

13 May 2020

Ambassador Alexandra Moreira
Secretary General PS/ACTO
Brazil

Dear Ambassador Alexandra Moreira

Thank you very much for your letter of January 14th. I greatly appreciate this opportunity to address some continuing misunderstandings and misconceptions about the role of the ICANN Community (including the Government Advisory Committee (GAC)), ICANN Board and ICANN Organization in the .amazon process.

One of my responsibilities, as ICANN's President and CEO, is to support the ICANN Board in taking decisions that are compliant with the ICANN Bylaws. According to the ICANN Bylaws, the role of the ICANN community is to develop policies and the role of the Board is to consider those policies for adoption.

As an individual, I understand the sensitivity of the name Amazon from the ACTO member states' perspective, but as ICANN's CEO I note that this sensitivity was not reflected by the concerned GAC members in the context of ICANN's community discussions related to the development of the Applicant Guidebook for the New gTLD Program, particularly as it relates to the protection of geographic names. The ICANN community agreed upon lists of protected names during this process. If Amazon had been included at this stage of the process that would have saved us a lot of tension and misunderstanding. Indeed, in this context the .amazon applications would have been subject to additional processes and considerations.

Because the name Amazon was not included in any lists of protected names, the ICANN Organization didn't have the opportunity to reject the relevant applications. This is why the GAC provided advice to the ICANN Board in the GAC's Durban Communiqué, asking the ICANN Board not to proceed with the .amazon applications. According to the Applicant Guidebook, GAC advice stating that a particular application should not proceed "creates a strong presumption for the ICANN Board that the application should not be approved". Following the GAC's advice, the ICANN Board directed the ICANN organization not to proceed with the delegation of the .amazon applications.

Following this ICANN Board decision, the Amazon Corporation tried, without success, to come to an agreement with ACTO member states. Ultimately, when that was not successful however, the Amazon Corporation initiated an Independent Review Process (IRP) against ICANN org challenging the validity of the ICANN Board's decision. The IRP panel agreed with the Amazon Corporation and recommended that the ICANN Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." . After the IRP panel decision in 2017 the Board asked the GAC for additional information

regarding its advice. The GAC could not provide any additional rationale to support the rejection of the application but advised the Board to continue facilitating negotiations between ACTO member states and the Amazon Corporation. At the same time (October 2017) the Amazon Corporation presented the GAC and ACTO with a new proposal which they further updated in Feb 2018. As ICANN's CEO, I firmly believe in the importance of the dialogue between the different communities. This is why, at the direction of the Board and in line with the GAC advice, I started a facilitation process to try to help the two parties to find a common agreeable solution to this issue. At that time, this initiative was welcomed by the GAC who asked the Board to continue facilitating the discussion (Abu Dhabi GAC Advice on .amazon, [1st November 2017 ICANN GAC Communiqué](#)). On 4 February 2018, the Board accepted the GAC Advice and directed me "to facilitate negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon Corporation."

This facilitation process personally led by me was a one of the top priorities of the ICANN organization for more than one year during which multiple ICANN org staff members, including several ICANN org executives, dedicated many hours. During this process, we tried to help ACTO member states and the Amazon Corporation to find a common agreeable solution. After a very promising start, reflected in several public statements made by a Brazilian Ambassador, ICANN received a letter from ACTO rejecting almost every part of the potential solution we had facilitated with the parties.

In an effort to further continue this facilitation process, I twice made myself available to travel to Bolivia and then to Brazil, based on ACTO Secretary General invitations. Both of these meetings were canceled by the ACTO Secretary General at the last moment. Then, after one year of this facilitation role, it was quite obvious than no real progress was made. In a final effort, the Board offered some additional time to both parties to find a common agreeable solution but despite these efforts the two parties failed again to find a solution. I reported this lack of progress to the Board, which determined that the efforts put into the facilitation work were concluded, and therefore at the end of October 2018 the Board directed ICANN Org to allow the .amazon applications to continue to processing. Even then the ICANN Board and ICANN Org remained committed to trying to achieve a solution. In February and March of 2019, when ICANN received letters from Brazil and Ecuador respectively asking again for more time, the Board took a resolution in March 2019 to provide ACTO and the Amazon Corporation the opportunity "to engage in a last effort that allows both parties over the next four (4) weeks to work in good faith towards a mutually acceptable solution regarding the .amazon applications and if one is reached to inform the Board of that solution by 7 April 2019." That resolution even included the possibility of a further extension if mutually requested by both ACTO and the Amazon Corporation. No such solution was presented and no mutual request for an extension was submitted.

The ICANN Board recognized the need to balance concerns of all those involved and in taking its decision, was also cognizant of the time that has lapsed since the .amazon applications were submitted in 2012 and since the Amazon Corporation prevailed in its Independent Review Process against ICANN in 2017. The ICANN Board and ICANN Org were not parties to this conflict between ACTO member states and Amazon Corporation. Both have sincerely worked to

offer an opportunity for the ACTO member states to defend their position and find a common agreeable solution with the Amazon Corporation. Despite these efforts it was not possible for the parties to find a mutually agreeable solution.

Sincerely yours,



Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)