



2 August 2014

To the attention of the members of the
ICANN New gTLD Program Committee; and the
ICANN Board Governance Committee
Contact Information Redacted

By e-mail: Contact Information Redacted

Re: Request for Reconsideration 14-27

Dear Members of the BGC,

Reference is made to your email of 26 July 2014, requesting clarification about the false and inaccurate information that the New gTLD Program Committee (NGPC) relied upon in passing resolution 2014.05.14.NG03 (related to Amazon's gTLD applications).

At the outset, we note that it is not possible for Amazon to know precisely what was considered, reviewed or relied upon by the NGPC because certain proceedings that were critical to the resolution of Amazon's gTLD applications were not open to the public and because ICANN staff have denied, without an appropriate basis, Amazon's request for disclosure of information related to the NGPC decision (see Request 14-35). As a result, Amazon reserves the right to raise newly discovered false statements in this and other future proceedings.

As explained in more detail in Request 14-27, Amazon was able to identify the following false or inaccurate material on which the NGPC has relied, based on publicly available information:

1. The NGPC relied¹ on the false premise that the consensus rationale for the GAC's Durban Advice is contained in the GAC's Early Warning of 20 November 2012. The rationale provided in the Early Warning reflects only the concerns of several governments and cannot be interpreted as the rationale of all members of the GAC.²
2. The 11 April 2014 letter from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru) misstates that the term 'Amazon' is recognized as a geographic location by ISO codification as set forth in the Applicant Guidebook.

In addition, and perhaps more critically, Peru not only misinformed the ICANN Board members in its letter of 11 April, but also misrepresented to the GAC as a whole the

¹ The NGPC's decision to reject Amazon's applications are claimed to be based upon a review of a number of documents as listed in the NGPC's 14 May 2014 Resolution on the GAC Advice on .AMAZON (and related IDNs). Each of the documents set forth in this response are included in that list. (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en>)

² As noted in Amazon's Request 14-27 the United States specifically objected to the same rationale set forth in the GAC's Early Warning, which indicates there is clearly different rationale for the GAC's *consensus* Durban Advice. From the record, the NGPC does not appear to have independently sought this consensus rationale as to the GAC Durban Advice prior to making its decision.

existence of the term “Amazon” on the ISO 3166-2 list just prior to the GAC consensus vote in Durban. Indeed, the GAC representative for Peru stated to the GAC: “[Amazon] has been allotted the three-digit code number. So it is in that 3166-2 list.” (<http://durban47.icann.org/meetings/durban2013/transcript-gac-plenary-16jul13-en.pdf>.) This statement was false and it was not contradicted before the issue was put to vote.

3. The 14 April 2014 letter from Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Brazil) and Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Brazil) claims “*that all steps prescribed in the gTLD Applicant Guidebook in order to object the Amazon EU S.à.r.l.’s application for the .amazon generic top level domain, including the holding of bilateral consultations with representatives of the said company, have been timely taken by Brazil and Peru, on behalf of the member States of the [Organización del Tratado de Cooperación Amazónica (‘OTCA’)]*”.

This claim is inaccurate. The Durban GAC Objection was not raised in due time by Brazil or Peru on behalf of the OTCA or otherwise.

In addition, Amazon notes that Amazon did meet in good faith with representatives of various member States of the Amazónica region in an attempt to resolve their differences, however these meetings are not “prescribed” by the Applicant Guidebook (AGB). Section 2.2.1.4.2 of the AGB only prescribes such meetings for names defined in that section, which as noted .amazon and the .amazon IDNs are not. All meetings the parties took part in were voluntarily conducted in an attempt to resolve the parties’ differences; and all attempts by Amazon to provide alternative resolutions were rejected by the member States of the Amazónica region at each of these meetings.

Finally, we note that the AGB specifically provides governments with the right to file a community objection against any application. Argentina, for example, filed a community objection against the .patagonia application. None of the governments of the member States of the Amazónica region filed a community objection to .amazon or the .amazon IDN applications.

Other Inaccurate Information Provided to the NGPC

In addition to the false or inaccurate information described above, the NGPC also based its decision upon the faulty premise that the statements in the GAC’s Durban Communique should be considered timely consensus GAC Objection Advice, as defined in Module 3.1 Part I of the Applicant Guidebook.

In fact, the Applicant Guidebook states that “[t]o be considered by the Board during the evaluation process, the GAC Advice on new gTLDs must be submitted by the close of the objection filing period.” (Applicant Guidebook § 1.1.2.7, § 3.1).

The GAC’s Durban Communique was submitted after the 13 March 2013 close of the objection filing period for the Amazon gTLD applications. Thus, the NGPC’s conclusion that the GAC’s Durban Communique was timely consensus GAC Objection Advice that it could consider in the evaluation of Amazon’s gTLD applications under the terms of the Applicant Guidebook was

incorrect.

After the Durban Communique – but before the NGPC’s decision – Amazon explicitly requested the opportunity (orally and in writing) to meet with the NGPC and present its position (including the issues discussed above). (<http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf>). It is Amazon’s understanding that this request was specifically denied by ICANN Staff and/or the NGPC. We believe that, had Amazon been afforded the opportunity to present its position to the NGPC, the false and inaccurate information and faulty premises upon which the NGPC relied could have been clarified before the NGPC decision.

We hope this clarifies Request 14-27 and trust that we will soon receive a positive response to our request.

Sincerely yours,

A handwritten signature in black ink that reads "Flip Petillion". The signature is written in a cursive, slightly slanted style.

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted