

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

AMAZON EU S.À.R.L.,

Claimant,

v.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,

Respondent.

ICDR Case No. 01-16-0000-7056

AMAZON'S REQUEST THAT THE PANEL HEAR LIVE WITNESS TESTIMONY

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Amazon EU S.à.r.l. (“Amazon”) respectfully submits this memorandum in response to the Panel’s October 4, 2016 Scheduling Order No. 1.

INTRODUCTION

ICANN assigns generic Top-Level Domains (“TLDs”) that serve as critical controls for the worldwide system that routes communications over the Internet. In assuming that vital function, ICANN has promised in its own Articles of Incorporation and Bylaws that it will remain accountable to the Internet community and will adhere to core values including transparency, neutrality, objectivity, integrity, and fairness. Independent review by this Panel is key to ensuring that ICANN’s Board complies with its Articles and Bylaws, as well as procedures set forth in its Applicant Guidebook to create an objective and fair system for assigning TLDs. To ensure that review is effective, the Panel has authority to find facts about the Board’s decisionmaking. That independent fact-finding authority includes discretionary authority to hear live testimony and question witnesses. ICANN cannot and should not be able to require this and other Panels to accept written testimony merely asserting that the Board’s decisions were objective and fair without an opportunity to ask witnesses about those assertions.

Part I of this memorandum shows that the Panel has discretionary authority to hear live witnesses. The procedures in effect when Amazon filed the .AMAZON Applications at issue permitted witness testimony. So did the procedures in effect when Amazon initiated this Independent Review Process (“IRP”). ICANN’s argument that those procedures prohibit live witness testimony was expressly rejected in a ruling of a prior IRP panel to which this Panel should give precedential effect. Panel Declaration on the IRP Procedure, *DCA Trust v. ICANN*, ICDR Case No. 50 2013 00 1083 (Aug. 14, 2014) (“First *DCA Trust* Decl.”) (CLA-026).¹ To

¹ Citations to CLA-__ and C-__ refer to Legal Authorities and Exhibits, respectively, submitted with Amazon’s Request for Independent Review on March 1, 2016.

the extent ICANN's updated procedural rules being contemplated for future adoption are relevant, they also would give the Panel authority to hear live witnesses.

Part II of this memorandum shows that the Panel should exercise its discretion to hear witnesses in this proceeding. This proceeding raises the important issue of ICANN's independence from political pressure exerted through its Governmental Advisory Committee ("GAC"). Through the GAC, ICANN's Board receives advice from – but has promised to remain independent of – the world's governments. Based on the Board's promise to maintain independent judgment, the United States relinquished its own control over the Internet domain name system one week ago. The ability to question witnesses would help the Panel determine whether the Board was improperly swayed by governmental pressure in denying the .AMAZON Applications. Two prior IRP panels have found such procedures useful in similar circumstances.

Further, ICANN has failed in its initial written response to the complaint to provide a rationale for denying the .AMAZON Applications other than ICANN's decision to follow the GAC's advice. ICANN's sole witness has given only cursory explanations of the GAC's advice and of the ICANN Board's rationale for accepting it. The Panel should have the opportunity to ask follow-up questions. That is especially so because the Panel's decision will set an important precedent for disputes about governmental objections to "geographic" names. Hearing witnesses will help the Panel produce a higher-quality decision that provides better guidance to ICANN and to future panels. Finally, the time and costs required for live testimony will be limited because the Panel members are located in Los Angeles, as is ICANN's sole named witness. Amazon will bear the costs of bringing its own witnesses. Considerations of time and cost thus present no barrier to live testimony.

ARGUMENT

I. The Panel Has Authority To Hear Witnesses

The authority of the Panel is grounded in Article IV of ICANN's Bylaws. At the time that Amazon filed the .AMAZON Applications in April 2012, the Bylaws² described the IRP process as a safeguard for holding ICANN "accountable . . . for operating in a manner that is consistent with these Bylaws, and with due regard for [its] core values." 2012 Bylaws, art. IV, § 1. Those core values include not only "[r]emaining accountable to the Internet community" but also principles of transparency, neutrality, objectivity, integrity, and fairness. *Id.*, art. I, §2(7)-(8), (10). The Bylaws authorize ICANN to adopt procedures for IRP proceedings, *see id.* art. IV, § 3, but the procedures must be "consistent with" the authorizing provisions of the Bylaws. As the Panel has recognized, the applicable procedural rules are the ICDR's International Dispute Resolution Procedures ("ICDR Procedures"), as augmented by ICANN's Supplementary Procedures. Scheduling Order No. 1, ¶ 5 (Oct. 4, 2016).

