

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

AMAZON EU S.À.R.L.,

Claimant,

v.

ICDR Case No. 01-16-0000-7056

INTERNET CORPORATION FOR  
ASSIGNED NAMES AND NUMBERS,

Respondent.

**AMAZON'S PREHEARING BRIEF**

**List of Exhibits**

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>
<b>C-076</b>	08 July 2013	Redacted - Information Designated Confidential In This IRP
<b>C-077</b>	30 Apr. 2013	Redacted - Information Designated Confidential In This IRP
<b>C-078</b>	05 Apr. 2013	Redacted - Information Designated Confidential In This IRP
<b>C-079</b>	09 Apr. 2013	Redacted - Information Designated Confidential In This IRP
<b>C-080</b>		Redacted - Information Designated Confidential In This IRP
<b>C-081</b>	21 May 2013	Redacted - Information Designated Confidential In This IRP
<b>C-082</b>	23 June 2013	Redacted - Information Designated Confidential In This IRP
<b>C-083</b>	20 June 2013	Redacted - Information Designated Confidential In This IRP
<b>C-084</b>	25 Feb. 2014	Redacted - Information Designated Confidential In This IRP

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>
<b>C-085</b>	18 Nov. 2016	Email from H. Dryden to J. LeVee
<b>C-086</b>	09 July 2013	Redacted - Information Designated Confidential In This IRP
<b>C-087</b>	03 July 2013	U.S. Statement in Advance of ICANN Durban Meeting on Geographic Names
<b>C-088</b>	03 Apr. 2013	Email from F. Alexander to C. McCachren et al.
<b>C-089</b>	03 July 2013	Email from J. Gruenwald to F. Alexander et al.
<b>C-090</b>	08 July 2013	Redacted - Information Designated Confidential In This IRP
<b>C-091</b>	03 March 2014	Correspondence from Vice Minister F. Samenez, Peru, to ICANN
<b>C-092</b>	16 July 2013	Email from P. Dengate Thrush to ICANN Alumni List
<b>C-093</b>	18 May 2014	Email from C. Samuels to A. Greenberg
<b>C-094</b>	14 July 2013	Transcription, ICANN Durban Meeting, CSG Meeting
<b>C-095</b>	11 Apr. 2014	Letter from Vice Minister F. Samanez, Peru, to S. Crocker, ICANN
<b>C-096</b>	08 July 2013	Redacted - Information Designated Confidential In This IRP
<b>C-097</b>	12 Feb. 2013	Redacted - Information Designated Confidential In This IRP
<b>C-098</b>	05 Apr. 2013	Redacted - Information Designated Confidential In This IRP
<b>C-099</b>	29 Apr. 2014	NGPC Briefing Materials
<b>C-100</b>	14 May 2014	NGPC Briefing Materials
<b>C-101</b>	18 July 2013	Announcement of new position for E. Lucero
<b>C-102</b>	03 Mar. 2017	Joint Stipulation of Amazon and ICANN

**C-076**



**C-077**



**C-078**





**C-079**



**C-080**



**C-081**

Redacted - Information Designated Confidential In This IRP

**C-082**

Redacted - Information Designated Confidential In This IRP



**C-083**

Redacted - Information Designated Confidential In This IRP

**C-084**

Redacted - Information Designated Confidential In This IRP

**C-085**

**From:** Jeffrey LeVee [<mailto:jlevee@JonesDay.com>]  
**Sent:** Monday, November 21, 2016 2:41 PM  
**To:** Thorne, John  
**Cc:** Kathryn E Kelly  
**Subject:** Fw: ICANN -- Amazon application

John:

FYI. I will keep you posted if I hear something further.

Jeff LeVee  
[JONES DAY® - One Firm Worldwide](#)  
Telephone: 213.243.2572

----- Forwarded by Jeffrey LeVee/JonesDay on 11/21/2016 11:39 AM -----

From: "Dryden, Heather (IC)" Contact Information Redacted  
To: "[jlevee@JonesDay.com](mailto:jlevee@JonesDay.com)" <[jlevee@JonesDay.com](mailto:jlevee@JonesDay.com)>  
Cc: Heather Contact Information Redacted  
Date: 11/21/2016 07:08 AM  
Subject: RE: ICANN -- Amazon application

---

Hi Jeff,

All is well. Thanks for the note. I will take a look and get back to you.

Best,  
Heather

**From:** Heather Contact Information Redacted  
**Sent:** November-18-16 12:33 PM  
**To:** Dryden, Heather (IC)  
**Subject:** Fwd: ICANN -- Amazon application

Begin forwarded message:

**From:** Jeffrey LeVee <[jlevee@JonesDay.com](mailto:jlevee@JonesDay.com)>  
**Date:** November 18, 2016 at 12:08:58 PM EST  
**To:** Contact Information Redacted  
**Subject: ICANN -- Amazon application**  
Hi Heather:

I hope this note finds you well.

As you will see on the attached, Amazon has initiated an IRP after the ICANN Board denied Amazon's application for .AMAZON. The Panel has ordered one of the witnesses to testify live (Akram) and has asked the parties to reach out to you to see if you would sign a written statement regarding certain

events; you would not be asked to testify, as the Panel has already ruled that your live testimony would be inappropriate.

I have told the Panel that you were never an ICANN employee, and that you are no longer involved in any ICANN activities. Even so, the Panel believes your testimony would be of interest. We are also reviewing some documents that might be useful to you in recalling the events, although we do not expect the documents to be available for a few weeks.

Please let me know if you are willing to discuss. Amazon's lawyer may also reach out to you, although I do not know if he has your email address.

Regards,

Jeff LeVee  
[JONES DAY@ - One Firm Worldwide](mailto:JONES DAY@ - One Firm Worldwide)  
Telephone: 213.243.2572

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=====  
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
=====

=====  
This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.  
=====

**C-086**





**C-087**

**From:** Juliana Gruenwald  
**To:** Contact Information Redacted  
**Cc:** Contact Information Redacted  
**Subject:** fyi  
**Date:** Wednesday, July 03, 2013 11:21:00 AM  
**Attachments:** [USGtdstatement7-3FINAL.docx](#)

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Hi Sarah – Were going to be posting this statement to the website on Friday. It's been carefully negotiated and so it can't be edited so just sending for your awareness.

Thanks,

Juliana

Juliana Gruenwald  
National Telecommunications and Information Administration (NTIA)  
Phone: 202-482-2145  
Email: Contact Information Redacted

## U.S. STATEMENT IN ADVANCE ON ICANN DURBAN MEETING ON GEOGRAPHIC NAMES

The United States has listened carefully to the concerns expressed by colleagues on certain geographic strings. It is our sincere hope that individual governments can resolve their concerns on specific geographic strings through agreements on specific safeguards negotiated with the relevant applicants. We encourage all parties to continue to do so leading to Durban. However, in the event the parties cannot reach agreement by the time this matter comes up for decision in the GAC, the United States is willing in Durban to abstain and remain neutral on .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .yun, and .thai, thereby allowing the GAC to present consensus objections on these strings to the Board, if no other government objects.

The United States affirms our support for the free flow of information and freedom of expression and does not view sovereignty as a valid basis for objecting to the use of terms, and we have concerns about the effect of such claims on the integrity of the process. We considered that the GAC was of the same mind when it accepted ICANN's definition of geographic names in February 2011 and agreed that any potential confusion with a geographic name could be mitigated through agreement between the applicant and the concerned government. In addition, the United States is not aware of an international consensus that recognizes inherent governmental rights in geographic terms. Therefore, the choice made in this discrete case does not prejudice future United States positions within the ICANN model or beyond.

Recognizing that the current rules for the new gTLD program do not specifically prohibit or condition these strings, we expect the specific issue of how to better address individual government concerns as well as other relevant considerations, including the free flow of information and freedom of expression, in the context of geographic terms to be considered in the review of the new gTLD program as mandated by the *Affirmation of Commitments*. This review hopefully will provide guidance as to how better to address this issue in future rounds of new gTLDs.

**C-088**

Michael Vasquez  
Other Agency

A large rectangular area of the document is redacted with a grey halftone pattern, covering the majority of the page's content.

**From:** Fiona Alexander [[mailto:Contact Information Redacted](#)]  
**Sent:** Wednesday, April 03, 2013 10:19 AM  
**To:** McCachren, Cari; Suzanne Radell; Ashley Heineman  
**Cc:** Boudreaux, Benjamin A; Flynn, Sheila F (S/CCI); Bouvier, Seth E; Finton, Timothy C; Bhardwaj, Manu  
**Subject:** Re: Meeting with the Brazilians, Peruvians, and Ecuadorians regarding .Amazon

Unfortunately all the folks (on the State side as well I believe with the exception of David Huitema) are in China already or travelling today.

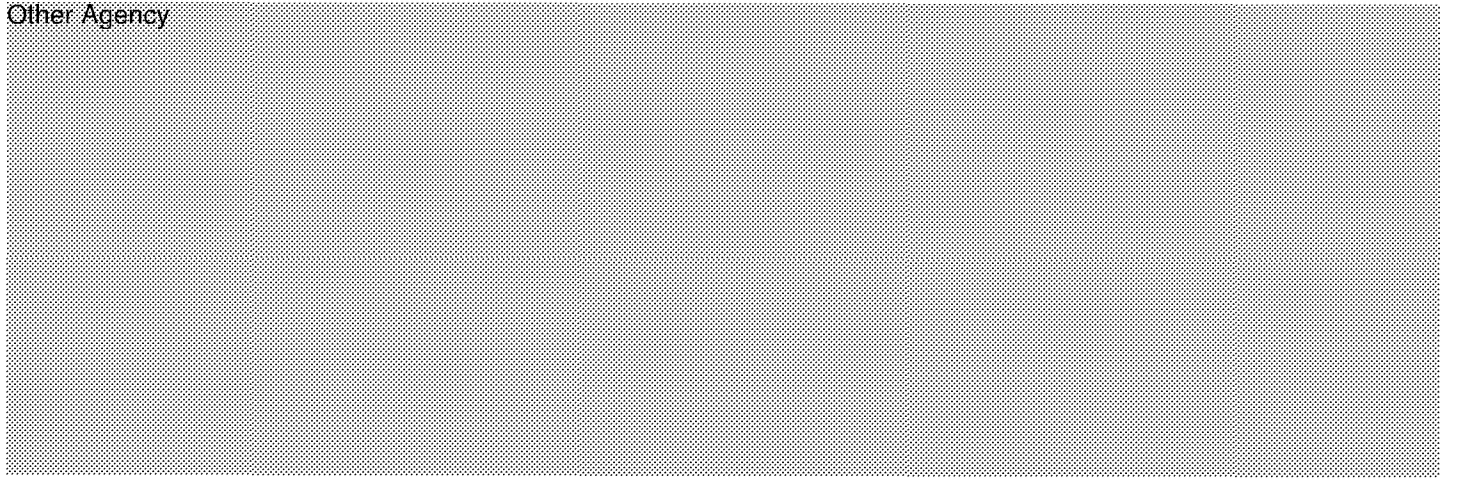
Both Jack and Chris have the material on our interagency agreed position on this issue.

