

# **Annex 1.**

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# Approved Resolutions | Meeting of the New gTLD Program Committee

14 May 2014

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## 1. Consent Agenda:

### a. Approval of Minutes

Resolved (2014.05.14.NG01), the [ICANN Board New gTLD Program Committee \(NGPC\)](#) approves the minutes of the 22 March, 26 March and 3-4 April 2014 [NGPC meetings](#)

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## Buenos Aires, and Singapore GAC Advice

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the GAC met during the ICANN 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013 and 5 February 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, and new advice in the Singapore Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.05.14.NG02), the NGPC adopts the scorecard titled "GAC Advice (Beijing, Durban, Buenos Aires and Singapore): Actions and Updates" (14 May 2014), attached as [Annex 1](#) [PDF, 448 KB] to this Resolution, in response to open items of Beijing, Durban, Buenos Aires and Singapore GAC advice as presented in the scorecard.

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either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, and its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014). The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing, Durban, and Buenos Aires advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its Singapore Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, and Buenos Aires GAC advice, and new items of advice from Singapore as described in the scorecard in [Annex 1](#) [PDF, 448 KB] , dated 14 May 2014.

As part of its consideration of the GAC advice, ICANN posted the GAC advice on its website and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>, the Durban GAC advice was posted on 1 August 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>, the Buenos Aires GAC advice was posted on 11 December 2013, and the Singapore advice was posted on 11 April 2014. The complete set of applicant

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NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The NGPC has considered applicant responses in addition to the community feedback in formulating its response to the remaining items of GAC advice.

As part of its deliberations, the NGPC reviewed various materials, including, but not limited to, the following materials and documents:

- GAC Beijing Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130718.pdf?version=1&modificationDate=1375787122000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB]
- GAC Durban Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130717.pdf?version=1&modificationDate=1374215119858&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2) [PDF, 104 KB]
- GAC Buenos Aires Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB]
- GAC Singapore Communiqué (as amended):  
[https://gacweb.icann.org/download/attachments/27132037/GAC\\_Amended\\_Communique\\_Singapore\\_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2](https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2) [PDF, 147 KB]
- Applicant responses to GAC advice:  
<http://newgtlds.icann.org/en/applicants/gac-advice/>

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In adopting its response to remaining items of Beijing, Durban, and Buenos Aires GAC advice, and the new Singapore advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in a manner that permits the greatest possible number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué and officially notified applicants of the advice on 11 April 2014. The Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

b. GAC Advice on .AMAZON (and related IDNs)

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC advised the ICANN Board in its Durban Communiqué that the GAC reached "consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications: [t]he 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)." This item of GAC

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2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.05.14.NG03), the NGPC accepts the GAC advice identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon, and directs the President and CEO, or his designee, that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5581) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

### Rationale for Resolution 2014.05.14.NG03

The NGPC's action today, addressing open items of GAC advice concerning .AMAZON (and related IDNs in Japanese and Chinese), is part of the ICANN Board's role to address advice put to it by the Governmental Advisory Committee (GAC). Article XI, Section 2.1 of the ICANN Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to "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." The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

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

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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 (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5581) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, including Amazon EU S.à r.l. (the applicant for .AMAZON (and related IDNs)), triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Amazon's response to the Board is provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/>, and the NGPC has considered this response as part of its deliberations on the GAC advice. In its response to the Board, Amazon asserted that the GAC advice should be rejected because: (1) it is inconsistent with international law; (2) the acceptance of GAC advice would be non-transparent and discriminatory, which conflicts with ICANN's governing documents; and (3) the GAC Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

The NGPC previously decided to further study and analyze the issues raised by the applicant and the GAC advice, and in a recent iteration of the [GAC-NGPC Scorecard](#) [PDF, 371 KB] adopted by the NGPC on 5 February 2014 noted that "ICANN has 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 treatv

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property law to address the specific issues of application of law at issue. Among other things, the Expert Analysis considers whether the consensus advice issued by the GAC is of such nature as to oblige ICANN to reject the application filed by Amazon, or to the contrary, whether the rules and principles cited by Amazon in its response of 23 August 2013 to the GAC's advice oblige ICANN to approve the applications for .AMAZON (and related IDNs). The Expert Analysis concludes the following:

*As regards the application for assignment of the new gTLD '.amazon' filed by the Amazon company:*

*i) there is no rule of international, or even regional or national, law applicable in the field of geographical indications which obliges ICANN to reject the application;*

*ii) there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN to accept this application.*

The Expert Analysis, which was considered as part of the NGPC's deliberations in adopting this resolution, was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the Expert Analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

In response to the 7 April 2014 communication to the GAC and Amazon, ICANN received related correspondence, including the following, which were considered as part of the NGPC's action:

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the NGPC reject the applications for .AMAZON. The letter comments on the Expert Analysis and requests that the NGPC reject the applications for .AMAZON.