The ICDR Procedures give the Panel broad procedural discretion: "[T]he arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case." ICDR Procedures, art. 20, ¶ 1. They also authorize "[t]he tribunal [to] determine the manner in which witnesses are examined," *id.*, art. 23, ¶ 3, and specifically contemplate that the Panel may receive "written statements signed by" the witnesses and "may require any witness to appear at a hearing," *id.*, art. 23, ¶ 4.³

² Bylaws for Internet Corporation for Assigned Names and Numbers (Mar. 16, 2012) (excerpt attached as Ex. 1) ("2012 Bylaws").

³ The quotations above appear both in the 2010 version of the ICDR Procedures, in effect when Amazon filed the .AMAZON Applications, and in the current 2014 version.

In April 2012, ICANN’s Supplementary Procedures⁴ did not address live witness testimony. Instead, the version of the rules in force at that time stated simply that panels “should conduct . . . proceedings by electronic means to the extent feasible” and, “[w]here necessary . . . may conduct telephone conferences.” 2011 Supplementary Procedures ¶ 4. ICANN’s Bylaws likewise did not address the issue of live witness testimony. *See* 2012 Bylaws, art. IV, § 3. In April 2013, one year after Amazon submitted the .AMAZON Applications, ICANN amended its Bylaws to limit telephonic or in-person hearings to “argument only.” 2013 Bylaws, art. IV, § 3(12).⁵ The sole reason given for the change was “[t]o keep the costs and burdens of independent review as low as possible.” *Id.* ICANN also at that time amended the Supplementary Procedures⁶ to state:

In the extraordinary event that an in-person hearing is deemed necessary by the panel presiding over the IRP proceeding . . . the in-person hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.

2013 Supplementary Procedures ¶ 4. The 2013 Supplementary Procedures state that they “govern” in cases of “inconsistency” with the ICDR Rules and that they apply to all IRP proceedings filed after their effective date. 2013 Supplementary Procedures § 2. ICANN neither

⁴ Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (2011) (attached as Ex. 2) (“2011 Supplementary Procedures”).

⁵ Bylaws for Internet Corporation for Assigned Names and Numbers (Apr. 11, 2013), (excerpt attached as Ex. 3) (“2013 Bylaws”).

⁶ Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (apparently effective Apr. 11, 2013) (attached as Ex. 4) (“2013 Supplementary Procedures”). Exhibit 4 is undated but bears a 2011 copyright notice from the American Arbitration Association. In the brief that ICANN filed regarding procedural issues in *DCA Trust*, ICANN represented to the *DCA Trust* panel that these procedures went into effect on the same day the 2013 Bylaws took effect, April 11, 2013. ICANN’s Memorandum Regarding Procedural Issues at 2-3, *DCA Trust* (filed May 5, 2014) (excerpt attached as Ex. 5).

sought nor received consent to the 2013 amendments from parties (like Amazon) with pending applications that could be affected. The provisions defining the purposes of the IRP as holding ICANN accountable and ensuring that it adheres to its core values remained unchanged. *See* 2013 Bylaws, art. IV, § 1 (Ex. 3).

ICANN has recently amended its Bylaws again, with an effective date of October 1, 2016.⁷ The amended Bylaws delete the “argument only” provision added in 2013. They also contemplate new rules of procedure, which are still being drafted. 2016 Bylaws, art. I, § 4.3(n)(i) (Ex. 6). The new rules of procedure are to “be informed by international arbitration norms and consistent with the Purposes of the IRP,” *id.* §4.3(n)(ii); must “ensure fundamental fairness and due process,” *id.* § 4.3(n)(iv); and must permit IRP panels to “conduct an objective, de novo examination,” *id.* § 4.3(i); and to “make findings of fact,” *id.* § 4.3(i)(i). The Purposes of the IRP (a defined term) include “[e]nsur[ing] that ICANN . . . complies with its Articles of Incorporation and Bylaws,” ensuring “that ICANN is accountable to . . . Claimants,” and “reduc[ing] Disputes by creating precedent.” *Id.* § 4.3(a)(i)-(vi). Although the new procedures are still in draft form, the most recent public version of them would expressly give panels discretion to require live witness testimony.⁸

Thus, the Panel has discretion to hear live testimony and permit cross-examination of witnesses under all of the procedural regimes that may be relevant here. The 2011-2012

⁷ Bylaws for Internet Corporation for Assigned Names and Numbers (Oct. 1, 2016) (excerpt attached as Ex. 6) (“2016 Bylaws”).