Fiona

Other Agency

A second large rectangular area of the document is redacted with a grey halftone pattern, covering the bottom half of the page's content.

Other Agency



**C-089**



**From:** Juliana Gruenwald  
**To:** [Fiona Alexander](#); [Suzanne Radell](#)  
**Cc:** [Elizabeth Bacon](#); [Heather Phillips](#)  
**Subject:** RE: new improved gTLD blurb for website  
**Date:** Wednesday, July 03, 2013 11:57:00 AM  
**Attachments:** [USGNEXTSTEPSFinal7-3.pdf](#)

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I've attached the new statement and have pasted the clarifying paragraph we will use below:

NTIA, in its role as the U.S. government's representative to the Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN), has actively participated in the development of the GAC's advice on the rollout of new generic top-level domain names (gTLDs). The statement below is the U.S. government's position related to certain proposed geographic gTLDs. Building on discussions about these gTLDs within the GAC at ICANN's Beijing meeting in April, the GAC will continue talks on the issue at ICANN's 47<sup>th</sup> meeting in Durban, South Africa July 12-18. We acknowledge the diligence of all parties, particularly the applicants, to follow the process set forth in the Applicant Guidebook and, as noted in the statement, will work to clarify these rules for future applications.

I am going to send this to Charlie so he can get it ready to post on Friday. He's not working on Friday, but I am so I will post it to the website. Thanks!

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**From:** Fiona Alexander  
**Sent:** Wednesday, July 03, 2013 11:34 AM  
**To:** Juliana Gruenwald; Suzanne Radell  
**Cc:** Elizabeth Bacon; Heather Phillips  
**Subject:** RE: new improved gTLD blurb for website

Ok to all as well as Juliana's other suggestion to the headline/title change to **U.S. STATEMENT ON GEOGRAPHIC NAMES IN ADVANCE OF ICANN DURBAN MEETING**

Juliana – do you want to create the pdf of the statement and send to us so we are sure to have Suzanne send the correct one.

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**From:** Juliana Gruenwald  
**Sent:** Wednesday, July 03, 2013 11:32 AM  
**To:** Suzanne Radell; Fiona Alexander  
**Cc:** Elizabeth Bacon; Heather Phillips  
**Subject:** RE: new improved gTLD blurb for website

Hi – I'm fine with replacing "particularly" with "including" but I guess I'll let Fiona make the final call on that since you guys know all the sensitivities here better than me.

The way we plan to post it to the website is to have a headline on the NTIA homepage that would link to another page where we would have the clarifying paragraph and another link to the statement itself. So it would look like this when you click on the initial headline link on the NTIA homepage:

NTIA, in its role as the U.S. government's representative to the Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN), has actively participated in the development of the GAC's advice on the rollout of new generic top-level domain names (gTLDs). The statement below is the U.S. government's position related to certain proposed geographic gTLDs. Building on discussions about these gTLDs within the GAC at ICANN's Beijing meeting in April, the GAC will continue talks on the issue at ICANN's 47<sup>th</sup> meeting in Durban, South Africa July 12-18. We acknowledge the diligence of all parties, including the applicants, to follow the process set forth in the Applicant Guidebook and, as noted in the statement, will work to clarify these rules for future applications.

LINK TO STATEMENT

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**From:** Suzanne Radell  
**Sent:** Wednesday, July 03, 2013 11:29 AM  
**To:** Juliana Gruenwald; Fiona Alexander  
**Cc:** Elizabeth Bacon; Heather Phillips  
**Subject:** RE: new improved gTLD blurb for website  
**Importance:** High

Hi all, just trying to catch up to where things now stand: the new sentence will only go into the statement on the NTIA site, or will it be included in either the email I send to the GAC and/or in the final USG Statement?

And at the risk of being shouted down, could I suggest we replace "including" with "particularly" when referring to the applicants? I know it would be completely unseemly/undiplomatic to criticize the govts here, but I thought the point was to call out the fact that the applicants actually played by the book. Just a thought....thanks for entertaining it, and thanks in advance for helping me understand where the new sentence will end up. Suz

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**From:** Juliana Gruenwald  
**Sent:** Wednesday, July 03, 2013 11:11 AM  
**To:** Fiona Alexander  
**Cc:** Elizabeth Bacon; Suzanne Radell; Heather Phillips  
**Subject:** RE: new improved gTLD blurb for website

I would think if we did it the way I described, it would be the first thing people see before they pull up the statement on the website so it would be prominent. Also, in talking to Heather more about this, she said the way I wanted to do it -- having it separate from the statement -- is our standard way of doing these things. Plus, it wouldn't make sense to integrate it into the statement like you did in version 2 since we talk about the "statement below" in the set-up graf.

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**From:** Fiona Alexander  
**Sent:** Wednesday, July 03, 2013 11:04 AM  
**To:** Juliana Gruenwald  
**Cc:** Elizabeth Bacon; Suzanne Radell; Heather Phillips

**Subject:** RE: new improved gTLD blurb for website

Suzanne will be sending that cover email to the GAC list and then the attachment so she provides context that way. The only reason I'm asking about version 2 versus the first option you describe below is the desire to be sensitive to the applicants who were concerned about their reputations...

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**From:** Juliana Gruenwald  
**Sent:** Wednesday, July 03, 2013 11:03 AM  
**To:** Fiona Alexander  
**Cc:** Elizabeth Bacon; Suzanne Radell; Heather Phillips  
**Subject:** RE: new improved gTLD blurb for website

My idea was to have this paragraph on the page with a link to the file with the USG statement. But if Suzanne is going to send to the GAC list, I would do it the way you did in Version 2. Do they have to be identical? Wasn't the idea of the paragraph to give some context to people who see it on our website? If you want to have the same thing on the website as you send to the GAC than we should do version 2.

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**From:** Fiona Alexander  
**Sent:** Wednesday, July 03, 2013 10:52 AM  
**To:** Juliana Gruenwald  
**Cc:** Elizabeth Bacon; Suzanne Radell  
**Subject:** RE: new improved gTLD blurb for website

I'm good with the change. Does it make sense to include this paragraph above the headline or as part. See version 1 vs version 2. We just need to be consistent in terms of Suzanne sending the GAC list which of these to use and of course turn into a pdf file before transmission

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**From:** Juliana Gruenwald  
**Sent:** Wednesday, July 03, 2013 9:48 AM  
**To:** Fiona Alexander  
**Cc:** Elizabeth Bacon  
**Subject:** new improved gTLD blurb for website

Hi Fiona – Larry rewrote the last sentence and wanted me to run it by you to make sure it is ok. Also, how long will Larry actually be at the ICANN meeting in Durban. He's in South Africa for a week and Heather wasn't sure how long he was actually there doing ICANN stuff. Thanks!

Revised statement:

"NTIA, in its role as the U.S. government's representative to the Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN), has actively participated in the development of the GAC's advice on the rollout of new generic top-level domain names (gTLDs). The statement below is the U.S. government's position related to certain proposed geographic gTLDs. Building on discussions about these gTLDs within the GAC at ICANN's Beijing meeting in April, the GAC will continue talks on the issue at ICANN's 47<sup>th</sup> meeting in Durban, South Africa July 12-18. **We acknowledge the diligence of all parties, including the applicants, to follow the process set forth in the Applicant Guidebook and, as noted in the statement, will work to clarify these rules for future applications.**"

Juliana Gruenwald

National Telecommunications and Information Administration (NTIA)

Phone: 202-482-2145

Email: Contact Information Redacted

July 2013

## **U.S. STATEMENT ON GEOGRAPHIC NAMES IN ADVANCE OF ICANN DURBAN MEETING**

The United States has listened carefully to the concerns expressed by colleagues on certain geographic strings. It is our sincere hope that individual governments can resolve their concerns on specific geographic strings through agreements on specific safeguards negotiated with the relevant applicants. We encourage all parties to continue to do so leading to Durban. However, in the event the parties cannot reach agreement by the time this matter comes up for decision in the GAC, the United States is willing in Durban to abstain and remain neutral on .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .yun, and .thai, thereby allowing the GAC to present consensus objections on these strings to the Board, if no other government objects.

The United States affirms our support for the free flow of information and freedom of expression and does not view sovereignty as a valid basis for objecting to the use of terms, and we have concerns about the effect of such claims on the integrity of the process. We considered that the GAC was of the same mind when it accepted ICANN's definition of geographic names in February 2011 and agreed that any potential confusion with a geographic name could be mitigated through agreement between the applicant and the concerned government. In addition, the United States is not aware of an international consensus that recognizes inherent governmental rights in geographic terms. Therefore, the choice made in this discrete case does not prejudice future United States positions within the ICANN model or beyond.

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**C-090**



**C-091**





PERÚ

Ministerio  
de Relaciones Exteriores

"DECENIO DE LAS PERSONAS CON DISCAPACIDAD EN EL PERÚ"  
"AÑO DE LA PROMOCIÓN DE LA INDUSTRIA RESPONSABLE Y DEL COMPROMISO CLIMÁTICO"

Lima, 03 MAR. 2014

OF. RE ( DAE-DCT) N° 0-4-A/56  
Pending resolution of the Board of ICANN  
regarding ".amazon"

Dr. Steve Crocker, Chairman of the Board  
Mr. Fadi Chehadé, President and CEO  
Mr. Cherline Chalaby, Chair of the New gTLD Program Committee  
Internet Corporation for Assigned Names and Numbers (ICANN)

Regarding the letter of the Amazon Corporation dated January 10<sup>th</sup>, we would like to take into account the following:

1.- As to the Resolution of the Office of Trademarks and Patents of Peru (INDECOPI), mentioned in the letter of Amazon, it should be noted that the two lines quoted by Amazon, are just a short part of a Resolution of 18 pages emitted by INDECOPI. The quote was taken out of context, thus giving a wrong interpretation of the real purpose of the Resolution or, in turn, of the position of the Government of Peru.

