
MONTREAL – GAC: Updates on Current Issues (.Amazon)
Sunday, November 3, 2019 - 10:30 to 12:00 EDT
ICANN66 | Montréal, Canada

MANAL ISMAIL, GAC CHAIR: So welcome back everyone. We are now starting our session on .amazon. It's a 45 minute session, and we are already a few minutes late, so I'll hand over directly to Laurent please to start with a factual presentation and then we will open the floor for discussion and for statements by countries, so Laurent please over to you.

LAURENT FERRALI: Thank you very much, Manal. Laurent Ferrali government engagement for the record. I will give you a short overview of the .amazon process and the last -- and the last updates since ICANN65 meeting. Next slide please. Thank you. So as you know I mean the .amazon process stopped in 2020 -- at 2012 and at this time we had 3 application from Amazon corporation. .amazon on two versions of the word Amazon. We had 2 different GAC advice, one in Beijing during ICANN 46 and another one in Durban during ICANN 47. The one in -- I mean the GAC advice from... is an important one because I mean the GAC advice the Board -- the application should not proceed, so it was -- it was the real

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beginning of this .amazon process. I mean, the .amazon was mentioned in the GAC 46, GAC 46 GAC communique but it was I mean Amazon a lot of different strings, so we can keep in mind just ICANN 47 for the moment. So then the GAC -- the Board took a decision. The back accepted the GAC advice and during ICANN to proceed with the .amazon applications. More than one year after the Board decision, the Amazon corporation submitted a proposal to the Amazon corporation... organization member states, the idea was to try to find a solution that benefit both parties.

At that time this proposal was rejected by actor member states. Then Amazon corporation filed an independent review process, it's in March 2016. Next slide please. And in July 2017 the IRP panel gave its final declaration, it's decision, and the core of the decision was that the Board, the NGPC failed in its due to independently evaluate and determine whether valid merit-based public policy interest existed supporting the GAC's consensus advice. In a nutshell it means to the Board was not able to reject or decide to proceed with the .amazon application on the basis of the GAC advice. It was not enough as rationale for the Board decision. And the panel recommend the ICANN Board... the .amazon application as well. It was in 2017 July. Thank you. Next slide. Just right after the IRP final declaration, the Board ask the Board if the Board -- the GAC, sorry, has any information to

provide to the Board as it relates to the merits based public policy reasons. Again, the idea was to try to have a rationale to confirm the Board decision related to the .amazon applications. And any other new or additional information to provide to the Board. The idea was to provide the rationale. The Board was asking the GAC if the GAC was able to provide any rationale that could help the Board to reject the .amazon application. In October 2017 again during the Abu Dhabi meeting the GAC advised the ICANN Board to continue facilitating negotiation between the Amazon corporation treaty organization. Member states and the Amazon corporation with a view to reaching a mutually-acceptable solution to allow for the use of the .amazon as a top level domain. So we had you remember that we had this ICANN GAC advice in Durban with very, with this wording asking the Board to do -- to proceed with the .amazon application, and now we have this wording in the ICANN 60 GAC communique.

I know some GAC members are thinking that the ICANN GAC advice from Durban is still valid, but I mean, I'm not sure that the wording of the 2 GAC advice are compatible. On February 2018 the ICANN Board accepted this advice, and tasked the ICANN.org with supporting the Amazon corporation, and ACTO member states in negotiating a solution. Idea was to support the negotiation between the 2 parties. Regarding the requests from the GAC -- from the Board to the GAC about additional

information, the Board -- the GAC chair sent ... to the Board mentioning that at this time the Board does not have any additional information to provide to the Board on this matter. Next slide please. So, the ICANN.org started a process in October 2017 during the ICANN Abu Dhabi meeting, and we will see that this process facilitated process ended in March 2019. As I told you the process started in Abu Dhabi. The idea was to try to find a compromise between the 2 parties. Amazon corporation at this time, and submitted a particular a new proposal for particular compromise. And in February 2018 some negotiation started -- I mean some negotiation started by ICANN started, in fact, we start this negotiation during the IGF2017, but the -- yeah, there were discussions start on February 2018. During this time I mean between February 2018, and September 2018, we had two GAC meetings, and the party from Brazil gave updates, 2 updates on the negotiation, and as you can -- as some of you know and you can check on the transcript it was quite positive for the process. On the 5th September 2018, and the Amazon countries conclude the proposal does not constitute a good bases to serve imminent rights related to the negotiation of the Amazon TLD. Again on September 2018 the ICANN Board tasked the ICANN president and CEO to support the development of a solution for the delegation of the strings represented in had the .amazon application. That includes sharing the use of those top-level domains with the ACTO member states to support the cultural

heritage of the countries in the Amazonian regions. ICANN -- yeah, and in March 2019 we had a meeting in Kobe.

It was the ICANN64 meeting, and again a new decision from the Board, and at this time the negotiation were, there were some difficulties with the discussion, but the Board decide to allow some additional time for the 2 parties to find a mutually-agreeable solution so the GAC -- the Board sorry, decide -- I mean ask, ask -- I mean decide that the 2 parties should engage in a last effort that allows both parties over the next 4 weeks to work in good faith towards a mutually-acceptable application regarding the .amazon applications and if one... solution by the 7th of February 2019. And it was quite clear that at this time the ICANN.org as a facilitator was not any more -- I mean that there was no... facilitator from ICANN at this moment and it was acted in a letter from the ICANN.org president and CEO to the GAC stating that the 10 March 2019 Board resolution marked the end of the facilitation process by ICANN.org president and CEO. A process which was advised by the GAC in its Abu Dhabi communique and GAC advice. So on the 7 -- on April 7 2019 no solution regarding the application, and no joint request for more time had been submitted to ICANN. On 17 April 2019, the Amazon corporation submit a proposal for public interest commitments related to the .amazon application. And on 23rd April 2019, the ACTO sent its own proposal for PIC language and noted several

concerns with the Amazon corporation proposal. Next slide please. This is the last -- this is the this is the Board's resolution 15th of may 2019, and this Board resolution state that the ICANN Board is determined the Amazon corporation proposal of 17 April, 2019 to be acceptable, and directed the ICANN.org president and CEO or his designee to continue processing of the .amazon application according to the public policy and procedures of the new gTLD program. And where we can we can next slide please. Quick, because I don't have so much time now. The Board resolution in detail the Board determined that the Amazon corporation proposal is not inconsistent with GAC advise and that the GAC advice of course and there is no public policy reason for why the .amazon application should not be allowed to proceed in the new gTLD program. Just right after this Board resolution, Colombia files requests. And next slide, please. And in the meantime, I mean the GAC ask the Board to explain in writing whether, and why it considers the decision to proceed with the .amazon application based on the proposal that the 8 Amazon countries considered it did not address their concerns complies with GAC advice. Of that's the latest GAC advice related to the .amazon. Next slide please. Next slide please. Thank you. So this is the Board's accountability mechanism committee which is in charge of the Board requests. Decision and the BAMC conclude that neither the Board nor the staff took action -- of action... or in contradiction of the ICANN bylaws. So the Board considered the

request was denied. Next slide please. Yeah, so we have -- I mean the Board answered to the GAC advice in September. And so but I think all of you, I mean you are -- you had this answer from the Board, and I don't have so much time so I will skip it. Next slide please. And during the Summer -- I mean in August we had a joint declaration of the president of the member states and associate states. The declaration served to highlight the concerns of the relevant member states in relations to the decision made by the ICANN states Board of Directors to delegate to .amazon top level domain to Amazon Inc. ... next slide please. And on the September 13 the Board alert the GAC that the PICs were available on posted on the ICANN website and that there was a public comment period from, from 13 September to the 19 to available to the 19, and to representatives from Brazil and Ecuador and the ACTO IG comments on the... interest commitments from the Amazon corporation. Next slide please. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laurent. And without any further ado, I open the floor for comments or questions. Brazil, please.

BRAZIL:

Thank you Manal. Achilles Zaluar, for the record. Dear colleagues, I will seek to be as quick as possible and concentrate on the most consequential issues and things that might not be of general knowledge. I ask for patience for this is the only occasion we have to highlight the issue that's important for us. For many of the technical details of the disputes I would refer to the useful document called Amazon update prepared by the secretariat available at the GAC web page and reviewed by Laurent just now. For those interested to studying Brazil's position I would direct you to our comments on the specification 13 and application comments pages in the ICANN website. It is not very easy for a lay person to actually find these. But the secretariat is very helpful and will assist you if you need. I also recommend if you get there to read the residents coroner comments by ACTO and other Amazon countries as well as those by the general public. Most of you are experienced professionals. It should take you no more than 30 minutes of work to find the pages.

To make a long story short, the Amazon corporation, one of the largest private companies in the world, one of the top 5 Internet giants sometimes referred to as GAFA or GAFAN with revenues north of 200 billion dollars applied for the Amazon gTLD in 2012. Correspondence in the Amazon region objected to it. It is one thing to register a geographical name as a trademark this.

Happens all the time on a first-come first-served basis. It is another totally different thing for someone to lay exclusive claim to a whole continent of cyberspace without the agreement of the indigenous peoples who would have a relevant claim to it. In other words Amazon.com is fine. Nobody complains about it and by all accounts the company thrived on the back of its website. But .amazon is a totally different thing. More similar to a TLD. Amazon nation whereas at risk of having identity confiscated as regards cyberspace. Not going to go back on the rules or -- specifications there is a lot of controversial about them and this caused heated arguments in Work Track 5 which blocked consensus and led to the maintenance of the status quo, as we just heard in the previous session. In general terms these rules or bylaws say in the case of regions and such the constant of the affected communities and governments should be achieved by a gTLD is granted. In 2013 GAC acknowledged Amazon countries concerns and recommended that application do not proceed. That stay "Durban advice of ICANN 47" in 2014 the ICANN Board accepted the Durban advice and denied the application. Case closed. Or so it seemed. The company may hardly be said to have suffered. Its lines of business all based on the Internet continue to thrive. In 2015 the company presented the proposal to ACTO for sharing the use and administration of the gTLD. Taken into account what happened later maybe we should have taken it. But as they say, hindsight is always 2020. The Board had had denied

the company's application so Amazon countries at the time thought the matter was closed. In 2016 the company opened what's called an independent review process, an IRP, which is basically a kind of arbitration panel under U.S. law. In 2017 the IRP asked the Board to evaluate again the company's application. So the question which had been closed for 3 years, from 2014 to 2017, was re-opened, I say this because some people say the procedure has taken a long time but that is not so. There was a procedure that lasted 2 years from 2012 to 2014 and led to a result. Which some people didn't like the result so they re-opened the process in 2017 and that's where we are. In 2017 GAC reacted to this situation, not by repealing the Durban advice, which is therefore still valid, but by underlining the need for a mutually-acceptable solution to be found before the application is granted. We are all okay with that since the beginning. If the communities and governments and countries agreed why not. That's the Abu Dhabi advice of ICANN63. So the Board tasked the ICANN corporation to intermediate a consensus. The company, however, did not come back to its 2015 proposal, for shared responsibility for the gTLD. Its new proposal was much harsher. They would run .amazon as they see fit and would offer token concessions to help us save face. Something seems to have changed from 2013 to 2017 in the balance of power in cyberspace. Amazon correspondence and ACTO were shocked at this development. A question that seemed settled came back from

the dead. Mind you, we are not talking about the Internet community here. Those were government officials and simple citizens. Not Internet specialists who do not even know for sure what is ICANN. I speak from experience. Having come to the question in January this year it can me a while that understand that ICANN is a nonprofit corporation under the law of the wonderful state of California.

To explain it to my superiors, journalists and congressman, such a body could dispose of the name of the Amazon region as they see fit under their own rules without their consent was no simple matter, it took us a while, I would say the year of 2018 to come to terms with this development. Initially some Amazon countries didn't want to negotiate what we saw as our birthright. For this reason and others the mediation efforts didn't get off the ground. In early 2019 this very year it dawned on us if we didn't negotiate, we would lose the whole thing. We could complain. Or we could make speeches, but we would still lose it. So we started working on an ACTO counter-proposal which could use as basis for negotiation with the company. As we were just starting, the Venezuelan crisis erupted and rendered dialogue among the countries difficult not because of substance. We were all in agreement about the rights. But because discussing negotiating tactics became tough considering the overall political context. Allow me to say that perhaps some people thought that we would

never be able to come up with a joint ACTO substantive proposal. That an ability could then be used as an excuse to cut short the negotiation and grant the application on the company's terms. Yet, miracle of miracles, with the help of the new ACTO secretary general, a young and brilliant Bolivian lady -- I wish she could be here -- I would -- did receive a counter-proposal that every country in the Amazon all of them endorsed and presented officially this was last April just before ICANN64 in Kobe. The ACTO proposal is balanced. It does not hinder in any way the ability of the company to exploit the .amazon gTLD for its retail and other business activities, except when it would cause confusion among the public, for instance by linking the Amazon domain to names... of geography heritage, culture and the right. By these the names of series of rivers, religion, folk lore, folklore, myths, medicinal herbs, animals and such, this would all be protected. For instance. Manaus. So SULOMINIS(sic) is the name of the upper part. Manaus is the capitol of the state of Amazon, but they could not be used but the company has not agreed to that. According to the ACTO proposal we would share responsibility. The company on one side. ACTO and the 8 other Amazon nations on the other, for discussing and solving disagreements in a prompt and fair way. All the details could be negotiated to everybody's satisfaction. I underline the ACTO proposal of 2019 is considerably less advantageous to our side than the 2015 proposal by the company itself, which shows to