⁸ Versions of the draft procedures would, consistent with the amended Bylaws provisions cited above, permit an IRP panel to hear from witnesses if “considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of witness cross examination.” Draft IRP Updated Supplemental Procedures at 7 (Aug. 22, 2016) (attached as Ex. 7). The quoted provision is from what appears to be the most recent public draft. *See* <https://community.icann.org/display/WEIA/WP-IOT+-+IRP+Implementation+Oversight+Team>.

procedures in effect when Amazon filed the .AMAZON Applications do not restrict the Panel’s authority to order live witness testimony. Neither do the 2016 Bylaws effective October 1, 2016 or the draft procedures that will likely be in effect soon. Although the 2013 procedures in effect when Amazon filed its IRP complaint contain language purporting to restrict hearings to “argument only,” a previous IRP panel considered and rejected in the *DCA Trust* proceeding⁹ ICANN’s position that this language prohibits live witness testimony.

In *DCA Trust*, as here, ICANN argued that the 2013 Supplementary Procedures gave IRP panels no discretion to hear live witness testimony.¹⁰ The *DCA Trust* panel reasoned generally that the Supplementary Procedures did not

override[] the general and broad powers that Articles 16 and 36 of the ICDR Rules confer upon the Panel to interpret and determine the manner in which the IRP proceedings are to be conducted and to assure that each party is given a fair opportunity to present its case.

First *DCA Trust* Decl. ¶ 50 (CLA-026); *see also id.* ¶¶ 46-47 (construing the Supplementary Procedures as “add[ing] to” the Panel’s existing authority). It reasoned specifically that provisions that “appear to limit both telephonic and in-person hearings to ‘argument only’ . . . [are] fundamentally inconsistent with the requirements in ICANN’s Bylaws for accountability and for decision making with objectivity and fairness”; that “ICANN should not be allowed to rely on written statements of [its] officers and employees attesting to the propriety of their actions without an appropriate opportunity in the IRP process for *DCA Trust* to challenge and test the veracity of such statements”; and therefore that the panel had discretion “to order an in-person hearing and live testimony.” *Id.* ¶¶ 84-86.

⁹ Decl. on IRP Procedure, *DCA Trust* (CLA-026); Third Decl. on IRP Procedure, *DCA Trust* (Apr. 20, 2015) (“Third *DCA Trust* Decl.”) (attached as Ex. 8).

¹⁰ *See* ICANN’s Memorandum Regarding Procedural Issues at 7-11, *DCA Trust* (excerpt attached as Ex. 5).

In a later decision, the *DCA Trust* panel reaffirmed those conclusions, reasoning that without “the ability to fact find and make enquiries concerning [ICANN’s] actions” and to “ask the questions it needs to, in the manner it needs to or considers fair, just and appropriate in the circumstances,” it could not carry out its responsibilities under the Bylaws. *See Third DCA Trust Decl.* ¶ 24 (Ex. 8).¹¹ It also emphasized the special importance of independent panel fact-finding in light of ICANN’s practice of requiring gTLD applicants to submit a waiver of the right to judicial review of ICANN’s actions ““in court or any other judicial fora,”” *id.* ¶ 15 (capitalization omitted) (quoting ICANN Guidebook), which purports to make the IRP “the only and ultimate ‘accountability’ remedy for an applicant,” *id.*¹² Ultimately, as discussed below in Part II, the *DCA Trust* panel did consider live witness testimony and found that testimony helpful – indeed, key – to its decision.