- [Letter](#) dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil). The letter reiterates Brazil's objection to the applications for .AMAZON.
- [Letter](#) dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the Expert Analysis and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

The NGPC considered several significant factors during its deliberations about how to address the [GAC](#) advice concerning .AMAZON (and related [IDNs](#)). The NGPC had to balance the competing interests of each factor to arrive at a decision. The concerns raised by the relevant parties highlight the difficulty of the issue. In addition to the factors highlighted above, the following are among the factors the NGPC found to be significant:

- Although the NGPC does not have the benefit of the rationale relied upon by the [GAC](#) in issuing its consensus advice in the Durban Communiqué on the applications for .AMAZON (and related [IDNs](#)), the NGPC considered the reason/rationale provided in the [GAC Early Warning](#) [PDF, 79 KB] submitted on behalf of the governments of Brazil and Peru on 20 November 2012 expressing concern regarding Amazon's application for the .AMAZON [gTLD](#). In the Early Warning, the concerned governments indicated that among other reasons, it was requesting that Amazon withdraw its application because "[g]ranting

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hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." The Early Warning also explains that the applied-for string "matches part of the name, in English, of the 'Amazon Cooperation Treaty Organization', an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty...."

- The NGPC also considered correspondence received on the matter, and takes particular note of correspondence from Amazon dated 4 July 2013 and 3 December 2013, wherein Amazon describes its "attempts to find a mutual resolution with the Governments of Brazil and Peru" concerning the .AMAZON applications, and the public interest commitments it is willing to include as contractually enforceable provisions in the Registry Agreement. Amazon indicates that it is willing to be contractually committed to do the following:
  - *Limit the registration of culturally sensitive terms such as "Amazonia," "Amazonas," and "Amazonica" under the .AMAZON new gTLD to OTCA [Organização do Tratado de Cooperação Amazônica's] and its Member Governments.*
  - *Continue to engage in good faith discussions with the OTCA and its member governments to identify any other existing terms of specific cultural sensitivity.*
  - *Present a Memorandum of Understanding to ICANN setting out Amazon's non-objection to any future application filed by the OTCA and/or its Member Governments for the terms ".AMAZONIA", ".AMAZONAS", or ".AMAZONICA".*
- The NGPC considered the community-developed

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individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism."

As part of its deliberations, the NGPC's review of significant materials included, but is not limited to the following, letters, materials and documents:

- GAC Early Warning:  
<https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000&api=v2> [PDF, 79 KB]
- GAC Beijing Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130718.pdf?version=1&modificationDate=1375787122000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB]
- GAC Durban Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/Final\\_GAC\\_Communique\\_Durban\\_20130717.pdf?version=1&modificationDate=1374215119858&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2) [PDF, 104 KB]
- GAC Buenos Aires Communiqué:  
[https://gacweb.icann.org/download/attachments/27132037/FINAL\\_Buenos\\_Aires\\_GAC\\_Communique\\_20131120.pdf?version=1&modificationDate=1385055905332&api=v2](https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB]
- GAC Singapore Communiqué (Amended):  
<https://gacweb.icann.org/download/attachments>

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- Applicant Guidebook, Module 3:  
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 261 KB]
- Applicant responses to GAC advice:  
<http://newgtlds.icann.org/en/applicants/gac-advice/>
- [Letter](#) [PDF, 94 KB] dated 3 March 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) [PDF, 68 KB] dated 4 July 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) [PDF, 465 KB] dated 4 October 2013 from Mr. Ernesto H.F. Araújo (Chargé D' Affaires, a.i., Brazilian Embassy).
- [Letter](#) dated 3 December 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) dated 24 December 2013 from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru).
- [Letter](#) [PDF, 72 KB] dated 10 January 2014 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) dated 3 March 2014 from Mr. Fernando Rojas SamanéZ (Vice Minister of Foreign Affairs, Peru).
- [Letter](#) [PDF, 459 KB] dated 25 March 2014 from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization).
- [Letter](#) [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas SamanéZ (Vice Minister of Foreign Affairs, Peru).
- [Letter](#) dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director Department of Scientific

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Republic of Brazil).

- [Letter](#) dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon).

There are no foreseen fiscal impacts associated with the adoption of this resolution. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS. As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué and officially notified applicants of the advice. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Additionally, as noted above, the Expert Analysis was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

c. **Perceived Inconsistent String Confusion Objection Expert Determinations – Review Mechanism**

No resolution taken.

d. **New gTLD Auction Rules**

No resolution taken.

e. **New gTLD Program Financial Update**

Item not considered.

Published on 16 May 2014



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Agreements

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Independent Review Process

Request for Reconsideration

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RFPs

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## Help

Dispute  
Resolution

Domain Name  
Dispute  
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Name Collision

Registrar  
Problems

Whois

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Saturday, May 17 2014

In Today's Issue:

**gTLDs**

[gTLDs \(10\)](#)

**Approved Resolutions | Meeting of the New gTLD Program Committee**

Friday, May 16 2014 09:12 PM

14 May 2014 Consent Agenda Approval of Minutes Main Agenda Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice Rationale for Resolution 2014.05.14.NG02 GAC Advice on .AMAZON (and related IDNs ) Rationale for Resolution 2014.05.14....