2. - It is also worth noting the fact that in the same process, Amazon mentioned the need to avoid confusion between similar names: *"...it is essential that the authority seems that the particle or name Amazon that makes up the requested sign, translates into English as AMAZON. This means that the signs in question [AMAZONASPERU and AMAZON] are equivalent and consequently, the consumer trying to remember them, is going to associate them with the same concept, i.e. the Amazon rainforest, thus producing both direct and indirect confusion between the signs"* (page 7 of the notice of opposition of Amazon to INDECOPI).

3. - In this sense, the argument of "equivalence" upon translation set forth by Amazon, coincides with the spirit of Module 2 of the gTLD Applicant Guidebook, which seeks ultimately, to protect the use of geographic names and safeguard the rights of the possibly affected countries, communities and the culture they represent.

4.- In this regard, we would like to reiterate the position that led the Governmental Advisory Committee (GAC) to include in the Durban Communiqué the outcome of the objection procedure, and the consensus obtained in this respect:

- a) The application for registration of the domain ".amazon" is a direct reference to the Amazonian region (defined as the area covered by the Amazon River basin), according to the biography of the founder of the company.
- b) The Amazon region comprises a major part of the Peruvian territory (782, 880, 55 km<sup>2</sup>) and one in which most part of the Peruvian ethnic population resides.
- c) The preservation of the Amazonian biome and its local populations should prevail over the interests of a private company which name is inspired by the region itself.
- d) Amazon is also the name of a department of Peru located in the northern part of the country and this fact is also recognized under ISO 3166-2.
- e) The application requested by Amazon, partially coincides with the denomination, in English, of the Amazon Cooperation Treaty Organization (OTCA), created in 1978.

We finally hope that ICANN meeting to be held in March this year in Singapore, will adopt a clear resolution in this matter, reflecting the outcome of the GAC Durban Communiqué

Best regards,



Fernando Rojas Samané  
Vice Minister of  
Foreign Affairs of Peru

MCS

**C-092**

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**From:** icann-alum-bounces@icann.org on behalf of Peter Dengate Thrush  
Contact Information Redacted  
**Sent:** Tuesday, July 16, 2013 12:57 AM  
**To:** ICANN Alumni List  
**Subject:** [icann-alum] Fwd: Not following GAC advice  
**Attachments:** ATT00001.txt

Begin forwarded message:

**From:** Peter Dengate Thrush Contact Information Redacted  
**Date:** 16 July 2013 9:43:42 AM GMT+02:00  
**To:** ICANN Alumni List <icann-alum@icann.org>  
**Subject:** Not following GAC advice

Folks

Nice to catch up with many of you at breakfast this morning.

One topic we didn't cover fully was disagreeing with the GAC

Here's a good explanation of a current disagreement with the GAC over new gTLDs  
<http://domainincite.com/13728-this-is-how-stupid-the-gacs-new-gtlds-advice-is-part-two>

If the GAC continues to give half baked inconsistent advice in the face of the boards response to date, the board is obliged not to follow it.

A second area looks likely to arise if the GAC goes ahead at the prompting of a couple of Sth American members and gives advice against [Redacted] Amazon. Only the US govt took a principled stand against that nonsense, but in a battle with State our colleagues at Commerce were outvoted, and the US will not now protest.

There is not a shred of credibility to the objection, which amounts to those countries using an ICANN process and forum to obtain a result they could not obtain under their own national law, or any principle of international law.

It's a breach of the legitimate expectations of TLD applicants.

It lies outside the hard wrought principles developed between board and GAC against GNSO advice granting the GAC rights in relation to geographic names.

It does not strengthen the GAC or the multistakeholder model to accept this kind of behaviour. If countries threaten to leave the GAC unless they get their own way, ( and diplomacy fails) we should let them go.

[Redacted]

The board needs to defend ICANN principles against this kind of abuse.

Regards

Peter Dengate Thrush

**C-093**

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**From:** lac-discuss-en-bounces@atlarge-lists.icann.org on behalf of Carlton Samuels  
 Contact Information Redacted  
**Sent:** Sunday, May 18, 2014 7:45 AM  
**To:** Alan Greenberg  
**Cc:** lac-discuss-en@atlarge-lists.icann.org; ALAC Working List  
**Subject:** Re: [lac-discuss-en] [ALAC] NGPC rejects Amazon applications

It always had to be a political decision, pure and simple.

The fellas simply bit the lemon and then puckered up. Here's THE relevant notation

"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."

[Note my emphasis....it didn't say 'the GAC'.]

-Carlton

=====  
 Carlton A Samuels

Mobile: 876-818-1799

\*Strategy, Planning, Governance, Assessment & Turnaround\* =====

On Sat, May 17, 2014 at 10:49 PM, Alan Greenberg  
 Contact Information Redacted >wrote:

> [https://new.icann.org/resources/board-material/  
 > resolutions-new-gtld-2014-05-14-en](https://new.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en)  
 >  
 > Alan  
 >  
 > \_\_\_\_\_  
 > ALAC mailing list  
 > [ALAC@atlarge-lists.icann.org](mailto:ALAC@atlarge-lists.icann.org)  
 > <https://atlarge-lists.icann.org/mailman/listinfo/alac>  
 >  
 > At-Large Online: <http://www.atlarge.icann.org> ALAC Working Wiki:  
 > [https://community.icann.org/display/atlarge/At-Large+  
 > Advisory+Committee+\(ALAC\)](https://community.icann.org/display/atlarge/At-Large+Advisory+Committee+(ALAC))  
 >

\_\_\_\_\_  
 lac-discuss-en mailing list

[lac-discuss-en@atlarge-lists.icann.org](mailto:lac-discuss-en@atlarge-lists.icann.org)

<https://atlarge-lists.icann.org/mailman/listinfo/lac-discuss-en>

**C-094**



## Transcription ICANN Durban Meeting

### CSG Meeting

**Sunday 14 July 2013 at 16:00 local time**

Note: The following is the output of transcribing from an audio. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Coordinator: This call is being recorded. If you have any objections you may disconnect at this time.

(Tony): Well good afternoon everyone. There's still a few people to join us I think but we should really get moving.

You can't hear me? That's the best way.

Okay. Is that better? Let me have the mics.

And I think we'll start the transcription. So I think there's a dial in.

Woman: This is (unintelligible) speaking. The transcript's already been started. Thank you.

(Tony): Okay. No dial in? Okay. We'll just go with the transcript.

Man: Okay.

(Tony): Thank you. Is there a problem with this? Can you hear me? No.

Can you hear me? I don't think we have a phone. We've got (unintelligible).

Benedetta Rossi: Tony? Can you hear me?

(Tony): Right, okay.

Benedetta Rossi: Tony can you hear me? This is Benedetta speaking.

Man: Hello.

Man: It's fixed Tony.

(Tony): Yeah no it's in the dial in.

Benedetta Rossi: Tony can you hear me?

(Tony): Okay so having fixed that and hopefully we'll have dial in capability fixed in a minute I think we should get going. I circulated the agenda as was.

And the intent of this session was to prepare for our session with the board on Tuesday. By doing that it frees up the time of the CSG meeting that we've got planned for Tuesday morning.

So rather than go through this exercise then we should be able to do some real work and concentrate on some other issues. There are a few additions to this agenda as printed.

And that is following the session we had this morning (Chris Mondini) is going to join us at 6:00. So that should be a rather interesting session.

And providing he's here on time at 6:00 then the update from the meeting strategy working group from Michelle will take place after that at the end. So that's the agenda that we currently have.

What we normally do in terms of preparation for the meeting with the board is to go through the issues, make sure that we've got all the points out that we need to raise, agree how we're going to do that and agree who's going to start that discussion when we actually meet with the board. So the first topic is the one that you've heard a lot about today.

I think there was a fair amount of discussion about the budget and the operational plan both in the GNSO session with Xavier and also afterwards when we discussed the AGRT2 activities. It was raised then again.

So now is your opportunity to raise any issues with the stat plan and budget and get out on the table all of the points that we really need to make. Steve maybe I can call on you to actually start the discussion on this.

I know you had some pretty useful input this morning. And it may be worthwhile kicking it off on that.

Steven Metalitz: Thank you. This is Steve Metalitz with the IPC. I think our issues with the operating plan and budget falls into two categories.

The first has to do with the request that we made as constituencies. None of which have been acted upon and we learned this morning that I guess we're not going to find out for at least three weeks or some number of weeks after this meeting whether or not or to what extent our requests have been granted.

It also became clear to me that our requests had not been read because Xavier stated that nobody asked for another intercessional meeting. The IPC asked for another intercessional meeting.

So I don't know. I guess we know how that one's going to turn out.

But that's one area. And especially because we were explicitly told by Xavier at the last intercessional that if we had a project that was going to run throughout the entire year we should not apply for it in the so called fast track -- we should apply for it in the regular process which we did.

So we're going to be well into probably at least six weeks into the new fiscal year before we know whether we have funding from ICANN for example a secretariat which the IPC asked for. And some other things that we were really hoping to know one way or another well before the fiscal year started.

So that's one area of problem. And the other area of problem is really deals with the larger budget questions.

I mean, you know, we're one little corner of the budget here -- like 1% of the budget that is all of the supporting activity, supporting organization and advisory committee requests. But there are much larger questions that were raised in particular by ISP filing and the business filing as well as in the registry stakeholder group filing and others.

So we are not, you know, alone in this. And apparently there are concerns elsewhere too that really haven't been addressed.

And these have to do mostly with the vague categories that account for in some cases 40% or 50% of the spending in a particular area. But there's really

very little understanding -- there's nothing in the operating plan that really tells us what will be done.

Those are the two areas of concern that we had. And in terms of how best to present this to the board I'm not totally sure.

I think I'm a little hesitant to lead with the first one because it sort of just seems like special pleading we didn't get, you know, our money. Well we don't know if we got our money, you know.

And I think the bigger questions and the broader questions are also very important. And we just haven't been given a document that'll enable us to comment very intelligently on it.

So but those are the two main areas of concern I think. I may be leaving something out but I think those two - I guess the other one that we raised also was compliance demonstrated by several of us.

And that's an example of lack of information in the budget. I think Chris did an analysis which indicated that the headcount for compliance would actually be below what was asked for a couple of years ago.

Xavier's response came back and I think he said it would be one person higher which I guess is good. But maybe not commensurate with the scope of the problem that's being faced, you know, with 1000 new registry operators and 1000 registrars -- many of them operating under a brand new agreement.

So those were the two main issues. And I guess that we could discuss and I'll pass to present them.