which lengths we are prepared to go for the sake of an agreed solution as demanded by the Abu Dhabi advice. The first steps in the negotiation were promising. By dealing directly with the company in informal consultations took part. Always reporting back to ACTO and ACTO member states to receive the... that was an exchanged. We could see the lines of a possible compromise. So it was with renewed shock that we Amazon countries learned that negotiations were interrupted only by the other side. Last may right before ICANN65 in Marrakech. We were told there was a great hurry to conclude the issue before Marrakech. And no further delay would be tolerated. So the negotiations were cut short. The company's proposal would be the final public interest commitment or PIC. No compromise how... with the counter-proposal would be envisaged by the Board. And yet here we are at ICANN66 in Montreal in November. And the issue is still open. Apparently, there was not so much of a hurry. So why were the negotiations broken up last may? Why did we lose the time between May and November when Amazon countries and ACTO were ready and willing to negotiate? Maybe when you're sure of the judge sentencing in your favor there's less impetus to reach a deal with the other side. This, dear colleagues, is not compatible, neither with the Durban advice not the Abu Dhabi advice. No impartial observer would conclude GAC advice was followed in this important precedent-setting case. So we are asking GAC, we are asking GAC to request the ICANN Board to designate a

professional independent mediator to facilitate the resumption of negotiations between ACTO and its member states on the one side, and the company on the other. The mediator could be empowered to seek the views of local Amazon communities as well as of the Internet community at large. Thus bringing civil society into the negotiating room. Such a measure would be essential if ICANN is to follow the Abu Dhabi advice. Find a mutually-acceptable solution for the .amazon application. If the Board does not agree then it should explain in writing why it decided not to follow the Abu Dhabi advice. Fail to do so I am afraid would set a bad precedent and reflect badly on the current state of Internet governance including on its ability to establish a balance between private interests and public policy concerns. In the .amazon case. The private interests legitimate as they are, of one corporation would be allowed to run roughshod over the concerns and the cultural heritage of 8 nations and tens of millions of people. We must reflect about this at the next IGF meeting in 2 weeks in Berlin. Dear colleagues, we think a win/win deal could be reached, one that would provide a positive impetus for Internet governance instead of discrediting it. It's not too late. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Brazil. So, the floor is open. Either for further comments or for reactions to what Brazil has suggested? Any further comments or requests for the floor? Yes U.S., please.

UNITED STATES: Thank you, chairman. Chairperson. Good morning, everyone. The United States does not support further GAC advice on the .amazon issue. Any further questions from the GAC to the Board on this matter we believe is unwarranted. The GAC did this in Marrakech and the Board responded in full on September 8th of this year. We are unaware of any international consensus that recognizes inherent governmental rights and geographic names. Discussions regarding protections of geographic names is the responsibility of the... and therefore should be discussed and those relevant and appropriate forums. Contrary to statements made by others, it is the position of the United States that the Board's various positions authorizing ICANN to move forward were processing the dot application are consistent with all relevant GAC advice. The United States, therefore, does not support further intervention that effectively working to prevent or delay the delegation of .amazon and we believe we are not supportive or -- and we do not believe that it's required. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, U.S. Any further comments or requests for the floor?
Yes, Israel, please.

ISRAEL: Thank you chairman for giving me the floor. The GAC advice was given, and should be to our opinion, should be followed accordingly in order to find mutually-acceptable solution for .amazon applications. We share the position that there is no need for further advice on .amazon. We believe that the Amazon applications are consistent with the relevant GAC advice, having said that, and since it is an ongoing issue for 7 years, we don't believe that there is a need for further delay. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Israel. I have China next.

CHINA: Thank you, chair. Guo Feng from China, for the record. For this issue, I try to perhaps understand this issue carefully. Perhaps from if the ICANN Board side, it might think it has to has followed all the necessary procedures, but from the ACTO government, ACTO country's side, this issue is highly related to the public policy issue, so in my observation, so this issue is the commercial interest contradicting with the public policy, something like this.

