bylaws and has delegated decision making authority to the Committee as it relates to the New gTLD Program for the current round of the Program which commenced in January 2012 and for the related Applicant Guidebook that applies to this current round.

See Rationale for Resolutions 2012.04.10.01-2012.04.10.04, Ex. R-17.

25. The ICANN Board decommissioned the NGPC in October 2015 because the reasons for the NGPC’s formation no longer existed:

Whereas, in order to have efficient meetings and take appropriate actions with respect to the New gTLD Program, on 10 April 2012, the Board took action to create the New gTLD Program Committee ("NGPC") in accordance with Article XII of the Bylaws.

Whereas, the Board delegated decision-making authority to the NGPC as it relates to the New gTLD Program for the current round of the Program and for the related Applicant Guidebook that applies to this current round.

Whereas, the reasons that led to the formation of the NGPC no longer exist as they did at formation.

Whereas, the Board Governance Committee (“BGC”) has considered the necessity of maintaining the NGPC as a standing committee of the Board, and recommended that the Board decommission the NGPC.

Resolved (2015.10.22.15), the ICANN Board New gTLD Program Committee is hereby decommissioned.

Resolved (2015.10.22.16), the Board wishes to acknowledge and thank the NGPC Chair and all of its members for the considerable energy, time, and skills that members of the NGPC brought to the oversight of the 2012 round of the New gTLD Program.

Accompanying Exhibit R-18 is Resolutions 2015.10.22.15 and 2015.10.22.16, dated 22 October 2015.

How the GAC Fulfilled Its Obligations With Respect to .AMAZON.

26. In response to the application submitted by Amazon EU S.à r.l. (“Amazon”) for the .AMAZON gTLD, on 20 November 2012, the GAC issued, on behalf of the Governments of Brazil and Peru, an Early Warning to Amazon to note “concern regarding the application for the generic top-level domain (gTLD) ‘.AMAZON.’” The Early Warning cautioned Amazon that it should be “taken seriously as it raises the likelihood that the application could be the subject of

GAC Advice.” As stated in the Early Warning, the concerns concerning the .AMAZON gTLD expressed in the Early Warning were threefold. First, the concerned governments wanted to ensure that the Amazon region states could carry out their functions, because “[g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome.” Second, the concerned GAC members were concerned that the .AMAZON gTLD string overlapped with the “Amazon Cooperation Treaty Organization,” which “coordinates initiatives in the framework of the Amazon Cooperation Treaty, signed in July 1978 by Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela.” Third, the Early Warning noted that the .AMAZON gTLD was not supported by the governments of the Amazon region, namely, Brazil, Peru, Bolivia, Ecuador, Guyana, and Argentina. Complainant Exhibit C-22 is the GAC Early Warning – Submittal Amazon-BR-PE-58086.

27. GAC members Peru and Brazil submitted supplemental notes in the Early Warning that the GAC issued about the .AMAZON gTLD, stating the importance of the “Amazon” name to their respective regions. Peru noted that the Amazon river is the world’s largest river and is of particular importance to Peru, because 2969 km of the river runs through Peruvian territory, and the “peruvian [sic] Amazon region comprises 61% of the total territory of Peru.” As such, the “Amazon territory’s importance for Peru is reflected in the various international cooperation programs.” Brazil voiced the importance of protecting geographic names that “refer to regions that encompass peoples, communities, historic heritages and traditional social networks whose public interest could be affected by the assignment, to private entities, of gTLDs that directly refer to those spaces.” Complainant Exhibit C-22 is the GAC Early Warning – Submittal

Amazon-BR-PE-58086.

28. According to Amazon, it subsequently held discussions with GAC members Brazil and Peru with the goal of reaching an agreement that respected the “needs of the Amazonia Region.” The parties had not reached agreement. *See* Letter from Stacey King, Corporate Counsel for Amazon, to GAC Chair Heather Dryden, Complainant Ex. C-35.

29. In the GAC Beijing Communiqué issued in April 2013, the GAC advised that it had “identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban,” but noted that it had not completed its deliberations. It advised the ICANN Board to “not proceed beyond Initial Evaluation with the following strings: ... [including] .amazon (and IDNs in Japanese and Chinese).” Accompanying Exhibit R-19 is the GAC Beijing Communiqué, dated 11 April 2013.