(Tony): Okay thanks Steve. Can I just check is anybody online? We were expecting some people.

So who is online please?

Benedetta Rossi: Tony this is Benedetta speaking. Can you hear me?

(Tony): Yes can hear you. Anybody else?

Benedetta Rossi: Perfect.

(Tony): Online?

Benedetta Rossi: We have (Alan Shenkman) on the line as well.

(Tony): Okay thanks. Okay if at any time you wish to take the floor please indicate. Thank you.

So...

Man: It seems pretty universal. It must be a universal (unintelligible).

(Tony): Who is this?

Man: Rather than leaving stuff out? Yeah. So like - so Sarah was - ran into the problem that she wasn't getting audio from the bridge from (unintelligible) on the bridge (unintelligible). And so...

(Tony): Excuse me.

Man: Ran the board obviously and left a gap. And he had turned up the audio going out so the participants could hear that (unintelligible) but they couldn't hear back in since we had (unintelligible).

Man: (unintelligible) bridge.

Man: Yeah, yeah.

Man: (unintelligible).

Man: Yeah.

Man: So we generally like to see (unintelligible) on the line (unintelligible).

Man: Oh okay.

(Unintelligible)

Man: Yeah. You know, and I don't know the audio technical side. You know, I don't know all the reasons why (unintelligible).

Man: (unintelligible).

[Audio Gap]

Woman: Of the outreach and global engagement line item without any detail as kind of the last item in the budget discussion. But then use that as the segue into the discussion about, you know, what exactly are they doing on outreach and engagement?

And why do they seem to be dead set on not including us or trying to integrate our efforts. I know that's not necessarily the topic but it seemed pretty clear to me from the discussion this morning that all three constituencies feel very much the same on the point.

And I think it's an important one to use the opportunity of the board to make. And, you know, it would seem to me that - and I certainly think the point that Mikey made needs to also be included.

Zahid Jamil: Yeah and just a point - a quick point on what was just said about hiring these 35 people for the new GTLB program. I'm not saying this is a good or a bad idea -- just perhaps consider that they did take in I think in the order of \$350 million from the applications.

So that would seem to be the possibility to use some of those funds let's say for the rollout of these TLDs which will demand a big effort. And in my perception that might be covered. Thank you.

Ron Andruff: Thank you Tony. Ron Andruff for the transcript.

What I find kind of astounding about it all is that we're talking now about engagement and all of the importance of engagement. ICANN for all of us who are a little long in the tooth, you know, we've watched it grow from a couple hundred to 500 to 700 to 1000.

I mean it's been an organic growth. It's grown as the institution has grown and developed.



Within the BC for years we've been working on how do we do outreach. We've tried to connect with chambers of commerce in various cities we arrive in and so forth.

And we've produced all kinds of documentation to entice people to come and join. But there's been no desire for people to come and join for one reason or another.

But we have grown nonetheless organically. So the question I have right now is why?

Why are we bringing on 35 people? Why are we bringing 10,000 people?

What is the rationale there? Because it's the end user ultimately that needs to be informed of what's going on with ICANN.

So in terms of building this large mass of 10,000 new people - why? ICANN grows as an organic body and it keeps its focus.

And if it's to get rid of volunteer fatigue I just don't see guys rushing in, joining the organization and as we saw that chart that the other Chris showed the other day about how everything kind of moved to the middle, you know, they get involved and then they see it and then they get on a working group and then they all of a sudden take leadership positions. That's all well and good and that's kind of how it works.

But I just don't see that you could start advertising. And all of a sudden, you know, there's massive outreach that's going to create this massive amount of volunteers.

It just seems to me almost a waste of money. And I'd rather see those funds being spent on compliance.

I'd like to get 35 more compliance people that are going to be added before the end of the year. Now that's something we can talk about.

Because right now we've got a lot of guys with guns in the streets and we've got no cops. And we've been complaining about that for a decade.

And that's really maybe where we want to dig our heels in and say look it, let's stop talking about engagement. Let's start talking about compliance.

How big is that compliance team going to be? And how are you growing that compliance team?

It's all I hear from compliance every year, every meeting when they show up is we've got this many positions filled, we've got these three or four positions still outstanding. Well why are they outstanding?

Why haven't - you've got twice as many people, five times, 10 times. We watched CFOs get fired from this company because we talked about more compliance. Thank you.

(Tony): Thanks Ron. I've got Chris, Marilyn and Jonathan.

(Chris): Thanks. Chris (unintelligible) here. Just following on from what Kristina said I think the outreach is probably a good example to spearhead with not just because it's an example of well the 11 programs in the past actually make \$11 million of which one is \$5.8 million.

And when we question that the answers that came back answer 67 -- I'll just read it out. We understand the need for increased transparency and visibility into ICANN's workload and progress. Due to the ongoing work to develop consistency and uniformity to the ATAR system we've provided program level data for the FY '14 budget. As ICANN's proficiency in that task matures and project planning becomes more fully developed ICANN will provide more detailed information.

So that's where we are with it. So we've got 80 questions and the answers are either sort of stop ends or so complicated I can't understand them.

(Tony): On that point I think we share that response back on the questions. They were far from helpful. Marilyn.

Marilyn Cade: I'm going to see if I can propose an approach that doesn't throw the baby out with the bathwater. Because the reality is that we have asked for tools and resources and assistance to build and strengthen the constituencies, the stakeholder groups and have done a lot of work ourselves but have increasingly recognized that to do a more professional job and to be more effective ourselves that we need for ICANN to invest a little bit in matching the huge amount of stakeholder work.

And I do not call us volunteers because we are building -- we actually are the people who bind the process. But - probably a better analogy.

But what I'm seeing here and I said it this morning but I'm really seeing it again -- they really do not understand enough - all of the new people do not understand enough about ICANN or what we do to understand how to work with us to support our being more effective. And they are people who are used to being hired to do a job themselves.

So I'm hoping we can come up with some concrete ideas that include fixing the funding support to the constituencies and stakeholder groups, finding a way to provide more detail. And taking an interim approach to putting some of these massive programs on hold until more detail is provided.

I believe there will be strong support for them for that approach from other groups like the CCNSO and others who have traditionally, you know, really reinforced the importance of rigor and accountability.

(Tony): Well most groups -- most companies that do budget builds start at the bottom and projects get filtered as the projects build layer on layer until you get to the top assessment of budget. Here it seems that we all put in our request -- and they all got put on hold.

And they then said well there's this amount of money and at some stage we'll see how much you're going to get which just seems to be chaotic to do it that way. So certainly the linkage between what they plan to do -- it would be helpful to know about that.

And it would help to know how we fit. And that's the big gripe I think that we have.

That's the reason we haven't got our funding.

Marilyn Cade: But Tony what I'm suggesting is that we ask for three things. One is that we are given the funding we've asked for and justified.

And two that some of these big gaping amounts of money do not move - that the board puts that - board continues in a frozen environment until the detail is provided to the community on some of these things.

(Tony): Aren't we also asking for something in the future that starts happening again so we become more involved in the process as well as that builds? Okay.

Jonathan.

Jonathan Zuck: Hey it's Jonathan Zuck from ACT. I guess I'd like to echo a little bit what both Ron and Marilyn have said that I think the gross that's necessary is more organic and more retail oriented and is not going to be the result of advertising campaign.

But I don't know why we're surprised because historically the only kind of measurable metrics this organization has had have been topological in nature. And so the only way that they can show movement on something is to throw money at it or hire people and call headcount progress.

And I think that's a pretty common response to problems. I mean I would suggest that the number one way to increase engagement, you know, little "e" with ICANN is actually through the much vaunted yet under exploited comment process.

And that if they were going to spend some resources it might be on presenting problems in a more digestible fashion to ICANN outsiders. And then also I mean and this is really out there -- read the comments when they come in and with sufficient time to incorporate them in the policy decisions.

I think that is going to be the number one way to bring a more of a mass outside growth of participation. And anything else that just is sort of funds

your burnout level is going to be a function of real retail recruiting efforts one on one, bringing people in one at a time to do the work.

And that's going to require support issues.

(Tony): Okay. So I'm just going to pause there for a moment. We have a technical problem which I think requires us to stop.

Sorry it'll be just a few moments. Verizon operator can you please announce yourself?

Coordinator: This is the operator.

(Tony): All right. Is there anybody online at the moment?

Coordinator: Yes.

(Tony): And if you are online can you please announce yourself?

Woman: I think we actually have to tell them to dial back in now. So can you...

Benedetta Rossi: Yes so this is Benedetta speaking. I'm online and we have Alan Shankman on the line as well.

Man: Okay thank you. Ladies and gentlemen I'm happy with that. (Unintelligible) back into the room and you may continue.

(Tony): Okay. Thank you. So Alan you're online and is Bennie online as well?

Benedetta Rossi: Yes I am.

(Tony): Okay. Thanks. So continuing. (Alita) you were going to...

(Alita): Yeah so I just wanted to go back to something Kristina said. And that is I think it probably might make sense for us to ask why we've not been more involved in the decisions.

And I know it's not something that we'd identified in our agenda. But IU would like for us to consider addressing that.

(Tony): Seems a reasonable question certainly. John? Okay could I ask that those who are on the line to mute unless you want to speak please.

One final question I have here. One final question -- Mikey the issue you raised today about sustaining the level of budget seemed to take I think some of the staff by surprise.

My question is that it seemed a really obvious question to reflect tomorrow as well if you're having to do that -- to pose that.

Mikey O'Connor: Yeah this is Mikey. I think the problem they've got is they've got this At Task gizmo and it's a bottom up roll up thing. They implemented it in a hurry.

They implemented it really badly. The staff don't know how to operate it.

And so they poured a bunch of garbage into this system that's then rolled it up to the top. And then they get giant numbers which they then take this garbage number and plunk it into the budget on the cost side.

Meanwhile there is the whole revenue side where there's the current base of revenue which seems to be flattening. And then drug induced fantasy about the revenue streams coming in from new GTLDs.

And they plunked that in. And no one has ever done the net income subtraction.

So I'm happy to do something equally - maybe more coherent when I've had more sleep.

(Tony): Okay. So before we move onto the next topic I think we've teased out the issues we need to raise. My question is who would want to start the discussion and set the context for this as the first issue when we meet with the board?

Any volunteers?

Man: Tony perhaps you could just summarize what that first topic sounds like in a few words.

(Tony): Well the heading for the first topic was the one that's on the agenda. So it's basically our reflection back on the current status of the operational grand budget.

Steve?