[WHOIS \(1\)](#)

[Security & Stability \(2\)](#)

[Registrars & Registries \(3\)](#)

**desi qlp-addendum[3].pdf**

Friday, May 16 2014 08:50 PM

URL:

http://myicann.secure.force.com/SunriseAttachment?attachmentId=MDBQZDAwMDAwMEJDRkZ2RUFQ  
ParentId: a0ed0000004kpRdAAI

[Public Comment Forum \(1\)](#)

[ICANN news in your language \(10\)](#)

**Qualified Launch Program for .BAR TLD.Final.pdf**

Friday, May 16 2014 07:49 PM

URL:

http://myicann.secure.force.com/SunriseAttachment?attachmentId=MDBQZDAwMDAwMEJDRXhYRUFY  
ParentId: a0ed0000004jvxyAAA

[GNSO \(1\)](#)

[GAC \(2\)](#)

[Board \(10\)](#)

**WHOIS Online Accuracy Reporting System: Request for Proposal**

Friday, May 16 2014 07:20 PM

16 May 2014 The Internet Corporation for Assigned Names and Numbers (" ICANN ") is seeking one or

more providers to assist ICANN in the development, operation, and maintenance of the WHOIS Online Accuracy Reporting System. Every year, millions of individuals, businesses, organizati...

**These Topics  
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**Sunrise Policies.pdf**

Friday, May 16 2014 04:48 PM

URL:

<http://myicann.secure.force.com/SunriseAttachment?attachmentId=MDBQZDAwMDAwMEJDRFNRRUE1>

ParentId: a0ed0000004joW4AAI

ccTLDs

ccNSO

**ICANN publishes final Initial Evaluation result**

Friday, May 16 2014 04:38 PM

SSAC

RSSAC

**TMDB Certified Registrars List**

Friday, May 16 2014 03:58 PM

File: db-registrar-certified-16may14-en.pdf

Nominating  
Committee

**NEW CONTRACTING STATISTICS RELEASED**

Friday, May 16 2014 03:41 PM

IDNs

IANA

**Registry Launch and General Policies - 041814.docx**

Friday, May 16 2014 02:47 PM

URL:

<http://myicann.secure.force.com/SunriseAttachment?attachmentId=MDBQZDAwMDAwMEFicEhRRUEX>

ParentId: a0ed0000004mTTbAAM

ASO

ALAC

**startup-info-form-17nov13-en.pdf**

Friday, May 16 2014 02:47 PM

URL:

<http://myicann.secure.force.com/SunriseAttachment?attachmentId=MDBQZDAwMDAwMEFicEIKRUEX>

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**WHOIS**

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**WHOIS Online Accuracy Reporting System: Request for Proposal**

Friday, May 16 2014 07:20 PM

16 May 2014 The Internet Corporation for Assigned Names and Numbers (" ICANN ") is seeking one or more providers to assist ICANN in the development, operation, and maintenance of the WHOIS Online Accuracy Reporting System. Every year, millions of individuals, businesses, organizati...

**Security & Stability**

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### **Approved Resolutions | Meeting of the New gTLD Program Committee**

Friday, May 16 2014 09:12 PM

14 May 2014 Consent Agenda Approval of Minutes Main Agenda Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice Rationale for Resolution 2014.05.14.NG02 GAC Advice on .AMAZON (and related IDNs ) Rationale for Resolution 2014.05.14....

### **Minutes | Regular Meeting of the New gTLD Program Committee**

Thursday, May 15 2014 10:55 PM

22 March 2014 Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations s...

### **Registrars & Registries**

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#### **TMDB Certified Registrars List**

Friday, May 16 2014 03:58 PM

File: db-registrar-certified-16may14-en.pdf

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Thursday, May 15 2014 10:55 PM

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### **Public Comment Forum**

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#### **FY15 Draft Operating Plan and Budget**

Friday, May 16 2014 05:58 PM

Comment / Reply Periods (\*) Comment Open Date: 8 May 2014 Comment Close Date: 29 May 2014 - 23:59 UTC Reply Open Date: 30 May 2014 Reply Close Date: 1 July 2014 - 23:59 UTC Important Information Links Public Comment A...

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**Annex 1 to Meeting of the New gTLD Program Committee Resolution 2014.05.14.NG02 | GAC Advice Scorecard**

Friday, May 16 2014 09:09 PM

16 May 2014 resolutions-new-gtld-annex-1-14may14-en [PDF, 448kB]

**BGC Recommendation on Reconsideration Request 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 14-21, 14-22, 14-24, 14-25, and 14-26**

Friday, May 16 2014 08:45 PM

14 May 2014 recommendation-european-commission-et-al-14may14-en [PDF, 235kB]

**WHOIS Online Accuracy Reporting System: Request for Proposal**

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**Report of Public Comments | Preliminary Issue Report on Access by IGOs and INGOs to the Curative Rights Protections of the UDRP and URS**

Friday, May 16 2014 04:12 PM

16 May 2014 report-comments-igo-ingo-crp-prelim-16may14-en [PDF, 91kB]

**xn--hxt814e Registry Agreement**

Friday, May 16 2014 02:20 PM

15 May 2014 On 15 May 2014, ICANN and Zodiac Libra Limited entered into a Registry Agreement under which Zodiac Libra Limited operates the xn--hxt814e top-level domain. The agreement may be viewed by following the links below: Registry Agreement DOCX | Redline PDF | Re...

**Alternate Path to Delegation Report for xn--hxt814e**

Friday, May 16 2014 02:18 PM

12 November 2013 Eligibility for Alternate Path to Delegation TLD "xn--hxt814e" is eligible for the

Alternate Path to Delegation as described in the ICANN New gTLD Collision Occurrence Management plan. [ 1 ] Second Level Domains (SLDs) A total of 2 unique applicable SLDs were d...

**cancerresearch Registry Agreement**

Friday, May 16 2014 01:36 PM

15 May 2014 On 15 May 2014, ICANN and Australian Cancer Research Foundation entered into a Registry Agreement under which Australian Cancer Research Foundation operates the .cancerresearch top-level domain. The agreement may be viewed by following the links below: Registry A...

**Alternate Path to Delegation Report for .cancerresearch**

Friday, May 16 2014 01:35 PM

12 November 2013 Eligibility for Alternate Path to Delegation TLD "cancerresearch" is eligible for the Alternate Path to Delegation as described in the ICANN New gTLD Collision Occurrence Management plan. [ 1 ] Second Level Domains (SLDs) A total of 28 unique applicable SLDs we...

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**GNSO**

**Minutes | Regular Meeting of the New gTLD Program Committee**

Thursday, May 15 2014 10:55 PM

22 March 2014 Note: On 10 April 2012, the Board established the New gTLD Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD Program. The Committee was granted all of the powers of the Board (subject to the limitations s...

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**GAC**

**Approved Resolutions | Meeting of the New gTLD Program Committee**

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**Board**

**Approved Resolutions | Meeting of the New gTLD Program Committee**

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**BGC Recommendation on Reconsideration Request 14-13, 14-14, 14-15, 14-16, 14-17, 14-18, 14-19, 14-20, 14-21, 14-22, 14-24, 14-25, and 14-26**

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**Board Briefing Materials | 22 March 2014**

Thursday, May 15 2014 10:52 PM

22 March 2014 briefing-materials-8-22mar14-en [PDF, 9756kB]

**Board Briefing Materials | 22 March 2014**

Thursday, May 15 2014 10:46 PM

22 March 2014 briefing-materials-7-22mar14-en [PDF, 7290kB]

**Board Briefing Materials | 22 March 2014**

Thursday, May 15 2014 10:43 PM

22 March 2014 briefing-materials-6-22mar14-en [PDF, 3261kB]

**Board Briefing Materials | 22 March 2014**

Thursday, May 15 2014 10:41 PM

22 March 2014 briefing-materials-5-22mar14-en [PDF, 10372kB]

**Board Briefing Materials | 22 March 2014**

Thursday, May 15 2014 10:30 PM

22 March 2014 briefing-materials-4-22mar14-en [PDF, 15570kB]

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# **Annex 3.**

## GAC Early Warning – Submittal Amazon-BR-PE-58086

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Application ID:	1-1315-58086
Entity/Applicant Name:	Amazon EU S.à r.l.
String:	AMAZON
Early Warning Issue Date:	20 November 2012

### Early Warning Description – This will be posted publicly:

#### GAC Member(s) to indicate a description of the Early Warning being filed

On behalf of the **Governments of Brazil and Peru**, we would like to express our concern regarding the application for the generic top-level domain (gTLD) “.AMAZON” by the private company "Amazon EU S.à.r.l.", a subsidiary of “Amazon.com Inc.”

### Reason/Rationale for the Warning – This will be posted publicly:

#### GAC Member(s) to indicate the reason and rationale for the Early Warning being filed.

The Amazon region constitutes an important part of the territory of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, due to its extensive biodiversity and incalculable natural resources. Granting 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. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region.

In addition, this gTLD string requested by "Amazon EU S.à.r.l." matches part of the name, in English, of the “Amazon Cooperation Treaty Organization”, an international 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, and expedites the execution of its decisions through its Permanent Secretariat.

It should also be noted that the application for the “.AMAZON” gTLD has not received support from the governments of the countries in which the Amazon region is located. **Therefore, the Governments of Brazil and Peru (GAC Members), with full endorsement of Bolivia, Ecuador and Guyana (Amazonic non-GAC members) and also of the Government of Argentina**, would like to request that the “.AMAZON”

## GAC Early Warning – Submittal Amazon-BR-PE-58086

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gTLD application be included in the GAC early warning process.

### Possible Remediation steps for Applicant – This will be posted publicly:

#### GAC Member(s) to identify possible remediation steps to be taken by the applicant

- The applicant should withdraw their application based on the information provided above

### Further Notes from GAC Member(s) (Optional) – This will be posted publicly:

#### Further Notes from Peru

The Amazon region is also universally recognized by the rich biodiversity of the Amazon River. Born in Peru, the Amazon river is the largest in the world and before flowing into the Atlantic Ocean runs a distance of 5890 km, of which 2969 km runs in the Peruvian territory. In recognition of its importance, the Amazon has been declared one of the “Seven Wonders of Nature”, as can be seen on the following URL: <http://nature.n7w.com/?lang=es>

Regarding the “Amazon Cooperation Treaty Organization”, it should be noted that its main purpose is to promote the harmonious development of the Amazon while incorporating the countries’ Amazonian territories to their respective national economies, an essential condition for reconciling economic growth with environmental preservation.

The peruvian Amazon region comprises 61% of the total territory of Peru. The Amazon territory’s importance for Peru is reflected in the various international cooperation programs such as PNUMA, in the lively Peru's participation in international environmental forums, and the permanent measures of the government of Peru in favor of sustainable development in the region Amazon trough 36 natural protected areas and all the development programs with social inclusion of its population.

Also, in Peru one of our Regions has the Amazon name. For more information you can visit the following web page: <http://www.regionamazonas.gob.pe/sede/>

### **Further Note from Brazil**

The principle of protection of 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, is hereby registered with reference to the denomination in English of the Amazon region, but should not be limited to it. Rather, it shall be, in name of the public interest, applied by Brazil to possible future or existing applications in other languages, including IDN applications.

## **INFORMATION FOR APPLICANTS**

### **About GAC Early Warning**

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs or of a formal objection at a later stage in the process. Refer to section 1.1.2.4 of the Applicant Guidebook (<http://newgtlds.icann.org/en/applicants/agb>) for more information on GAC Early Warning.

### **Instructions if you receive the Early Warning**

**ICANN strongly encourages you work with relevant parties as soon as possible to address the concerns voiced in the GAC Early Warning.**

#### **Asking questions about your GAC Early Warning**

If you have questions or need clarification about your GAC Early Warning, please contact [gacearlywarning@gac.icann.org](mailto:gacearlywarning@gac.icann.org). As highlighted above, ICANN strongly encourages you to contact [gacearlywarning@gac.icann.org](mailto:gacearlywarning@gac.icann.org) as soon as practicable regarding the issues identified in the Early Warning.

#### **Continuing with your application**

If you choose to continue with the application, then the “Applicant’s Response” section below should be completed. In this section, you should notify the GAC of intended actions, including the expected completion date. This completed form should then be sent to [gacearlywarning@gac.icann.org](mailto:gacearlywarning@gac.icann.org). If your remediation steps involve submitting requests for changes to your application, see the change request process at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.

## GAC Early Warning – Submittal Amazon-BR-PE-58086

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In the absence of a response, ICANN will continue to process the application as submitted.

### **Withdrawing your application**

If you choose to withdraw your application within the 21-day window to be eligible for a refund of 80% of the evaluation fee (USD 148,000), please follow the withdrawal process published at <http://newgtlds.icann.org/en/applicants/customer-service/withdrawal-refund>. Note that an application can still be withdrawn after the 21-day time period; however, the available refund amount is reduced. See section 1.5 of the Applicant Guidebook.

**For questions please contact: [gacearlywarning@gac.icann.org](mailto:gacearlywarning@gac.icann.org)**

### **Applicant Response:**

# **Annex 4.**

# ICANN 47 DURBAN – PUBLIC FORUM TRANSCRIPT (EXCERPTS)

18 July 2013

STEVE DeBIANCO:

Hi. Steve DelBianco for the business constituency, and it's a request for the board.

The BC really appreciated the opportunity you gave to the community to comment on ICANN's response to GAC advice, but -- and there's always a "but," right? -- but we were not asked for public comment on how the board will respond to the non-safeguard portions of the GAC advice coming out of Beijing. It was just the safeguards that were open to the public.

We request that opportunity. And we'd also want to comment on any board responses that you're preparing for advice that's going to come out from here in Durban.

Your response to the GAC covers some incredibly complex issues that have broad implications.

For example, the BC thought that the singular/plural contention decision was incomprehensible and we also felt that your reply to GAC advice was incomprehensible because your main justification for sticking with the panels was the worry of setting a precedent for second-guessing panels.

But your decision creates an even crazier precedent, the precedent that applicants in the next round could suggest plural forms of any existing TLD.





established under international frameworks, including binding international treaties, must be recognized.

By adhering to these established principles, ICANN will ensure its decisions advance the global public interest in the introduction of new gTLDs. INTA remains available to consult with ICANN on these important issues. Thank you.

[ Applause ]

J. SCOTT EVANS:

Yes. My name is J. Scott Evans. I'm from Yahoo!. I'm a board member and an officer of the International Trademark Association. I am also a founding member of the IPC, a current member of the business constituency, and a founding member of the Brand Registry Group.

I have two issues I'd like to talk to the board about today.

First, I would like to agree with Claudio and his statement. It was my understanding and the understanding of my organizations, both here and outside of ICANN, that the role of the Governmental Advisory Committee is to look at the laws that exist in our world today that the governments have years together, in working cooperatively and through treaties and negotiated their national laws and international laws, and provide you with advice based on those precepts as they exist.

There is no international recognition of country names as protection and they cannot trump trademark rights.

So giving countries a block on a name violates international law, so you can't do it.

Now, if they want to object under the community objection process and



bring their claim and have it looked at under the law as it exists, that's correct. But a blanket prohibition from a mark like dot amazon that has trademark registrations from the very countries that are objecting, that own all the second-level domains in the country code top-level domain from those very countries, is wrong and I believe it sets a very dangerous precedent.

Second issue. And I've talked to Cherine about this and the only reason I'm bringing this up in the public forum is because I want the entire board to hear this.

Marilyn asked when the study on dotless domains is going to be out. Well, it was actually issued 18 months ago. It's SSAC53. And it says it will be terrible for stability and security of the Internet.

So when an applicant amended their application to seek to have a dotless domain, my technical people looked at it and said, "Well, ICANN's already looked at this issue and they say it's a bad thing."

[ Timer sound ]

J. SCOTT EVANS:

So my question is: Why are we having a second study?

Because when I have to sit down with people who run billion-dollar businesses, they don't think that looks credible and it starts to make you all look like you don't have any credibility. So I just warn you.

Thank you.