30. Pursuant to section 3.1 of the Guidebook, ICANN posted the GAC Beijing Communiqué, which triggered the twenty-one day applicant response period. On 10 May 2013, in a letter addressed to ICANN’s Chairman of the Board, Amazon responded to the GAC Beijing Communiqué and objected to the recommendation that the GAC provide “further consideration” regarding the .AMAZON gTLD before allowing it to proceed. Specifically, Amazon took the positions that delay was improper because: (i) the GAC Beijing Communiqué undermined ICANN’s community-developed policy regarding geographic names; (ii) delay for “further consideration” was a process not contemplated by the Guidebook and could perpetually delay the processing of applications; (iii) the governments of Brazil and Peru acted improperly by attempting to block the .AMAZON applications at the GAC Beijing Meeting; (iv) the governments of neither Brazil nor Peru filed community objections to the .AMAZON applications, and; (v) Amazon has valuable trademark and intellectual property interests in its

name. Amazon also reiterated that it was in ongoing negotiations with the GAC representatives from both Brazil and Peru, but maintained that despite “our willingness to reach a mutually agreeable solution, we should not be forced to negotiate under continual GAC ‘consideration,’ holding up our applications to the detriment of business because the GAC was not able to reach consensus.” Complainant Exhibit C-30 is Amazon’s GAC Advice Response Form for Applicants, dated 10 May 2013.

31. The NGPC considered both the GAC advice communicated in the GAC Beijing Communiqué and Amazon’s responses, and decided to accept the GAC’s advice. Accordingly, the NGPC stated that ICANN would not “proceed beyond initial evaluation of these identified strings [including .AMAZON]. In other words, ICANN will allow evaluation and dispute resolution processes to go forward, but will not enter into registry agreements with applicants for the identified strings for now.” Accompanying Exhibit R-20 is the ANNEX 1 to NGPC Resolution No. 2013.06.04, dated 4 June 2013. *See also* NGPC Rationale for Resolution 2013.06.04.NG01 (4 Jun. 2013), Ex. R-21.

32. Before the GAC Durban Meeting, the United States, which purportedly had expressed concerns preventing GAC consensus at the Beijing meeting regarding the .AMAZON string, submitted a public statement that it would “abstain and remain neutral onamazon (and IDNs in Japanese and Chinese) ... thereby allowing the GAC to present consensus objections on these strings to the Board, if no other government objects.” Complainant Exhibit C-34 the U.S. Statement on Geographic Names in Advance of ICANN Durban Meeting, dated July 2013.

33. Also prior to the Durban meeting, Argentina, Brazil, Chile, Peru and Uruguay submitted a joint, publicly available statement reiterating that .AMAZON is “a geographic name that represents important territories of some of our countries, which have relevant communities,

with their own culture and identity directly connected with the name.” As such, these countries expressed that the GAC Durban Meeting was “an important opportunity for the GAC to give a clear mandate following the current principles for new gTLDs, approving the GAC advice proposals submitted by Brazil and Peru for ‘.amazon’, addressed to the ICANN Board in order to reject this application.” Complainant Exhibit C-39 is these governments’ Statement on “.amazon” and other strings containing geographic names, dated 13 July 2013.

34. On 16 July 2013, at the ICANN Meeting in Durban, South Africa, the GAC held a plenary session where objections to the applications, including those for .AMAZON and equivalent names in Chinese and Japanese characters, were discussed. During the meeting, which was open to the public, the Brazilian and Peruvian governments reiterated several of their concerns, along the lines of those expressed in the GAC Early Warning, and urged that the GAC advise ICANN against allowing the applications for .AMAZON to proceed. Several other countries – including South Africa, Sri Lanka, Trinidad and Tobago, Russia, China, Argentina, and Thailand – voiced their support for the position expressed by Brazil and Peru, and no country stated opposition to that position. At the conclusion of the plenary meeting, GAC Chair Dryden found consensus in support of the objection on Amazon’s applications:

So I am now asking you in the committee whether there are any objections to a GAC consensus objection on the applications for dot Amazon, which would include their IDN equivalents. I see none. Would anyone like to make any comments on the string dot Amazon. I see none. Okay. So it is decided...

Complainant Exhibit C-40 is a transcript of the GAC Open Plenary session, dated 16 July 2013.

35. In the GAC Durban Communiqué, issued two days later, the GAC presented its advice on .AMAZON (and the two equivalents) to the ICANN Board:

The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications: The application for .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) (Citation omitted).

Accompanying Exhibit R-22 is the GAC Communiqué – Durban, South Africa, dated 18 July 2013.

36. ICANN also conducted a Public Forum at the Durban Meeting, where members of the public could make presentations to the Board. During the forum, which was held on 18 July 2013, several speakers commented on the GAC’s advice regarding .AMAZON. Stacy King, Corporate Counsel for Amazon, spoke on behalf of Amazon, and stated that “We disagree with these recommendations and object to the material changes to the rules. If this board ignores the guidebook and accepts these recommendations, you will be allowing fundamental changes to the very nature and value of this multistakeholder process.” Heather Forrest, the expert for Amazon in the current IRP proceedings, presented the results of her study on the states’ rights with respect to geographic names, in which she found that “there is not support in international law for priority or exclusive right of states in geographic names and found that there is support in international law for the right of non-state others in geographic names.” *See* Transcript of the Durban – ICANN Public Forum (18 July 2013), Complainant Ex. C-42.

37. On 23 August 2013, Amazon submitted to the ICANN Board a GAC Advice Response Form in response to the GAC Durban Communiqué. Amazon’s response was 20 pages long and included six exhibits, for a total of 316 pages of material. Amazon argued that “the GAC Advice as it relates to the AMAZON Applications should be rejected because it (1) is inconsistent with international law; (2) would have discriminatory impacts that conflict directly with ICANN’s Governing Documents; and (3) contravenes policy recommendations implemented within the [Guidebook] achieved by international consensus over many years” (Citations omitted). Amazon also requested that “**the NGPC obtain, before it considers the GAC Advice against the AMAZON Applications, independent expert advice on the**

protection of geographic names in international law generally and the violations of relevant principles of international law and applicable conventions and local law represented by the GAC Advice.” Accompanying Exhibit R-23 is Amazon’s GAC Advice Response Form for Applicants, dated 23 August 2013 (emphasis supplied).

38. Consistent with Amazon’s request in bold above, the NGPC “commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.” Accompanying Exhibit R-24 is ANNEX 1 to ICANN NGPC Resolution No. 2014.02.05.NG01: GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates.

39. The expert chosen was Jérôme Passa, a professor at the Université Panthéon-Assas (in Paris). Professor Passa was asked to opine whether on “legal grounds in the field of intellectual property law relating, in particular, to the rules of international law or fundamental principles, ICANN would be **bound**: to assign the new gTLD in question to its applicant, or, to the contrary, to refuse to assign it” (Emphasis in original). Professor Passa concluded that there was “no rule of international, or even regional or national, law applicable in the field of geographical indications” that obliged ICANN to either accept or reject Amazon’s gTLD application for .AMAZON. Complainant Exhibit C-48 is the Expert Report of Professor Jérôme Passa, dated 31 March 2014.

40. On 14 April 2014, in a letter addressed to the ICANN Board, Amazon expressed agreement with Professor Passa’s “core conclusions” which, as Amazon then purported to explain at length, compelled a finding that: “(1) Existing law on sovereign rights and geographical indications does not support blocking .AMAZON, and (2) Granting .AMAZON would not prejudice the objecting governments as they may still represent the Amazonia region

through future geographical gTLDs” (Citations omitted). *See* Amazon’s Response to M. Passa’s Expert Report on .AMAZON (and related IDN’s), Ex. R-25.

41. In addition to commissioning Professor Passa’s report, the NGPC extensively discussed the issues presented by the GAC advice on .AMAZON (together with the two equivalent strings) during the period after the GAC Durban Communiqué was issued in July 2013 and before the NGPC adopted the GAC’s advice in May 2014. Indeed, the .AMAZON string was discussed during six NGPC meetings during this time. *See* NGPC Minutes (10 Sep 2013), Ex. R-26; NGPC Minutes (28 Sep. 2013), Ex. R-27; NGPC Minutes (9 Jan. 2014), Ex. R-28; NGPC Minutes (5 Feb. 2014), Ex. R-29; NGPC Minutes (22 Mar. 2014), Ex. R-30; NGPC Minutes (29 Apr. 2014), Ex. R-31.

