

Our ref FPE/mne/129055

Flip Petition
Contact Information Redacted

23 May 2014

To the attention of Mr. Cherine Chalaby
Chair, ICANN New gTLD Program Committee (NGPC)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

By regular mail and by e-mail: didp@icann.org

DIDP Request

Dear Sir,

Pursuant to ICANN's Documentary Information Disclosure Policy (DIDP), I hereby request on behalf of Amazon EU S.à.r.l. ('Amazon') the documents described below.

Relevant Background

Amazon is the applicant for the new gTLDs .AMAZON (application ID 1-1315-58086), .アマゾン (application ID 1-1318-83995) and .亚马逊 (application ID 1-1318-5591) (collectively, the 'Amazon Applications') among others. On 14 May 2014, the NGPC approved resolution 2014.05.14.NG03, deciding that the Amazon Applications should not proceed (hereinafter, the 'Decision').

The rationale for the Decision states that the NGPC considered several significant factors and that the NGPC had to balance the competing interests of each factor to arrive at a decision. The NGPC listed a selection of factors that it found to be significant. However, it is not apparent how the NGPC balanced the competing interests and what other factors the NGPC found to be significant. In addition, the NGPC itself notes that its decision is based on the advice of the GAC, an ICANN-created advisory committee.

Information Requested

Accordingly, Amazon respectfully requests that ICANN produce all documents directly and indirectly relating to (1) the balance of the competing interests of each factor and (2) the GAC's advice in relation to the Amazon Applications, including but not limited to:

1. All communications between individual members of ICANN's Board and GAC representatives or other government officials acting as GAC representatives directly or indirectly relating to any of the Amazon Applications;

2. All communications between ICANN's Board and the GAC directly or indirectly relating to any of the Amazon Applications;
3. All communications between individual members of ICANN's Board and ICANN's Staff directly or indirectly relating to any of the Amazon Applications;
4. All communications between individual members of ICANN's Staff directly or indirectly relating to any of the Amazon Applications;
5. All communications between individual members of ICANN's Board directly or indirectly relating to any of the Amazon Applications;
6. All communications between individual members of ICANN Staff and the Independent Expert M. Jerome Passa directly or indirectly relating to any of the Amazon Applications;
7. All communications between individual members of ICANN Staff and/or the ICANN Board and the Independent Objector M. Alain Pellet directly or indirectly relating to any of the Amazon Applications;
8. All communications between individual members of ICANN Staff and the Independent Objector M. Alain Pellet directly or indirectly relating to ICANN policies around conflicts of interest and/or M. Pellet's ongoing representation of governments;
9. All GAC deliberations from behind closed doors directly or indirectly relating to any of the Amazon Applications;
10. All GAC communications, including but not limited to a GAC vote on whether or not the GAC could obtain consensus against any of the Amazon Applications during the April 2013 ICANN meeting in Beijing;
11. All GAC communications, including but not limited to the GAC's inability to obtain consensus against any of the Amazon Applications during the April 2013 ICANN Meeting in Beijing;
12. All GAC communications, including but not limited to communications directly or indirectly relating to the decision to hold another vote on the Amazon Applications during the April 2013 ICANN Meeting in Durban;
13. All GAC communications directly or indirectly relating to the decision to make the GAC deliberations during the April 2013 ICANN Meeting in Beijing closed;
14. All GAC communications directly or indirectly relating to the Amazon Applications between the April 2013 ICANN Meeting in Beijing and the July 2013 ICANN Meeting in Durban.

The information requested herein is not publicly available, and is therefore a proper subject for a DIDP Request.

The information does not meet any of the defined conditions for nondisclosure:

- The information was not provided by or to a government or international organization. At most, it was provided by a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization. The GAC itself is not a government or international organization, but an advisory committee set up under ICANN. Their communications in relation to the Amazon Applications as well as communications by other government officials in relation to the Amazon Applications are not sensitive to governments, but relate to whether or not a public resource – the applied-for gTLDs in the DNS – should be allocated. As this decision has an impact on applicants, the concerned applicants have a right to know how the Decision was made;

- The information is not likely to compromise the integrity of ICANN's deliberative or decision-making process. Indeed, ICANN is required by its Articles of Incorporation and Bylaws to "operate to the maximum extent feasible in an open and transparent manner", including by "employing open and transparent policy development mechanisms" and "making decisions by applying documented policies neutrally and objectively". Without full transparency about the Decision that was taken outside the scope of any established policy, ICANN would seriously compromise the integrity of its deliberative or decision-making process. Disclosing the requested information can only improve ICANN's deliberative and decision-making process. As a result, there can be no justification for refusing to publish the requested documents;
- The information is not likely to compromise the integrity of the deliberative or decision-making process between ICANN and its constituencies or other entities, for the same reasons as noted above;
- The information is unrelated to any personnel, medical, contractual, remuneration, or similar records;
- The information is not likely to impermissibly prejudice any parties' commercial, financial, or competitive interests. Additionally, to the extent that any requested document contains such information, and the information is unrelated to the Amazon Applications (for example, any financial or contract information related to consulting services), such information can be redacted before the publication of the documents;
- The information is not confidential business information or internal policies or procedures;
- The information will not endanger the life, health, or safety of any individual nor prejudice the administration of justice;
- The information is not subject to attorney-client privilege;
- The information is not drafts of communications;
- The information is not related in any way to the security or stability of the Internet;
- The information is not trade secrets or financial information;
- The information request is reasonable, not excessive or overly burdensome, compliance is feasible, and there is no abuse.

Finally, to the extent any of the information does fall into one of the defined conditions for non-disclosure, ICANN should nonetheless disclose the information, as the public interest in disclosing the information outweighs any harm that might be caused by disclosure. Indeed, there can be no harm from disclosing the information, as the ICANN community is entitled to know the standards by which ICANN (together with any consultants) makes decisions that determine what new gTLDs will be added to the Internet. ICANN's transparency obligation, described by ICANN's own Bylaws and Articles of Incorporation, require publication of information related to the process, facts, and analysis used by (individual members of) the NGPC in making the Decision.

Moreover, unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies. Additionally, future applicants will have no reliable guidance for determining if an application which meets all criteria set forth in the multistakeholder created

policy will not be subjected to discretionary powers that the ICANN Board assigns to itself, which will result in significant waste of money and time in the submission of applications with no fair chance of success.

Conclusion

In short, because there is no "compelling reason for confidentiality" and numerous compelling reasons for publication, and because publication is required by ICANN's own Bylaws and Articles of Incorporation, Amazon urges the publication of the requested information, including in particular the specific documents described above

Yours sincerely,



Flip Petillion
Crowell & Moring LLP
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