STACEY KING:

Hi. My name is Stacey King and I stand here today on behalf of Amazon and our millions of customers worldwide.



Amazon's vision is to be the earth's most customer-centric company, a place where people can come to find and discover anything they may want to buy online.

Like all online companies, the way our customers find us is through the Internet.

One of our goals in applying for dot amazon is to find new and innovative ways, mechanisms, and platforms, to surprise and delight our customers.

From 2007 to 2011, the GAC, the board, and the community negotiated rules for this process.

Many of us remember these debates. They were difficult discussions and no one got everything they wanted.

But the result of these discussions was the applicant guidebook. This is how the multistakeholder model works.

That process produced several categories of geographic names that either could not be applied for, such as dot brazil, or required government support.

Dot amazon did not and still does not appear in either of these categories.

Prior to filing our applications, Amazon carefully reviewed the applicant guidebook. We followed the rules.

You are now being asked to significantly and retroactively modify these rules. That would undermine what had been hard-won international consensus to the detriment of all stakeholders.



Applications at issue are for our company name, an amazon brand, for which we have trademark registrations in over 125 countries worldwide. Even after submitting our application, we tried in good faith to negotiate, meeting in person, by video teleconference, making several offers for resolution including reserving names such as amazonas, amazonia and OTCA coexisting with future dot amazonia or dot amazonas. We were told each time to either withdraw or change our company name.

[ Timer sounds ]

Under the rules after an objection was (audio problem) in Beijing and failed, our application should have moved forward. Instead without any support in the rules, our application was subjected to a second objection three months later.

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.

KRISTINA ROSETTE:

Kristina Rosette on behalf of Patagonia Inc., which everyone knows withdrew its application last week and here's why. Patagonia is deeply disappointed by and concerned about the breakdown of the new gTLD process. Consistent with the recommendations and principles established in connection with that process, Patagonia fully expected its dot patagonia application to be evaluated against transparent and predictable criteria, fully available to applicants prior to the initiation of the process.

Yet, its experience demonstrates the ease with which one stakeholder



can jettison rules previously agreed upon after an extensive and thorough consultation.

In particular, the definition of geographic names which the GAC formally accepted in its May 26, 2000 letter to the board as well as the GAC's February 2011 recognition that dot brand gTLD strings that also have geographic connotations should not be excluded but should be subject to requirements and safeguards agreed upon by the applicant and the concerned government.

Moreover, as of last week, Patagonia's best information which was obtained through a reliable and informed source was that the ICANN board would almost certainly adopt any GAC consensus advice that the dot patagonia application should not proceed regardless of its stated intention to create a predictable, repeatable process for the evaluation of new gTLD applications.

Patagonia is gravely concerned about the precedence implicitly established throughout this process, precedence that call into question the viability of the multistakeholder model, that make clear that conflict of interest rules and principles do not apply to the ICANN-created and hired independent objector and that threaten trademark rights owned by thousands of entities globally.

If Patagonia had had any inkling that the process would unfold as it did, it would never have applied for dot patagonia in the first place. Instead, the thousands of personnel hours --

[ Timer sounds ]

-- and hundreds of thousands of dollars spent preparing and defending its application would have been put to productive use in support of its



mission statement: Build the best product, cause no unnecessary harm, use business to inspire and implement solutions to the environmental crisis. Thank you.

[ Applause ]

HEATHER FORREST:

Good afternoon. My name is Heather Forrest. I am a senior lecturer at the Australian Catholic University in the faculty of law. At the time the board commenced or voted in 2008 to commence the new gTLD program, I commenced a doctoral thesis in international law on the subject of the consistency with international law of the protection afforded by the applicant guidebook to geographic names.

My study asked two questions in particular: First, whether there was support in international law for an exclusive or priority right of states in geographic names; and, secondly, whether there was support in international law of the rights of non-state others that would disprove the exclusivity or priority of geographic names rights of states.

My study was comprehensive. I looked at international trade law, unfair competition law, intellectual property law, geographic indications, sovereign rights and human rights.

As the board approved the applicant guidebook, I completed my study and 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.



On the basis of my conclusions, I encourage the board to consider the role and value of consistency with international law in its decisions regarding geographic names. Thank you.

[ Applause ]

KIRAN MALANCHARUVIL:

Hi, my name is Kiran Malancharuvil, and I'm here representing MarkMonitor. MarkMonitor endorses gTLD applications for by dot amazon and IDN equivalents applied for by Amazon. Respectfully we ask the ICANN board to allow these applications to proceed to delegation. Furthermore, we request that the ICANN Board solicit public comment and -- on this and all other future GAC advice to encourage the community and the GAC to cooperate and communicate within the ICANN multistakeholder model and so that the Board can arrive at a reasoned and impartial decision. MarkMonitor respects the important role of the GAC and the ICANN community. However, we believe that the GAC's objection to dot amazon is not consistent with the multistakeholder decision-making process. Furthermore, this advice appears to be averse to established rights and international legal conventions. To date, governments in Latin America, including the Amazonas community countries have granted Amazon over 130 trademark registrations that have been in continuous use by Amazon since 1994 without challenge. Additionally, Amazon has used their brand within domain names including some registered by MarkMonitor and including registrations in Amazonas community ccTLDs without objection. Amazonas community countries and all other nations who have signed the TRIPs agreement have obligated themselves to maintain and protect these trademark registrations. Despite these



granted rights, members of the Amazonas community signed the Montevideo declaration in April 2013 and resolved to reject Amazon and Patagonia in any language as well as any other top-level domains referring to them. This declaration appears inconsistent with national and international law.