Thus, assuming for argument’s sake that the Panel should look strictly to the 2013 Bylaws and Supplementary Procedures, it should apply them as construed in *DCA Trust*. The 2013 Bylaws confirm that IRP panel decisions have precedential effect. *See* 2013 Bylaws art. IV, § 3(21) (“The declarations of the IRP panel . . . are final and have precedential value.”); *see also* 2016 Bylaws, § 4.3(a)(vi) (IRP decisions “creat[e] precedent”). ICANN’s later removal of the “argument only” provision from the 2016 Bylaws further reinforces the *DCA Trust* panel’s conclusion that excluding the possibility of live witness testimony and cross-examination is inconsistent with IRPs’ fundamental goals of accountability, objectivity, and fairness. ICANN’s

¹¹ *See also* Third *DCA Trust Decl.* ¶ 26 (Ex. 8) (“The Panel is also of the view that any attempt by ICANN in this case to prevent it from carrying out its independent review of ICANN Board’s actions in the manner that the Panel considers appropriate under the circumstances deprives the accountability and review process set out in the Bylaws of any meaning.”).

¹² Amazon does not concede that this waiver is enforceable and in filing this IRP has reserved its right to challenge the waiver. The *DCA Trust* panel also noted that it was assuming (rather than deciding) that the waiver was enforceable. *See id.* ¶ 15.

Domain Name System responsibilities are too important and the opportunity for governmental overreach is too great to deprive the Panel (which, according to ICANN, is the sole independent check on its Board's decisionmaking) of procedures it finds necessary or appropriate.

II. The Panel Should Exercise Its Authority To Hear Witnesses in This Case

The question before this Panel is whether ICANN's Board complied with its Articles, Bylaws, and Applicant Guidebook in refusing to allow the .AMAZON Applications to proceed. Answering that question will require the Panel to decide some or all of three subsidiary questions, each of which will require it to exercise its independent fact-finding authority.

First, the Panel will be asked to determine whether ICANN's Board improperly deferred to the GAC's advice to block a TLD application in light of the GAC's failure to offer any consensus reasoning for that advice. *See, e.g.*, C-054 at 10 (resolution conceding that ICANN's Board's committee did "not have the benefit of the rationale relied upon by the GAC in issuing its consensus advice"). Amazon contends that the GAC must give policy reasons for advice; that ICANN's Board must evaluate those reasons independently before deferring to the GAC; and that neither of those things happened here. Evaluating those contentions will require the Panel to find facts about what the Board determined and why.

Second, the Panel will be asked to determine whether reasons for opposing the .AMAZON Applications given by individual GAC members such as Brazil and Peru – which, although never adopted by the GAC as a whole, were quoted by ICANN's Board – are consistent with the Articles, Bylaws, and Guidebook. Amazon contends that ICANN has treated "Amazon" as a geographic name and that doing so was inconsistent with the defined Guidebook process for evaluating whether proposed names are geographic. Evaluating those contentions will require the Panel to find facts about whether ICANN indeed treated "Amazon" as a geographic name.

Third, the Panel will be asked to determine whether ICANN’s Board exercised due diligence to find out the relevant facts about the .AMAZON Applications. Amazon contends that the record before the Board contained no evidence that the .AMAZON Applications would harm the people of the Amazonas region; that ICANN’s own experts agreed that there would be no such harm; and that the Board could not reasonably or fairly accept unsupported allegations to the contrary. Evaluating those contentions will require the Panel to find facts about the content of the record before ICANN’s Board when it made its decision.

Earlier IRP panels considering similar issues have determined that they needed to hear live witnesses. In *DCA Trust*, for example, claimant DotConnectAfrica Trust (“DCA Trust”) sought to register the name .AFRICA. DCA Trust filed its application in March 2012, just one month before Amazon filed the .AMAZON Applications in April 2012. Final *DCA Trust Decl.* ¶ 3.¹³ The GAC, led by several African countries, issued advice opposing the .AFRICA application in April 2013, at the GAC meeting before the meeting where the GAC issued advice against the .AMAZON Applications. *Id.* ¶¶ 88, 106. DCA Trust, like Amazon, alleged that the GAC advice had been issued in response to political pressure by countries themselves seeking to control .AFRICA, and that ICANN’s Board had uncritically accepted the GAC’s advice without adequately investigating whether it had any legitimate basis. *See id.* ¶¶ 78-85.

After concluding that it had authority to hear and question witnesses, *see supra* pp. 6-7, the *DCA Trust* panel asked ICANN to bring its witnesses to the hearing, including Heather Dryden. Ms. Dryden was the GAC Chair both when the GAC issued advice against DCA Trust’s application and when, just one meeting later, it issued advice against the .AMAZON Applications. As the panel summarized her testimony, Ms. Dryden “acknowledged . . . that the

¹³ Final Decl., *DCA Trust* (July 9, 2015) (“Final *DCA Trust Decl.*”) (CLA-002).