42. After these extensive deliberations, on 14 May 2014, the NGPC accepted the GAC’s advice and decided that the applications for .AMAZON and its Chinese and Japanese equivalents would not proceed. In reaching its decision, the NGPC noted that, “[a]s part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice... and the NGPC has considered [Amazon’s] response as part of its deliberations on the GAC advice.” The NGPC also considered the findings of Professor Passa, as well as correspondence from Amazon and several interested governments. The NGPC also identified numerous other documents – including the Guidebook, the GAC Early Warning on .AMAZON, and several GAC Communiqués – that it consulted, and were instrumental, in reaching its decision. The NGPC accepted the GAC’s advice:

The action being approved today is to accept the GAC’s advice to the ICANN Board contained in the GAC’s Durban Communiqué stating that it is the consensus of the GAC that the applications for .AMAZON [and related IDNs] should not proceed. The New gTLD Applicant Guidebook (AGB) provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved.”

(AGB § 3.1) To implement this advice, the NGPC is directing the ICANN President and CEO (or his designee) that the applications for .AMAZON [and related IDNs] filed by Amazon EU S.à r.l. should not proceed.

Complainant Exhibit C-54 is NGPC Approved Resolutions, dated 14 May 2014.

43. On 29 May 2014, Amazon filed a Reconsideration Request concerning the NCPC's acceptance of the GAC advice in the Durban Communiqué. Amazon alleged that, in passing Resolution 2014.05.14.NG03, "the NGPC (1) disregarded material information, (2) relied on false and inaccurate material information, (3) failed to take material action, and (4) took action in violation of GNSO-created policy and ICANN's own Articles of Incorporation, Bylaws and Affirmation of Commitments." Complainant Exhibit C-59 is Amazon's Request for Reconsideration, dated 29 May 2014. After considering Amazon's Reconsideration Request and its supporting exhibits – including the Passa report – the Board Governance Committee (BGC) concluded, based on an extensive analysis, that Amazon had not stated a proper basis for reconsideration. *See* Recommendation of the Board Governance Committee (BGC) on Reconsideration Request 14-27, Complainant Ex. C-65. The NGPC then considered the issues raised in Reconsideration Request 14-27 and accepted the BGC's recommendation that Reconsideration Request 14-27 be denied. Complainant Exhibit C-68 is the NGPC Approved Resolutions, dated 8 September 2014.

I affirm that the foregoing is true and correct to the best of my knowledge. Dated April 13, 2016.


Akram Atallah

CLAIMANT’S EXHIBITS CITED IN THE
WITNESS STATEMENT OF AKRAM ATALLAH AND
CLAIMANT’S REQUEST FOR INDEPENDENT REVIEW PROCESS

C-3	26 June 2008	Adopted Board Resolutions – Paris
C-13	5 March 2011	Email from P. Dengate Thrush to H. Dryden
C-20	4 June 2012	gTLD Applicant Guidebook (Version 2012-06-04)
C-22	20 Nov. 2012	GAC Early Warning – Submittal Amazon-BR-PE-58086
C-30	10 May 2013	GAC Advice Response Form for Applicants – Applicant Name: Amazon EU S.à.r.l.
C-34	July 2013	U.S. Statement on Geographic Names in Advance of ICANN Durban Meeting
C-35	4 July 2013	Letter from S. King to H. Dryden
C-39	13 July 2013	Statement on “.amazon” and other strings containing geographic names – 47 th ICANN GAC Durban Meeting
C-40	16 July 2013	DURBAN – GAC Open Plenary 4
C-42	18 July 2013	ICANN Durban Public Forum Transcript, Comments of Keith Drazek, Chair of the Registries Stakeholder Group
C-48	31 March 2014	Independent Report of Jerome Passa
C-54	14 May 2014	Approved Resolutions – Meeting of the New gTLD Program Committee
C-59	29 May 2014	Reconsideration Request for Decision of August 21, 2013 Materially Affecting Amazon EU S.à.r.l.
C-64	30 July 2014	ICANN Bylaws (amended 30 July 2014)
C-65	22 Aug. 2014	Recommendation of the Board Governance Committee (BGC) Reconsideration Request 14-27
C-68	8 Sept. 2014	Approved Resolutions – Meeting of the New gTLD Program Committee [Request 14-27]
CLA-1	2 Mar. 2015	<i>Booking.com v. ICANN</i> , ICDR Case No. 50-20-1400-0247, Final Declaration.
CLA-4	9 Oct. 2015	<i>Vistaprint Ltd. v. ICANN</i> , ICDR Case No. 01-14-0000-6505, Final Declaration.