In conclusion, MarkMonitor urges the ICANN Board to reject GAC objections to dot amazon. We also ask the Board to seek public comment on this and future advice and to --

[ Timer sound ]

--fully analyze the potential impact that any advice may have on the ICANN model and applicable law. Thank you.

[ APPLAUSE ]

KEITH DRAZEK:

Okay. Thank you.

Good afternoon, my name is Keith Drazek. I'm here speaking in my capacity as chair of the registry stakeholder group. I'm going to read a prepared statement regarding GAC advice. From 2007 to 2011 the GAC, ICANN Board, and the community debated numerous aspects, rules, and policies around the Applicant Guidebook. None of us got everything we wanted, and all of us at times felt we were not being heard. While different stakeholders have different views about particular aspects of the GAC advice, we have a shared concern about the portions of that advice that constitute retroactive changes to the Applicant Guidebook around the issues of sovereign rights, undefined and unexplained geographic sensitivities, sensitive industry strings, regulated strings, et cetera. These changes in essence only override the rules set forth by this community but also exceed what those same



governments could do under their own national laws. GAC advice needs to be consistent with existing national and international law and the GAC should not use ICANN to create new rights or take away existing rights. ICANN should not be used by the GAC as a substitute for international treaty-based organizations like the ITU or the WTO or to regulate an industry they don't regulate at home or prohibit the use of strings that are expressly permitted within their national borders.

We respect the challenges facing the GAC. It is reasonable, however, to expect this advice will be consistent with the GAC's own principles for new gTLDs, including specifically its advice that no material changes to the Applicant Guidebook should be made after the application deadline. It is also reasonable to expect that their advice will be consistent with international law. We asked this Board to act today and in the future to protect the stakeholders before you and the people, companies, and organizations who they represent. We specifically call on you to accept the GAC advice only with respect to category 1 --

[ Timer sound ]

-- only where specific international conventions, treaties, and other legal instruments applicable in most jurisdictions regulate the implied use of such strings, and with respect to geographic names only where such names are precluded or regulated by the guidelines set forth by all of us in the multistakeholder created guidebook upon which applicants relied. At the very least we urge you to ensure that ICANN is not used to route around national and international law. Thank you.

[ Applause ]



BECKY BURR:

Thank you. Becky Burr with Neustar. I would like -- Neustar would like to associate itself, as other registries have done, with the registry stakeholder statement. But in particular, I would like to focus on the imperative for ICANN to act in accordance with the rule of law and in particular international law. Many people have stood up today and talked about trademark rights under international law. I would like to suggest to you that this is not simply a matter of trademark law and it has significant and I think very important implications for ICANN's future.

Under international -- there are international laws relating to expropriation of property and there are international laws relating to regulation of speech. The lawyers on the table are saying ah, but ICANN is not a state actor, therefore, it doesn't apply. Unfortunately, I don't -- I am not confident that is the case, and although I never disagree with Chris Disspain, the fact is that the Applicant Guidebook says that a government -- a GAC objection creates a strong presumption for the Board that the string will not be approved. So all I'm saying is the -- the strong presumption, based on government direction followed by GAC action, says to me you better be a little worried about whether those laws relating to regulation of expression and expropriation of property apply.

[ Applause ]



TIM MCGINNIS:

Thank you, sir. I'd like to thank you all, but first of all, my name is Tim McGinnis. Many of you know me. I'm with NCSG this week, and I would like to read three sentences from the NCSG statement regarding the Beijing communique.

In short, the GAC's Beijing communique is positioned not as advice but as a substitute for the policy work of the broader ICANN community.

As such, it constitutes a threat not only to the implementation of the new gTLD program but to ICANN's status as a multistakeholder policy development institution.

Unless this advice is rebuffed by the Board, ICANN undermines its supporting organizations, its policy development process, and the Applicant Guidebook, under which hundreds of companies applied for new domains.

And I'd like to add personally that I view it as a threat to the multi-equal stakeholderism that Fadi Chehade has inspired us with.

Thank you.

PETTER RINDFORTH:

Thanks. Petter Rindforth, intellectual property constituency, IPC.

The IPC greatly appreciates the role governments play in the ICANN multistakeholder model, particularly in matters where there may be an interaction between ICANN's policies and various laws and international agreements and where there may be -- may affect public policy issues. Having said that, we speak today to express concerns regarding the GAC's advice on specific geographic geo leads. The GAC's advice appears to be an effective retroactive change to the GAC position



accepting the guidebook's definition of geographic names and calling for applicant government resolution, multi applicant reaction, where brand strings have geographic connotations. The IPC believes that GAC advice on geographic geo leads should be consistent with existing national and international law. We ask the ICANN board to solicit and consider public comment on how it should address GAC's geographic gTLD-related advice in its communique. The IPC is concerned about the procedure that the GAC's advice and action regarding geographic gTLDs regarding future and current gTLD application at the second level.

Thanks.

[ Applause ]

ZAHID JAMIL:

Zahid Jamil. I'm from Domain Name Dispute Resolution Center in Pakistan, member of the BC but I'm speaking in my personal capacity. I want to make that clear.