Steve: Tony could I suggested that we go through the other topics as well and then we can allocate because so we don't, you know, so that we get - split them up in one...



(Tony): Okay. That seems fairly reasonable to do it that way. So let's move onto the second one.

Certainly in terms of providing a brief for this -- I'll obviously help reflect the notes I've taken of the input that's come with whoever's going to do that. But let's move on.

So the second topic was the GAC advice on GTLDs. Both related to the process itself and the impact on the timeline.

We had some discussion about this earlier in the day. But I'll open up now for any comments on that particular item.

Ron you did a good job in leading this this morning so please go ahead again.

Ron Andruff: Thank you Tony. Ron for the records, Ron Andruff.

I think what's really important that needs to be put on the table in a discussion like this is the fact that from my point of view in any case the GAC advise has been consistent from day one. If we go back and look back at when we were developing the applicant guidebook and all of the different elements they've consistently met their mark in terms of the things that they said they would like to do and so forth.

And as we've progressed through the development of the applicant guidebook to the point where we closed it and then we started to look at what I'll call more of the implementation elements of it where we are now -- while many might throw up their arms and say this is too late. You're coming at, you know, late notice and so forth.

The reality is that as was stated in the GAC new GTLD process committee meeting this morning their responsibility is the public interest -- to take care of their citizens. And so as a result of that they are flagging issues that they think need more work.

They also said it's not their responsibility to flesh those issues out. Rather they're flagging them, sending them back to us as the ICANN community and saying could you please work through these a little more - in a little more detail and try to come up with some solutions.

So I think there's two elements. One they've been consistent from the very beginning as far as I see it even though it's maybe come at late timing in others' view.

And two the work has to be done on our side. They're flagging issues that are of concern to them and they're acting in the interest of their citizens. Thank you.

(Tony): Okay. Fred?

Fred Feldman: for the record this is Fred Feldman. And I'd agree with you that the GAC has been super consistent about their advice with one exception.

I think the geographical advice seems to be an expansion of entitlement. And it seems to be outside of even national law with some of the requests they've made in terms of Amazon and Patagonia.

And I'm concerned and I've heard others concerned that this opens the door for increased governmental intervention with respect to domain names especially at the second level. We've seen the origins note as well that

proposes even greater protections for geographic at the - geographical indicators at the second level.

So we think it'd be interest - of the interest of the business constituency potentially and others to actually have a discussion about the expansion of the geographic indicator limitations.

(Tony):           Stephane?

Stephane Van Gelder: Thanks. Stephane Van Gelder, PC. Also in - when we talk about the public interest I think we ought to - although this may go slightly beyond GAC advice -- expand the discussion to the technical issues that seem to be coming out of late and that will definitely impact.

I mean, you know, if we're talking about maintaining the public interest with an internet that actually works as we expect it to then obviously those issues are a concern. And I'm not - with that I'm not saying that there are - that, you know, all the warnings are true.

My real problem here not being a totally technical person is that I don't know who to trust. And some of this I also get with the GAC advice.

The point that Fred has just made, you know, it's a question of how do we ascertain exactly who's right and who's not right? You know, what - if you're trying to gauge impact from advice then you have to understand exactly, you know, what the impact could be.

And if you're being told by one person and we're getting a lot of this that some of the impact could be dire and other people are saying no that's absolutely not right and there's no problem. And the real dire impact would be a delay and

further, you know, lack of clarity for people who have embarked in the process along a set of sudden rules then that could be a dire impact.

So my problem really with this is trying to understand who's telling - who can be relied upon basically to tell the truth.

(Tony):               Stephane on that point are you referring particularly to the security and stability issues or something different when you refer to the technical?

Stephane Van Gelder: yeah no I'm talking about the reports that we got on dotless domains from SSAC and others.

(Tony):               Mikey?

Mikey O'Connor: I just want to add on to Stephane's comment -- there are reports that are in the pipeline -- it's not clear when they're going to get released. But there are drafts out circulating that some people have seen in the community already.

And theoretically they're going to be released sometime this week on these two things. And I think one of the things that we might want to add to Stephane's point is a -- it would have been nice to have those before Durbin.

And then b, it's awfully tough to make policy decisions in that kind of vacuum. It puts a huge stress on this meeting when we have this giant corpus of information unavailable.

(Tony):               Marilyn?

Marilyn Cade: I'd like us to make a fairly strong statement about the fact that these reports should have met the promised deadline. Some of the SSR issues have been raised in the past and glossed over at various times.

And the terms of reference that some of the previous independent studies have been written so narrowly that the experts were - the reports did not capture or document all of the risk. But we also have an opportunity to meet with the SSAC while we're here.

But I think the failure to meet the deadline on these two - on the studies is really inexcusable even if it meant that ICANN needed to throw more money at who was doing the studies. That's the first point I'd like to make.

The second point that I'd like to make is that I'm not supportive of opening up discussions about individual elements of GAC advice in the CSG until we have an opportunity to talk at a constituency level. The - my assessment of what we got in the improvements of the RPMs and in much of the GAC advice is that it substantially improved in areas that we had been calling for improvement in.

And I may have a personal perspective about an individual piece of GAC advice. I have no conflicts of interest.

But I think if we were to get into focusing on individual pieces of GAC advice that we may find ourselves in a situation of having to declare interest and it would be very time consuming and we've got larger issues to deal with on the role of GAC advice. So now I'm just going to make a quick comment about the role of GAC advice.

Unless the GAC is respected -- and I'm not saying obeyed -- that's not the comment I'm trying to convey. But unless the role of the GAC is understood and incorporated into this multi stakeholder model then we're going to spend a whole lot more time dealing with external threats at the ITU and elsewhere to what is right now a pretty safe guarded place for contracted parties.

(Tony): Okay. So your preference is to certainly take a swerve around the geopolitical issues. Is that...

Marilyn Cade: I am not - I don't agree - I have a different point of view than perhaps some others will have. I don't have a client that has an investment in that issue.

But I think that trying to get into a debate about the geonames at this time is going to be very time consuming and potentially very divisive while there's a broader issue about effectively addressing the GAC advice that does help us.

(Tony): Certainly the points that Stephane raised about security and stability. And the lack of information being out there seems a very valid route to go down.  
Steve?

Steven Metalitz: Yeah this is Steve Metalitz. I'm getting a little confused by this discussion.

There's GAC advice which Marilyn just referred to. And I think I would generally be in agreement with her if some of this GAC advice has not been discussed at the constituency level -- some has in our constituency.

And then the security and stability issues while I recognize it's covered by GAC advice at various times the real driver as I understand this was not the GAC. There were other reports and submission and various - in various ways these issues were (unintelligible) had a report -- in various ways these issues

were flagged and there's a concern that the response to that - to those issues has been too slow or lacking.

We don't have the reports - I agree with Stephane -- we don't - this - I'm certainly incompetent to evaluate how serious a problem this is. But the whole idea of getting this report was that somebody competent would get the review anyway.

So I'm totally on board with that. But I'm just not sure that's GAC advice.

And I think if you throw it in with GAC advice it kind of muddies the water.

(Tony): Sure but it fits with our overall concept of concern though for the GTOD program. I saw Jay Scott, then Jonathan and then Mikey.

(Jay Scott): A couple of things. First with regards to Stephane there was an independent report that was done. And then when Google decided to change their approach they decided we'd have a second study which calls into question why we need a second study when we have the security and stability committee that is full of experts that when the issue wasn't even an issue -- there was nobody with a vested interest -- it seems to me that that seems to be the most valid report.

So I called into question why we're having a second report at all. That bothers me at a very fundamental level with regards to that.

And I struggle also with you. I agree with Marilyn that we should make a very big point about the fact that when there are reports like this coming out it is incumbent that they get it out at least two weeks before the meeting because there's a lot of analysis.

And we all represent large constituencies that have to get buy in and approval from everyone else. I disagree with Marilyn with regards to the GAC advice.

I think that it is incumbent upon us to respect the GAC. I respect a lot of people I disagree with.

I think that the GAC is fundamentally wrong here. And I think for commercial stakeholders this should scare you because what they are doing is they are seeking to get something that they cannot even get through their own international law treaties and through their own legislatures.

So they're creating a super legislature outside of the accountability process. So today it's geographic so indications with regards to domains.

Tomorrow it's ISP issues. The next day it's how you can incorporate to participate in this ecosystem.

So I think this is fundamentally problematic. And I think we owe it to the people that we represent here who are not within this bubble to speak up respectfully but clearly and say that that's unacceptable.

(Tony): Jonathan?

Jonathan Zuck: Jonathan Zuck from ACT. I guess this topic's gone around the posey a couple of times. And so I'm still reacting to Stephane's comment about SSR because I think it's a situation where as you say the reports are coming out too late to be incorporated.



And everybody thinks that someone else is taking care of this problem. I mean anytime we talk to somebody whether it's people on the GAC, etcetera -- well the FX has got it covered.

Well there's a report. And the FX is just an advisory board -- it's really something the staff need to be taking care of.

And so - and I can speak as a technical person because I've had to install internal certs that the situation is not tenable the way that it's currently structured. 120 days in a large enterprise would be a disaster.

And furthermore I think the real issue is that the down side of addressing this issue head on is so minor compared to the down side of letting it through that it should be a no brainer. This isn't about slipping the entire timeline for new GPLDs.

It's four or five strings that we already know are the ones that are predominantly dominate this internal cert space. You know, defer those or something like that and let the rest of the timeline continue on.

It's a very painless process compared to the pain that I think we're going to see especially the business community that we're trying to outreach to through all these new employees. They'll be spending all their time justifying the fact - apologizing for the fact that they've shut down their internal certs.

So I think this is probably something worth addressing because again the stakes of addressing it are so low and the stakes of not addressing it are so high.

Man: I've been doing my little note taking thing and I've already split these two into separate topics. There's, you know, I really agree with the idea of separating technical issues topic which I think warrants treatment at the same level as GAC advice and budget.

The main point - I think that was the main thing I wanted to say. And I'm so groggy from taking a nap I'll stop.

(Tony): Kristina?

Kristina: I was going to speak on (unintelligible) but as everyone knows I represent Patagonia and Amazon. But I don't mean to because I think Jay Scott said what I wanted to say far more effectively than I could and he didn't have a conflict.

one thing just picking up on the technical issue and the report I very much would like us to get the board to commit to us verbally that there will be a full and thorough and deliberate consideration of these reports when they are finally released. I'm very concerned that it'll be a situation where oh, everybody's on their way home and we're just going to throw the reports out and we'll have a 21 - 20 day public comment period.

