

Brasilia, 20 September 2017

Internet Corporation for Assigned Names and Numbers ("ICANN")

Attn: Dr. Stephen Crocker, Chairman of the Board; ICANN Board of Directors

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094

Dear Members of the ICANN Board,

As you are aware, on 4 August 2017, Amazon the company, in an e-mail addressed to the GAC, signed by Mr. Hayden, requested a meeting with the GAC, in the following terms:

"... we understand that a conversation has been initiated within the GAC to consider advice to the Board on this matter [i.e. on the Independent Review Panel recommendation relating to the .AMAZON applications]. Prior to the GAC making a decision on further advice regarding .amazon, we would welcome the opportunity to meet with the GAC and share our views. We believe it is vital for the GAC to hear directly from Amazon as to why we applied for .amazon, why we believe our applications should move forward, and how we intend to avoid using the TLD in a confusing manner."

On behalf of the Brazilian government, I personally expressed support for Mr. Hayden's request. (The full text of said communication is attached for your information). Following the appropriate internal consultations, the GAC accepted the request made by Amazon the company, and the GAC's Chair communicated this decision to Amazon. Time was allocated accordingly for representatives of Amazon the company to meet with the GAC at our upcoming meeting in Abu Dhabi, at ICANN 60, and this information was made known to the company's representatives. Furthermore, pending the scheduled meeting, Brazil and other interested GAC members have, in good faith, suspended further action within the GAC in relation to the .AMAZON applications, in accordance with what was asked by Amazon the company.

In that context, we are deeply concerned and surprised by the terms of the letter sent by Amazon the company, signed by Scott Hayden and Brian Huseman, to the ICANN Board of Directors, on 7 September 2017, in which it requests the Board "to immediately approve" the

.AMAZON applications. In the letter, Amazon the company also argues that "The Board should not request or consider any further GAC advice on the .AMAZON applications". That approach is deeply troubling as it is in blatant contradiction with the company's call upon the GAC – which we heeded in good faith – to postpone any action or decision relating to the .AMAZON applications until representatives from the company were given the opportunity to meet with the GAC, which will happen in late October this year.

As further elaborated in the draft advice proposed jointly with Peru for consideration of the wider GAC membership, the Brazilian government considers that reconsideration by the Board of the .AMAZON applications on the basis of the arguments used by Amazon the company could have serious and unintended consequences that go beyond recasting the opposition between the private interests of Amazon the company and the public interests of the Amazon countries, which were endorsed by and reflected the interests of the GAC as a whole. In line with paragraph 35 (a) of the Agenda for the Information Society, it is the right and duty of governments – and not of Amazon the company, nor of any panel constituted by three nationals of a single country in their individual capacity, nor even of the ICANN Board of Directors - to identify the public policy issues that may justify the Board to adopt certain decisions, or that may require the Board to explain why it decides to act contrary to them. In accordance with this fundamental principle, the 2012 Applicant Guidebook not only enables the GAC to oppose applications under the new gTLDs program "that are identified by governments to be problematic, e.g. that potentially violate national law or raise sensitivities", but it also mandates the Board to provide additional and independent rationale only for decisions NOT to follow GAC consensus advice. If the Board were, now, required to substitute the views of Governments and the GAC for its own judgment of what are the public policy issues justifying its decisions, and, on that basis, required to review every single prior decision to follow GAC advice, which some may find unsatisfactory to their very own private interests, it would be dealing a fatal blow to the multi-stakeholder governance model upon which ICANN is based.

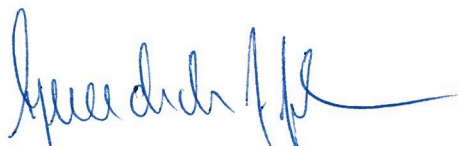
I can understand it might be a challenge for the Board to decide upon an issue that opposes the private interests of Amazon the company and the public interest as identified by the GAC. Unfortunately, however, as indicated in the attached 30 August 2017 mail, a mutually acceptable solution that satisfies both the ACTO member states and the Amazon company representatives could not be found yet. In spite of upholding the view expressed in the previous paragraph, we believe there might still be room for constructive discussion on the matter, in line with the call made by the GAC Board in its 2014 decision.

It is important to note, that the sensitivities raised by the .AMAZON applications are shared by many non-governmental stakeholders in Brazil and other Amazon countries. Let me recall that public hearings were held in Brazil on this topic back in 2013 leading to an explicit rejection of the Amazon bid by the Brazilian Senate Commission on International Affairs. Local communities also mobilized against such initiative. More recently, the multi-stakeholder Brazilian Internet Steering Committee adopted a declaration reaffirming its rejection of the .Amazon applications (see Letter from Hartmut Glaser to Steve Crocker, Published 11 August 2017, at <https://www.icann.org/en/system/files/correspondence/glaser-to-crocker-09aug17-en.pdf>).

Finally, much could be said about the IRP recommendation, but what is most striking for are the profiles of the arbitrators, which are all U.S. establishment jurists. As you are aware, one of the fundamental principles of international arbitration is that the arbitrators should not all be from the same nationality as one of the parties, if the parties are from different countries. This principle was not formally violated in the present case, since both parties are U.S. entities: ICANN and Amazon. But since the dispute concerned objections from non-US parties, it seems that fairness should have dictated that the arbitrators not be all U.S. nationals.

In sum, there are many important elements to be considered in regard to the matter at hand. In recognition of the complexities involved and convinced it is in everyone's interest to walk an extra mile to ensure any final outcome will fairly address conflicting, although legitimate views - and most importantly, uphold and strengthen the multi-stakeholder model adopted by ICANN -, Brazil would look forward to contributing to a transparent and enlightened debate.

Sincerely Yours,



Benedicto Fonseca Filho

Acting Undersecretary for Energy, Environment, Science and Technology  
Ministry of Foreign Affairs

Annex

Text of communication sent by the GAC Brazilian representative to the GAC Chair on 30 August 2017

Dear Thomas,

Thank you.

Without having had the opportunity to coordinate with the other ACTO members, I wish to inform that, in our national capacity we can agree with the Chair's proposal.

Looking back at what took place in 2013, I personally think we may have made a mistake by not allowing Amazon representatives to address the GAC at that point in time.

The arguments that can be voiced by the company's representative will reinforce Amazon's perspective which is based on their legitimate corporate interests and rely on legalistic arguments. These differ, in essence, however, from the Amazon countries's viewpoint (supported back in 2013 by the GAC wider membership) which was and remains informed by concerns of a political nature.

In other words, both perspectives have an intrinsic logic and have been pursued legitimately by the opposing sides. This was acknowledged, by the way, in various meetings held with Amazon representatives, not only in Brasilia, at the ATCO's headquarters, but also on the margins of IG meetings - which took place in an ambiance of mutual respect and mutual recognition. Unfortunately we could not find, in those meetings, a "magic formula" that could meet both sides' expectations simultaneously.

By the way, there may have been inaccuracies in arguments expressed at some point by the interested countries's representatives in GAC meetings or even in written documents, as pointed out by the IRP. However, these do not change the overall assessment of the existence of a problem of a political nature. And no one can deny that the Applicant Guidebook explicitly gave governments the prerogative to assess the existence of such political sensitivity - which, as we have expressed in our proposed GAC advice in regard to the IRP's Declaration, is an essential element to make sure governments' participation in any multistakeholder-based entity ensures the fulfillment of our roles and responsibilities.

Best regards,

Benedicto