GAC did not act with transparency or in a manner designed to insure fairness,” and that “the GAC made its decision without providing any rationale and primarily based on politics and not on potential violations of national laws and sensitivities.” *Id.* ¶¶ 102, 104. Those findings were key to the panel’s ultimate determination that ICANN’s Board had failed to comply with its Articles of Incorporation and Bylaws. *See id.* ¶¶ 113-115. Such findings would not have been possible if the panel had merely relied on Ms. Dryden’s witness statement, which contained mere generalities about the Guidebook criteria for GAC advice. *See id.* ¶ 110.¹⁴

Similarly, an earlier IRP panel in a case involving a TLD intended to be used for adult entertainment (.XXX) held a five-day hearing with live witnesses where the principal issue involved interactions between the GAC and ICANN’s Board. *See ICM Registry v. ICANN*, Declaration of Independent Review, No. 50 117 T 0024 08 (Feb. 19, 2010) (CLA-003). The panel in that case heard live testimony from ICANN President Paul Twomey, ICANN Board Chair Vinton Cerf, and Evaluations Panel Chair Elizabeth Williams, which showed among other things that the Board bowed to political pressure from the GAC in rejecting the .XXX application. *Id.* ¶¶ 63-64, 68 (ICM’s contentions relying on Twomey and Cerf’s hearing testimony); *id.* ¶¶ 146-149 (citing hearing testimony of Dr. Williams). Careful consideration of that testimony led the *ICM Registry* panel to conclude that in its treatment of the .XXX application ICANN’s Board had failed to act “consistent[ly] with the application of neutral,

¹⁴ *See Final DCA Trust Decl.* ¶ 110, at 49-50 (CLA-002) (“ARBITRATOR KESSEDJIAN: These are the exact words, actually, that you use in your declaration in terms of why there could be an objection . . . to a specific applicant. And you use three criteria: problematic, potentially violating national law, and raise sensitivities. Now, I’d like you . . . to explain precisely, as concrete as you can be, what those three concepts – how those three concepts translate in the DCA case. . . . THE WITNESS: That is what the witness statement says, but the link to the GAC and the role that I played in terms of the GAC discussion did not involve me interpreting those three things. In fact, the GAC did not provide rationale for the consensus objection.”).

objective and fair documented policy.” *Id.* ¶ 152. In a later assessment of the *ICM Registry* proceeding, Professor Jack Goldsmith, who had served as an expert witness for ICM, has stated that he has “no doubt that ICM would not have been able to convince the IRP of the unfairness of the ICANN process surrounding .XXX without the ability to cross-examine ICANN witnesses with documents.”¹⁵

The present case, like *DCA Trust* and *ICM Registry*, involves governmental pressure on ICANN’s Board applied by the GAC. Indeed, the same actors were involved in *DCA Trust* as here – although here, unlike in *DCA Trust*, ICANN has chosen not to provide any written testimony from Ms. Dryden, the GAC Chair during the relevant actions. Moreover, critical parts of the GAC’s and ICANN Board’s processes were conducted behind closed doors, increasing the difficulty of identifying any efforts the Board made to find the relevant facts. Accordingly, Amazon requests that the Panel invite all witnesses whose testimony has been offered in written form to be made available to answer questions from the Panel, and if the Panel finds it appropriate, to answer questions from counsel. The witnesses identified to date are:

1. Akram Atallah, then-Interim President and Chief Executive Officer of ICANN. Mr. Atallah works for ICANN which is based in Los Angeles; according to his LinkedIn biography, Mr. Atallah lives in the “Greater Los Angeles Area.” See <https://www.linkedin.com/in/akram-atallah-4ba817>. His written testimony asserts that five countries (not the GAC) issued a joint statement that “.AMAZON is ‘a geographic name’” and that ICANN conducted “extensive

¹⁵ Memorandum from Jack Goldsmith Re: ICANN Independent Review Process at 6 (July 29, 2010) (attached as Ex. 9). Professor Goldsmith’s memorandum contains disclaimers that it represents “off-the-cuff” reflections meant to “spark thought and reflection” and should not be quoted. *Id.* at 1. Amazon quotes it regardless because it is one of very few available first-hand sources concerning the importance of live witness testimony in IRP proceedings. The memorandum is publicly available at <https://cyber.harvard.edu/pubrelease/icann/pdfs/Jack%20Goldsmith%20on%20ICANN-final.pdf>.