And frankly that's not acceptable on this issue. And I think we need to do everything we can to pin them down to commit to really giving this issue the - right, exactly. Exactly.

(Tony): And that's a good point that leads into our next issue as well when we get there. Certainly for the board there'll be some hooks. Christian?

(Christian Dawson): Prospective member of the commercial stakeholder group speaking on behalf of the internet infrastructure coalition. And I wanted to speak to Stephane's comments because I fully admit that the domain clash and doubtless domain issues are new to me as of today.

And I wanted to say that it's not necessarily an issue of who is telling the truth. But it seems to me as though this is a situation in which the old adage about everybody looking at different parts of the elephant and they've got their own part of the elephant that they're looking at and saying well it looks okay from here.

You know, I'd take a look at the domain clash situation. And from my perspective today I deal with amount the constituents that we deal with and what I do in my personal day job I deal with web hosting providers.

We resell most of the domain names that are out there. And we're going to get those calls when people are saying well, my internal communications, my internal sites aren't working.

The certs are not functioning anymore. We're the ones that are going to get those calls.

And I want - I'm interested in finding out more about well, how - are we looking at what the scope of the problem is with regards to how many of -- not just enterprise level businesses but small to medium businesses are going to be affected. How they're going to be able to retool their systems to address these things.

How many of the providers that I deal with are going to need to figure out how they're even going to get the information to deal with these situations. Because it's brand new to me today. And that's a problem.

(Tony): Okay. Thanks. Did you want to pick up on that specific point Jonathan? And then I'll go to Jeff?

Okay.

Jonathan: I was going to do that. And I - and it will affect small businesses quite a bit I think is the issue.

And the truth of the matter is that the analogy that comes to mind is when Microsoft came out with Windows 3.0. They couldn't release it until it could run Lotus 1-2-3 in a dos box, right, which was this ugly, hacked but the only way that they could sell a copy of windows was if they could run Lotus.

And there's a lot of ugly hacks out there in every enterprise and every corporation right now. And to suddenly say that wow, this is a purer way to do it and you've got 120 days to do it is just a disaster waiting to happen.

(Tony): Okay. Jeff welcome. The floor is yours.

Jeff: Thank you. I just wanted to relay that this was a major area of focus for the security and stability review team that I served on. And we had a number of recommendations related to doing a full scale security and stability review of the new gTLD program before it was launched.

And there were certainly folks on the team a lot more technical than I am. But the general theme of what others have been saying here is, you know, this is -

if this was being done within a company this is like a major new business that you're launching.

And that's everything from the human failures that can come with small and medium businesses they're going to be dealing with as well as all the technical issues. And we were also frankly concerned after having spoken with the LSAC that the root scaling study that they had done was very narrowly tailored and was only one piece of the overall elephant.

And they admitted as such. So there was an element that even on the technical issues there should be a much more holistic and rigorous technical study.

so I think the type of work that is only now really being done where they're doing surveys of the domain, you know, resolution request and really taking a look and analyzing that is the type of thing that, you know, can argue it probably should have been done long ago. But at a minimum it really does need to be taken before we launch.

And I think the other thing that I haven't seen happening is are they scaling up resources whether it's the security team -- how are they going to relate to all of these new registries and registrars and be prepared to provide federal support. So we had really said this should be a broader look not just at what you're doing on day one but what you're going to need going forward.

So I think this is an area where the commercial stakeholder group has, you know, it's going to feel the impact of this is not done well should try and keep the pressure up for more focus in this area. Thank you.

(Tony): Jeff I think that is really useful input. When we get into the session with the board I think that would be a really powerful input if you could make it as part

of that committee as well. I think it would really have some standing.  
(Heather)? Sorry.

(Heather Farr): (Heather Farr). I'm a member of the IPC.

I just wanted to follow-up briefly on Jay Scott's comment having spent four years studying international law and particularly rights and respective geographic names. I want to wholeheartedly agree with Jay Scott's comment.

Look there have been attempts in the past and unequivocally unsuccessful attempts in the past from governments to claim at the level of international law rights in geographic names. As I say those attempts have been unsuccessful and governments -- I don't think it's going to take them very long to realize that it's much easier and much quicker to get things done in the GAC environment than in the international treaty environment.

So this sets up a dangerous precedent, there's no doubt.

(Tony): Thank you. Steve and then Stephane.

Steve: So Tony I wanted to address something else in GAC advice that was rejected by the NGPC about which this group was passionate at our meeting in Beijing. You remember how we were so amazed, we were astonished and angry about the singular plural dismissal -- the decision that had been done.

And we were relieved to see that it made its way into the GAC advice in Beijing. But I for one was just as amazed that it was rejected.

And in rejecting the reconsideration or in some sense saying we reconsidered it and we think we were right -- so I guess they don't categorize that as an

outright rejection of GAC advice. They think the accepted GAC advice to reconsider, they reconsidered and figured out they were right.

I just want to quote you what the new gTLD committee said was the rationale to say no, we got it right. Their primary rationale was worried about precedent, a ripple effect because they felt that overriding the determination of an expert panel would cause a ripple effect and reopen the decisions of all expert panels.

IN other words they're worried about precedent. And yet when you think about it only the GAC has the special sort of stature of all the other advisor groups none of them have the bylaws driven motivation for ICANN to either adhere to or do consultations on advice.

So that precedent doesn't really hold water. And yet the precedent that we're worried about is in the next round, right.

In the next round any TLD is delegated now. In the next round I guess it's fair game to propose a plural of that.

So you talk about dangerous precedent. So when it all comes down to it I think we should take our opportunity when we meet with the board to suggest that it wasn't just the GAC worried about singular and plural.

The CSG was extremely concerned about it and made that point several times when we met with the board, we did the public forum, we've done so in our comments and we're amazed that the reasons they gave for the rejection were so thin. They actually said it in the example that there happens to be some second level domains that are plurals.

There's a car.com and a cars. A new.com and a news.

And since the world didn't end with that and they're able to distinguish we see no problem at all with having a .car and a .cars, a .home and a .homes. So I put that out there.

I think all of CSG felt strongly about it. And if so we should consider raising it with the board.

(Tony): Steve on that issue you were overseeing the room when the response was given to the GAC. Was there any response back from the GAC?

Steve: So in both meetings with the GAC -- it happened yesterday during the plenary. And Peter Neterhold raised that concern that he was still very upset about the decision.

And it came up again today. And it was the European commission speaking for the entire European commission expressed real disappointment with that.

There was no reaction from the NGPC, the new gTLD program committee at all to that point. So there - it's an ask and unanswered question.

And I believe the GAC may issue advice about it in the Durbin communique. But let's leave the GAC out of it a second longer.

We had an issue with this before the GAC even put it in the communique. And I think we need to beat that drum again.

(Tony): Okay Stephane.



Stephane Van Gelder: Thanks Tony. My point is different to Steve's if anyone wants to address what Steve said perhaps I can come back in later.

but if not I just wanted to ask as a relatively new member of this group the points made by Jay Scott and others about the possible I guess GAC overreach in terms of them trying to get some results that perhaps a multi stakeholder process wasn't designed to allow. I'm not clear on is this something new that this group is now considering that it's actually, you know, a GAC probably have overreached to some extent and perhaps they shouldn't have done?

Or is this something that - is this a view that's been held within the group for a while? Because I've not heard this group - sorry being on the other side I guess as I was -- I've not heard this group say that before.

It's a view that I personally hold to some extent and as you know I'm very deeply motivated to make sure that the multi stakeholder model does allow all voices to have an equal voice. So when I hear that there's a feeling that the GAC may have tried to have a bigger voice than everybody else I think that's an interesting point.

And I'm wondering how - what do we get - you know, how do we take that out of this discussion and act upon it in the real discussion that we'll have tomorrow.

Man: It's certainly a big issue.

Woman: I am not at this point willing to say that this group has abuts upon the truth - the point I was making earlier - individuals may be raising different points of view - but I don't feel that we have had a thorough discussion about this range of issues and the threats or risks or benefits to the multi-stake holding model

within the business constituency or within the CSG - and enough depth for the group to have a view. I also - there are a lot of people here who spend a lot of time in a broader eco-system of multi-stake holder activity and I think we would have to have a more thorough discussion - broadly - but I'm not - just because we're individually expressing points of view - I don't think we're at a point; myself, of reaching a consensus.

Man: Okay - on that - so it's a good point, it's also an issue that we haven't discussed the constituencies that are maybe soon to be used around that, (Lisa). Okay - yes, (Scott)?

J. Scott Evans: To answer your question - and I've been around for a while, so to my knowledge, I think sometimes that opinion - is sort of like policy versus implementation. There are people - but in this particular instance there are entire books written on this issue - okay, this is not - this has been going on since the 1950s - it has been a highlight of every major trade negotiation trips - it's been around since the 1800s where the Paris Convention was signed. I think Heather pointed out to you she spent four years studying this - it is actually studied in schools - that's what a big issue this is. So this is the one time that I can actually point to treatises that have been written in this particular specialty on this issue. And what I'm concerned about is when the international law is so unprevailed - even though it's been 60 years that people have been - here's one of the books written on it, by the way - has ben - what's going to happen when they learn they can circumnavigate around - you say the GAC, but the reality is it's only a few governments within the GAC - it is not the GAC as a whole. And so I think it's very incumbent upon us to be very wary of allowing them to circumnavigate processes that have been in place for intellectual property protections for over a hundred years. And I am woe to be part of that not and not stand up as a President Elect of INJ - the largest trade organization for trademark owners and say, "This is incorrect - we appreciate

your respect; this is an emotional issue - we understand you have a point of view - but the law does not support this and for that reason, this advice should not be taken into account."

Phil Corwin: Phil Corwin, a BC member speaking in a personal capacity and on the security issues generally and that list of names, I'm not in any way an expert - my expertise is in law and policy not in technical aspects - but I do know that ICANN's number one job is not trademark law or anything else - it's to be the technical manager of the DNS and if they mess that up and become the technical mis-manager - the DNS is going to undermine the entire organization. So I think from a business perspective and an ICANN supporter objective - the feedback they get from us should be - the guiding principle should be first, do no harm and proceed with extreme caution because if you mess up the technical management job it's going to undermine everything else you're doing and it should not be rushed through to serve some other agenda. I'm not saying I'm for or against not listing names or anything else but it's got to be done in a very deliberative and cautious way. Thank you.

Man: Aisha Hassan.