So when, what I want to convey is that perhaps one way of facing such a case like this I would encourage ICANN or ICANN Board dealing with this matter, extremely careful manner, and it is very sensitive, so I would encourage additional effort can be made to continue to facilitate the conversation between ACTO countries and the Amazon the company. The effort should never be given up to find out a mutually-acceptable solution. So this is my comment on this issue. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much China. Any further comments or requests for the floor? European Commission please.

EUROPEAN COMMISSION: Georgios Tselentis, European Commission. We understand the position of the ACTO states diverts on the conditions of the delegation of the .amazon domain. Of the commission also understands that the ACTO member states are urging further work between themselves and the Amazon corporation with a view to finding a mutually-satisfactory solution. We also recall the repeated consensus advice of the GAC to the ICANN Board facilitate parties arriving at the mutually agreeable solution. We recall also the resolution directing the CEO to support the solution of the delegation of the strings covered by the Amazon

applications and also, we expressed in previous occasions and recognized the sensitivity of the matter of geographical names, and therefore we urge ICANN Board to use caution and restraint? The delegation of significant geographic names and to protect to the extent possible, geographic terms including intellectual property rights of geographical indications in the domain name system, given the cultural and political sensitivities associated with such denominations. And in order not to undermine trust and confidence in the governance of the Internet among the different communities and user groups.

In the context and in order to balance the different interests at stake we encourage ICANN to exhaust possible means to facilitate parties to arrive after they -- consultation of the PICs and arrive if possible, to a mutually agreeable solution based on the Amazon corporation PIC that is have been submitted. And provided, and the comments which are provided during the consultation period by ACTO, and in conducted by ICANN, which as was presented in -- on 12th of October. Of possibly through clearer time bound and externally mediated final negotiation round. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much European Commission. Any other requests for the floor? Switzerland please. Go ahead.

SWITZERLAND: Thank you, Manal. And thank you to Laurent, and to the previous speakers. In Abu Dhabi at least in the rationale we recognized as the GAC the need for a mutually-acceptable solution. We still think that that is the best way to go, and as we said, in Marrakech, and was as mentioned in the communique, I think that it would be best to exhaust all means available to do that consistent with applicable procedures. Now, we had had this PIC consultation, and there have been different points of view expressed during that consultation, and I think it would be good to try to work on that basis on something that is acceptable to all parties involved, so in this sense, I very much agree with what Georgios from the European Commission has said before.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Switzerland. Any further comments? Portugal and Belgium.

PORTUGAL: Thank you very much. So I think that's the European Commission's proposal is a very good one. We are here -- well, I talk so many times about this issue that it's incredible that still at the end of 2019 we are still discussing such a sensitive thing. .amazon is a terrible precedent if it goes like ICANN wants. So we are talking about a precedent because with this precedent, so it

will be -- it will be very very difficult for the new round of the gTLDs to proceed with some trust and confidence on ICANN procedures if they allow this kind of situations. Governments are here to advise. We did have public interest, and this public interest means try to find the right balance among all the stakeholders. And, of course, the governments try to do the best for companies, for citizens, for the markets, for everyone. Of but here, we are, we are dealing with an extremely sensitive thing in the political terms, so it's normal that a technical entity like ICANN does not understand. But, and geographical names with a significance, are not a normal market asset, and they cannot be seen like that. So I will strongly suggest that we will think in a proposal as the European Commission proposed. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Portugal. I have Belgium next and we will stop afterwards because we've reached the end of the session. But in the afternoon, we have a 45 minutes slot for the communicated view, so I assume we will be further discussing, and I encourage GAC colleagues to maybe try to discuss between now, and the afternoon so Belgium please. Sorry to keep you waiting.

BELGIUM: Thank you, Manal. Very briefly, I would like to pre mind all the GAC members that the .amazon was mentioned on a list, very big list, of problematic geo names in... with the .Patagonia and other names, and all these names has found a solution. A good solution. So I would like to invite all the parties to have a mutual solutions, and I come back on the idea of to have an identification in a new system because I think that if we had information before an application of the moment of the application, it better to find a solution and we wouldn't have so many problem afterwards to have the solution between the different parties. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Belgium. So thank you, Laurent. Thank you, Brazil. Thank you everyone. We're stopping here on .amazon. Please remain seated. We will continue our sessions, and discussion now is on WHOIS on data protection policy. But we will be revisiting this later today. Thank you.

[END OF TRANSCRIPT]