deliberations” leading it to accept the GAC’s advice. Witness Statement of Akram Atallah ¶¶ 33, 42. The Panel and Amazon should have the opportunity to ask Mr. Atallah (a) about the substantive content of those deliberations (which he does not otherwise describe); (b) how (or even whether) the Board concluded that the view of certain GAC members that .AMAZON is a geographic name consistent with the Applicant Guidebook; and (c) whether ICANN’s Board had any reason other than politics for accepting the GAC’s advice. Without cross-examination, the Panel would be faced with an untenable choice between taking Mr. Atallah’s conclusory assertions at face value or rejecting them entirely as untested hearsay. Neither alternative would truly fulfill the Panel’s mandate to provide independent, impartial oversight of ICANN.

2. Dr. Heather Forrest, Associate Professor at the University of Tasmania in Australia and a Vice Chair of ICANN’s Generic Names Supporting Organization Council. Dr. Forrest wrote her Ph.D. thesis on the issue of governmental rights in geographic names, and has provided written expert testimony that, to the extent any GAC members understood that .AMAZON is a geographic name under the Applicant Guidebook or international law, they were incorrect. Given the complexity of these subjects, the Panel will likely find it useful to question her about the Guidebook or about relevant principles of international law.

3. Scott Hayden, Vice President and Associate General Counsel for Intellectual Property of Amazon.com, Inc. Mr. Hayden’s written testimony explained that Amazon has heavily invested in the use of its name throughout the world and has been allowed to register its name as a trademark more than 1,800 times in over 170 countries, and that there will be no effect on the Amazonas region if Amazon is allowed to use its name with different punctuation (.AMAZON versus AMAZON.COM). Those factors go to the strength of Amazon’s interests supporting the .AMAZON Applications, which the Board should have balanced objectively and fairly. Mr.

Hayden can also answer questions about Amazon's proposals to Brazil and Peru that would have facilitated their using strings such as .AMAZONIA, .AMAZONICA, or .AMAZONAS – names that reflect terms actually used to describe the geographic region in question by its residents.¹⁶

As previously stated during the September 30, 2016 conference, Amazon expects that if the Panel allows these witnesses to appear live, the hearing can be completed in two days. If, as in the *DCA Trust* case, the Panel members do most of the questioning of witnesses, the Panel itself will control the length of the hearing.

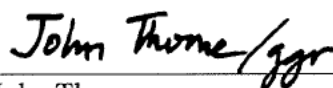
¹⁶ The parties or the Panel may also identify additional relevant witnesses after documents are exchanged. The Bylaws permit the Panel to “[r]equest additional written submissions from the Claimant or from other parties.” 2016 Bylaws § 4.3(o)(ii); *see also* 2013 Bylaws, art. IV, § 3(11)(b); 2012 Bylaws, art. IV, § 3(8)(a). For example, important information about the GAC's advice against and ICANN's consideration of the .AMAZON Applications may be in the possession of two witnesses whose testimony ICANN has not presented: Fadi Chehadé, who was the President and CEO of ICANN at the time that ICANN rejected the .AMAZON Applications and was a member of the New gTLD Program Committee; and Ms. Dryden, who (as explained above) was the chair of the GAC at the relevant time. Amazon is informed and believes that Mr. Chehadé personally participated in discussions with representatives of Brazil and Peru about the .AMAZON Applications at the time of ICANN's decision. Based on Ms. Dryden's testimony in *DCA Trust*, she appears uniquely situated to explain the GAC's deliberative process (or lack of such a process) and reasoning (or lack of reasoning). Amazon respectfully suggests that the Panel accept further submissions as to whether it should request potential testimony from additional witnesses such as Mr. Chehadé or Ms. Dryden once document discovery is complete. A final list of witnesses could be discussed by the parties and proposed to the Panel as part of the agreed upon statement of issues that the Panel requested from the parties. *See* Scheduling Order No. 1, ¶ 10(f).

CONCLUSION

The Panel should declare that it has discretionary authority to hear live witness testimony, including cross-examination and questioning of witnesses by Panel members, and that it will exercise its discretion to do so in this case.

October 10, 2016

Respectfully submitted,



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