Aisha Hassan: So seems like, you know, going back to this issue of the GAC overreaching - it seems like there are a number of members - BC members and IPC members who feel strongly - although I can tell you in the BC we have not discussed this nor do we have a position on it. That said, I'd like to see if there's a way for us to be able to have a presence on this or be able to talk about it in time for our discussion and I don't know if that's possible or there's a way to do that but I'd like to put that out there.

Man: Thank you, the basis on which we supported the GAC, you know, insistence on trying to solve the problem by doing GOs or because it was based upon

international law and for now the GAC to try and do something which is contrary to that and is not based on that - it would be a big precedent and I would say, you know, that is one of the arguments that could be used and say, "Look, that was different because that had to do with international law and this doesn't." I think it's important that we make that point.

Man: Stephano.

Stephane Hankins: Yes, Stephane again - just to say that in - I think we do have to try and let regional positions if possible - but I don't know, once again, I may be overstepping - you may not work like this and apologies if I am - but just listening, logic suggests that we've heard from Jahid; J. Scott and others that there's a legal position that is undeniable and I think, you know, some of us at least; and I'm one of them - are uncomfortable with the overreach idea and so there's definitely, I think a basis for discussion and trying to reach an end point which is actually, you know, rather than just discussion it; we actually act upon it. I don't know if it's possible in the time frame so once again, please be positive of my urge to get somewhere - but, you know, if it is possible then I think we've heard enough today to certainly suggest that there is a problem - thank you.

Man: Steve.

Steve Metalitz: Steve Metalitz - first on the geographic names issue - I think it is also the case that the IPC hasn't taken a position on it as we discussed fully. I think the reason for that - I'm trying to reconstruct this - I think the reason for that is that the respondent to the board's request for - on certain portions of the GAC advice. The safeguards and so forth and this was not part of what they asked for comment on. I think that's the reason that we didn't - I may be wrong about that - but I think that's the reason.

Woman: Well, as part of that effort there was a separate letter drafted, the text of which is approved and was supposed to have been submitted and for whatever reason, was not.

Stephane Hankins: And I think the rush now is the same reason that we haven't addressed it either.

Steve Metalitz: Yes, it strikes me that one thing we could say at this point, is that they should have asked for our views on it. It - although - I'm trying to keep this kind of - differentiate this from what they did ask us about and that we did respond on.

J. Scott Evans: They only asked for safeguard advice - that's all.

Steve Metalize: Yes, I know.

Stephane Hankins: You've got to be a little bit careful going down that road - they don't use that as a way of then asking for that because you wouldn't have an answer.

Steve Metalitz: Yes, I understand that - but it really goes to the role of GAC advice. I thought it was a positive that when there was very significant GAC advice that affected all the UGTL applications - that the board asked the public for comment on it. That was a positive side - I think it's the first time that the board has asked for public comment on advice, (David) - I may be wrong but I can't think of another time.

Steve Metalitz: Perhaps they should have had a broader request which then the constituencies could have responded to. I think we can certainly report to the board that there are strong views about this within our constituencies. We haven't come to a formal position because we were not, you know, we were not asked by the

board and in the rush of everything else - which is a I think our third point that we're going to bring up with the board - we had to prioritize and just focus on the things they specifically asked about. But I mean, I think that as a way of communicating - that there are some serious concerns about it but without actually distorting the fact - and I think it's a fact - that none of the three constituencies have actually taken a position on.

Stephane Hankins: Certainly a good point but I think the CSG would certainly all support the idea that the GAC should have been - it should have led to a public comment but that's something we'd all support.

Steve Metalitz: Yes, I think.

Stephane Hankins: Because it's worth making that point.

Steve Metalitz: Yes, I think the same would probably be true on the singular and plural issues which obviously affect a large number - it's not part of what they asked for advise on - I don't believe - I'm not sure that we have a unified deal on it but there are some people who have strong concerns about it and, you know, so maybe that would be the way to package it or to present it to the board on Tuesday given that we have not - we may not - it may be more difficult to come to a unified CSU position on the merits of either of those.

Mark Partridge: I'd like to make an - it's Mark Partridge, I'm a member of the IPC and I also attend these meetings as a representative of AIPLA - the American Intellectual Property Law Association - I'm not speaking on that group's behalf because it's not a topic we've betted but I always see things through that prism and I feel like I should speak to them that way. What I heard in sitting in the GAC discussion about this was a split of views within that group where some of the members were expressing concerns about granting exclusive

rights in certain terms - but also wanted to make sure it was consistent with established legal principles such as some of these terms are also used by other companies and you have to find a mechanism to deal with those rights and the existing mechanisms in the real world, involve established legal principles as they've been mentioned here that should be applied. We also seem to hear some comments from some of the members at the GAC that seem to go beyond that - as has also been suggested here. And I don't think this is really a very controversial thing for any of us in the business community or the intellectual property community to say that and urge the board as they evaluate and apply the GAC advice that it should be consistent with the established legal principles and not granting some sort of new interest that's not recognized by established legal principles. Perhaps that's a way forward in encouraging the board to identify within the advice - is this consistent with established legal principles or is this the special interest of a particular group within a particular country to get something that is not being established outside this organization.

Man: With that issue Mark, would you see the board or the group that would make that decision? Would you look up that advice and make that judgment?

Mark Partridge: So the question is who would do that? I think the board would need to reach out beyond itself to do that. But what the board would do is establish a process for those questions to be asked. Some of the suggestions that were made in the GAC could be a way forward to implement something along the lines of the clearinghouse would dispute mechanisms to specifically deal with these issues. It's going to be a case by case basis - but it would be something that should be consistent with the established legal principles that supposedly - when we were building these - launching these top level domains - part of the policy was that it should be consistent - with the right to allocate it should be consistent with legal principles and that was - a lot of time was spent on the

business side and the intellectual property side on those rights. This is something that a new - new issue to focus on because it's being raised in a way that hadn't been - I don't think - really raised much before by the GAC.

Man: Sure - the need for it to be consistent - it's certainly irrefutable - there's no doubt about that. Just one final comment from Zahid and we must move on.

Zahid Jamil: Just a word of caution - the way we messaged this out to the GAC or anybody else - it's important that they keep in mind two things: 1) that our RPMs - Jack was very helpful to us and we need to be sensitive to that one; 2) that the language that we use to sort of explain this on the basis that it should not sound like the objections the NCSG had when they said, you know, you don't want to create new law when you bring in RPMs and stuff. So we need to find - we may be saying the same thing but we need to say it in such a way that we're not accused of it.

Woman: I just wanted to - picking up on a comment that Steve made, you know, I think as a practical matter there will be another communiqué with GAC advice coming out of this meeting. While it troubles me - I guess - that there is a view within least the IPC that we wouldn't be able to come to a consensus position on this in the next, you know, several days - perhaps the other way to go about it which would also open up the opportunity that these El Bianco reference would be to specifically request that any GAC advice coming out of this meeting as well as NGPC advice that was not necessarily consistent with the outcome that the GAC had in mind - that there advice is put out for public comment and that way you keep everything into, you know, one opportunity to cover it; you avoid the issue of which constituency has a position - which doesn't and so on and so forth, you know, I suppose individual members could still speak but that way - it might be a good way to move things forward.



Man: How does that fit with the next issue we're going to move on to, which is that we've already been swamped by public comments? That's the only thing I have with that. Because that's where they're going to after the discussion - on the one hand we're asking for additional public comments and the issue we're moving on to now is overload on volunteers and the need for programs. Obviously, that would be one issue that you couldn't deny - the load of fatigue that occurred in that program is a result of that. Steve?

Steve: I would say since we're bring up the volunteer fatigue and comment overload - quite frequently even if we just park that for this meeting instead of making it seem contradictory to the point just brought up. (Kristina)?

(Kristina): I actually, you know, yes - (Unintelligible) but it seems to me that one of the issues we talked about this morning is that the unpredictability of the public comment. And if you can do the forecasting and this is an opportunity to do that. Because of the practical matter all affected applicants have 21 days from when the board publishes the GAC advise - so you could say - okay, we know that a month from now we're going to get a public comment period. We can work around that, I mean, you know, again - it's just not a chief position that's fine. But you need - from my perspective - one of the real issues is, yes, there's volume but also not being able to plan ahead.

Man: A perception in the public comments were going somewhere other than the circular file, I think would also act as an incentive to the volunteers that are feeling fatigue; that feel like their - I'll say - yelling into the wind.

Man: Yes, that's a view I think we all share, but part of the bigger question. (Ron) and then Stephano.

(Ron): I fully support what was just said but I also wanted to comment on Kristina - this morning's meeting with Bill - that got some traction and I think that's - we know that there will be public comments; we know that there going to be coming out, but the point is, if they can schedule them in a way - so it's not even that so much that we know what's coming but, you know, we know that there's a schedule; there's a full schedule so we can kind of then draw the resources from our constituencies who are best capable of dealing with various things as opposed to keep throwing the same people at the same - at the multiple comment periods that come through. So that would be much better - that's certainly - I agree, we shouldn't be bringing up fatigue because I think that's, you know, we're kicking a dead horse - there's a lot of bigger issues right now but I think we approach it from this point of view - that's here's our recommendation - other folks are unhappy - but here's our recommendation, what do you think of this? That will go a long way.

Man: Yes, we are into the discussion about this and are quite hopeful - it may be a way we can - based on the end of the other discussion - in a positive light. So, Stephane? (John) you had your hand up?

(John): Just on the fatigue thing which is a pet issue of mine as well - I kind of disagree that we should not talk about it at all - but if I understood (Ron's) suggestion - probably to go about it in a different way - there's probably an elegant way to bring it into the discussion. Another possible way we could go about it - mixing up issues again - sorry, I did this earlier on with the technical aspects, forgive me for doing it again - but on the budget issue which I know we've discussed a lot - the way I can just multiply the initiatives left, right and center - spending huge amounts of money on doing lots of things that aren't just - personally I just feel completely swamped and I'm being involved for quite a lot. So the real issue behind the volunteer burnout issue is trying to get - trying to maintain ICANN's ability to function. On the one hand, a group of

paid people - people are paid to work at ICANN and another group of people that put in their own time, effort and good will towards getting a lot of what ICANN's really about done. And I don't think those people were asked - the volunteers - are now in a situation where with all these new initiatives as well going on, it does go back to the common period thing as well, but if we look at all these, you know, all that's coming out now is just - I've been blindsided by it completely all the time. I have no idea it's coming; new websites; new systems; new positions opening up; new people to talk to - it's just getting so complicated, you know, that's what burnout is - you just feel like shooting yourself and just not reading one more ICANN email.