We and local dispute resolution providers and local CCs have tried desperately to maintain open access and openness of the CC space. And at times, we have to contend with governments who tend to not just apply law but just walk in and say, We want to take this away, this away, take all these words away because we want to block them.

A friend of mine from China said the same thing. That list is even secret. In our country, blocking DNS tends to be secret. So, indirectly, I will be unfortunately -- sorry, Steve -- be mentioning something that may have impact on us which you are about to decide on one way or the other related to the GAC advice.



So when we look at the GAC advice from where we come from, we see a right. Mostly it's been about IGOs and NGOs and that's fine because it was rooted in law. It was about RPMs, again rooted in law. It was about law enforcement so it was connected to some sort of criminal law and other things, international transport access and treaties and NLATs. That makes perfect sense.

But when we look at this, it becomes difficult because when we have governments who come to us and say, Well, if ICANN is able to block X, Y and Z, why can't you in the CCs block these things also?

And our response usually is, Well, show us a law or legislate this or something. But now it seems like we may be creating a precedent or a norm of some sort that may then not only apply to the CCs, depending what we do, but maybe to the second level.

So the fight we're fighting on the ground may be impacted. So I would just like to sort of bring that to your attention.

In addition, I would also like to say that there is a reverse to the availability of domain names. Somebody talked about free expression. By not making, say, for instance, dot amazon available, guess what? Maybe one region in the world is being impacted but the rest of the world may not be able to access dot amazon. So what about their rights and emphasis as well? I want to leave it there.

[ Timer sounds ]

Thank you, Steve.

[ Applause ]



NIGEL ROBERTS:

My name is Nigel Roberts. This is non-new gTLD. It goes to the heart of what we do. I guess, therefore, it is going to be of some interest to new gTLD folks.

I found it interesting to hear, both in this session and in the one before that was specifically new gTLD, about the number of people who have been highlighting the relevance of international law. I mean, I know there's one specific thing on the table here, but I'm looking at it from a general perspective. Now I have a feeling of groundhog day here. I've been highlighting the relevance of this since San Francisco meeting with various degrees of response.

Now, I don't propose to rehearse my previous comments on this except to ask the board to consider one specific question of whether the corporation could potentially have legal liability in its home jurisdiction of California for any breaches of international law.

Now, my readings of the corporation's articles and the rationale of the Judge Schwebel in ICM against ICANN is (indiscernible.) Now, I also realize a proper answer to that question might be part of a privileged conversation you should have with your own advisors. And I don't expect to ask you that question today. The question I ask you today is whether you'll take opinion on that and, in line with your collective and individual duties to the corporation, take any mitigating action that might seem appropriate? Would you consider that?

[ END OF EXCERPTED TRANSCRIPT ]



# **Annex 5.**



PERÚ

Ministerio  
de Relaciones Exteriores

Lima, April 11, 2014

Mr. Steven D. Crocker  
Chair, ICANN Board of Directors

Dear mister Crocker:

Regarding your letter dated April 7th, in which it is attached the advice of an independent counsel, on the early warning presented by Peru and Brasil, and the negative GAC advise for the gTLD ".amazon", we would like the members of the Board to consider the following:

1. The procedure followed by Peru matches exactly ICANN's bylaws and it is grounded in sound principles of international law. ICANN shall pay due regard to the fact that an early warning by two sovereign subjects, a negative advice by the Intergovernmental Committee and a negative report by an independent objector have been duly issued and forwarded to the board according to such procedure. The Peruvian government shall clearly state that there has not been any request, contact or exchange of views between the Peruvian government and the independent objector in any stage of this procedure and that the report shall not be objected on those grounds.
2. Not sufficing the above, the Board has requested another legal report. That report however is not pertinent to this procedure. Expressly limits its scope to the provisions of applicable international intellectual property agreements. It clearly states that through the analysis, there will be "no reference to the provisions of the various regulations adopted by ICANN and their legal nature", among others, the Applicant Guidebook. Furthermore, the study purposely excludes the contents of the Applicant Guidebook, which is the only reference set up by ICANN to establish the rules for the procedure and the subsequent applicable framework. The opinion of the independent counsel solicited by ICANN to this respect, analyzes the case of ".amazon" in a setting that might be appropriate for an IPRs forum by ICANN. The Guidebook gives no authority to consider IPRs issues as paramount provisions, noting that domain names are not a subject matter ruled by IPRs.

4.- The Durban communiqué voices the opinion of the community of countries that integrate the ICANN. Such communiqué reiterates the rights of the countries to intervene in claims that include words that represent a geographical location of their own –which by the way in this case, is recognized by ISO codification – in particular when such terms evoke strategic, historical and cultural values for the eight countries of the Amazon basin and their people.

Claims based on one single element of one of the criteria established on the Guidebook which is not tantamount in the system (trademark ownership), cannot take precedence against the rest of the criteria established in the same guidebook and certainly cannot disregard public policy legitimate concerns raised by the GAC and by the community, considering the current debate regarding internet actual and future governance.

On the grounds of ICANN's regulations and multistakeholder approach, the government of Peru requests ICANN's Board to reject the application of ".amazon".

Regards,



  
Fernando Rojas Samané  
Vice Minister of Foreign Affairs