Man: And as that's happening - the volume of emails is certainly going up. (Karen)?

(Karen): I think we need to go into this with some concrete positive recommendations to ICANN about how to improve their support to the public. That we may have said before but apparently we have to say much more clearly - the digestibility of the overview to not just new people but to more and more people who have overlay - this is not actually that hard to do, if there is a commitment to doing it so the digestibility of the overview needs to be fixed. The - they do not do neutral effective documented summaries of the public comments - they do not analyze where the public comments come from on an overview sheet; they do not provide a period of time between the initial response - even if it's five days - and publish the summary and then open the second round. We have repeatedly asked for not just 21 and 21 but a longer initial and a shorter reply - these are concrete things that we have asked for - predictability to precede a point would be an incredibly helpful thing. They could pause some of the non-essential activities - like I'm not sure if I'm going to die if I can't get on the Linked In site for business. I suspect I'll still be able to effective at ICANN - maybe not, which, you know, we could go in with concrete prioritization and say for the next year, do it this way, and - because

right now, I think we ourselves - when you look at the public comment process as a tool, it's not being effectively supported by ICANN to be an effective tool or for us to be able to use.

So maybe some concrete things - which these aren't policy issues, right, these are things we've thrown out before - we might be able to go in with concrete examples. Maybe I will die if I'm not on Linked In.

(Mark Trackenburg): Mark Trackenburg from the IPC - I think one other concrete thing - I don't know about the other constituencies, but, you know, one concrete thing is the IPC has asked for is secretary of support - I think while we should definitely ask for this - just like Marilyn had suggested, you know, we have before. We can't really control what they're going to do with that. Either they say yes, we'll do that - we can't really know what the outcome will be. They may say yes, okay that's a great idea we'll do that and it may just be indigestible in another way. Or, you know, they may adjust it in a way that's still doesn't really work. We don't really have control over that - we sent a, you know, send us a secretary of support to some extent we have control with that and so, you know, that would be incredibly helpful to the IPC to have someone manage that and to be able to organize all of the constituencies, you know, with the gather all the responses and be able to spend time going over other people's responses so that we can have a better idea of whether ICANN summary responses have any reflection at all upon those replies. So being that the easiest slot, most logical and most efficient way to reduce to some extent the overload - I think we should really make the request again even more strongly and again, frame the context of a very easy way to it - and that also connects the supports of the budget.

Man: Yes, that's right (Mark) we'll look back on those things and there is that inter-relationship and the fact that we're all struggling currently because we don't

know where we're going or how we're going because we don't know what budget we've got. That hooks back to that really well.

(Mark Trackenburg): And to outreach as well because again, you know, I think others have made the point but, you know they had a huge outreach budget to the extent that you get more people in and then you can't focus those people to actually be able to contribute to ICANN. So, you get your money from that budget and put it into the secretariat - that way whatever other outreach efforts you have - you expect to bring more people in - you're actually getting value from that because it's contributed effectively, I think.

Man: Sure. Okay. I think we need to have a much longer discussion about that third item because I think we've all got the same concerns - we will understand the problem on that. So, I'll bring this to a conclusion now if I can, in terms of the three issues. The way I anticipate it would work is the same way we've done time and time again - we have somebody introduce the issue and then having participated in this discussion, people are free to make their own points - having been involved in this and aware of the dialogue we've had and what was considered somewhat contentious; what was considered pretty solid ground to present on. So going down that path - again, we're back to the first question Steve that we've got - which is in terms of introduction of these three items - how do you want to handle that? Do you want to lead on these issues? Who's particularly passionate about any of these and the position?

(Steve): I just want to correct one thing, in my notes I've got four - the reason is because I broke out the technical issues and added it to the list. So the three that you're talking about has now been changed to four.

Man: The technical issues are part of the general issues around each of these?

(Steve): No. We were talking about GAC advice and that snuck in. So I split it like that.

Man: Right now its GAC advice and technical issues.

Man: I actually had something that said concerns over (Unintelligible) one could be the GAC advice and the other could be the technical issues.

(Steve): Okay. If you do split them I would take the GAC advice - I'm happy to play that role.

Man: In terms of (GTODs) it was put into the technical issues which Jonathan said he would take and Ron, you were saying?

(Ron): I was saying if you just want to split it up and if you wanted to talk - want someone to lead on GAC advice on GTLVs I would be happy to open that up.

Man: Okay. Do I have a volunteer?

Marilyn Cade: I think we need to be clear on what it is we're going to say about GAC advice because I do not agree that we had discussed this issue in the business decision. We have a threshold that could lead to a vote and you have a period of time that it's going to take to vote. So it depends on what we say that, you know, (Jim) really agreed to.

Man: Okay. Be specific Marilyn, what is it you would want to fall back on?

Marilyn Cade: I'm not in agreement that we have had enough discussion about how to address a geographic need. Individuals have raised concerns about it - some have conflicts of interest that they would have to declare - others may have

other beliefs - so I would have to understand what we're going to say about geographic needs. Something about GAC advice and the fact that we have benefited and I think you made a point that I was agreeing with earlier or I made a point that I think he agreed with earlier - that we have to think about how we are recognizing the GAC advice and how it has helped us in our command.

Man: One of the things we were asking for was to be able to comment on some of those issues as well. I don't think anyone disagrees with you on that particular point. Steve?

(Steve): Yes, I agree with Marilyn - we need to be a little clearer on what it is we are going to say about the GAC advice and my suggestion is if we thank the board for having put the safeguard portion of the GAC advice out for public comment - that we're glad to have the opportunity to comment on them - and that there were other part of the GAC advice that - about which many people in our constituency felt strongly and they were important and affected a lot of applications and they were not put out for comment. Perhaps they should have been and perhaps there will still be opportunities with whatever comes out of this meeting for those to be put out for public comment - and if they are, our constituencies will be do our best to respond promptly and as cogently as we can. Lisa?

(Lisa): Yes, I agree but I think we can say there are many members or there are some members or there are members that have concerns at least in the business constituency in regards to discussion this further. We don't have a position today but there are concerns and we are working towards having a definitive position.

Man: With respects with the overall opportunity to do this. Mikey?

Mikey O'Connor: Tony and the rest, this is Mikey - I've been taking notes - unfortunately the screen is dreadful and I would be happy to sit with a small group in a room with a better screen and grind through some of this. But I've taken my usual copious notes.

Man: That would be really helpful for those who feel passionate enough about this issue to want to contribute. We're at the section on the board - if you can get scheduling then that would really be helpful.

Mikey O'Connor: I'll send the notes to the leadership group - they'll be in outline form - they'll be that neutral super dense but I think it will be a helpful mental refresher for you and then let you all kind of.

Man: We can circulate but I think it's important that those who - are there are some conflicting duties - those who wish to make an input into that dialogue as a small group - that will be really helpful. And actually hash out where we're going and where we're not going. And particularly, Ron and Jonathan, obviously needed - well it's more your area Ron - I think the consensus is the technical issues.

(Ron): Exactly and I think, you know, Mikey brought it back to a good point that we might have kind of glossed over - at the end of the NGPC GAC meeting this morning, I was talking with (Bruce Tompkins) in joint development about the fact that it was an interesting dialogue and that it's, you know, it's a very cordial, collegial discussion but what's happening to us in the community is that we're lacking the documents to which they are speaking - meaning that the document that was referenced at the top by (Shireen) that - you sort of got this document so late that we received it also a little late but now we have it. And all the board members agreed that should be a public document and we



should see it. That would be very helpful to see that document. I think it would be good to bring that out - that this is an important dialogue and here we are the constituency discussing what's going on as well - we should have seen that document at the same time as everyone else. Why would you hold it back? So, if that makes sense - I see Phillip waving his hand.

It's actually out now? Okay very good. I take back everything I just said, thank you very much.

Man: I did not hear that. Okay, Ron, back to issue, rather than leave this floating can we just pick a time maybe when that group can get together?

(Ron): For my part, right after this at 6:30 - will that work? Jonathan? Will 6:30 work?

(Jonathan): Sure, my part is not controversial.

(Ron): Right - make sure we get a script right. Thank you.

Man: For those who want to take part in that discussion about the actual issues - Ron knows - after you get going at 6:30 and give you time. So let's go back to the other two issues: the operational plan and budget and the issue about overload. Is there anyone around here - Steve?

(Steve): Yes, with respect to the GLB advice - I don't know whether this group has a consensus on whether we want to go back into singular or plural or not. BC is solid on that but I don't know whether the rest of you are.

Man: We haven't discussed that in detail and we don't have a position in the ISPs - I think if you're going raise that - my own view is that and other ISPs can

comment - but my own view on that would be if you want to raise that it would have to be raised as an issue from your constituency, not from the CSG - I wouldn't have a problem with you taking that route. And I think (Steve) said - you haven't got a view on that either.

Woman: On, you know, I don't think that, you know, it's necessary to put it - I think we have kind of a rough consensus, I don't think we have any kind of formal position so, you know, perhaps that's the best way to address it. Well, let me ask this - would the ISPC oppose to including singular or plural in the topics that perhaps could be put out for public comment?

Man: Yes.

Woman: Okay, then maybe that's the cleanest way to handle it.

Man: Okay. That seems a reasonable way forward. So - operational plan and budget and the issue of overload - there the two issues that we have need some brief introduction on. My own personal view is I want to do the budget having given Salieu a bit of a rough time - I gather from his response back this back. So I'd rather - I don't know if anyone else would run that one up.

((Crosstalk))

Man: Well, I feel a little singled out as I've been invited to have a discussion. You have too.

Man: Really? That's interesting.

((Crosstalk))

Marilyn Cade: I - it's Marilyn - I had my corridor discussion with him already and I would make an observation about - I think we need to help him help us. There are some other people who are responsible for - he is not the champion for our needs - that is, he was the champion last year because there was no one - there are other champions - I will say that the champions are, I think are not either we haven't effectively educated them or they are not advocating on our behalf yet. And I think that's something we should take the opportunity to reinforce in the corridor conversation that we have.

So, for instance - the request for the secretariat funding is actually in David Olive's budget - but David is not someone what we have had any discussion or need to really educate or have a dialogue with. Last year, Rob Hoggarth and David did have an opportunity to comment on our budget request - I think.

Man: And it was helpful.

Marilyn Cade: Yes. I mean I'm certainly happy to work with others on making further liquidations of the kinds of things we need - I think - but I think with that particular instance in terms of Salieu's - we need to put some information and.

Man: Sure - what we had this morning - it wasn't an attack in any way - it was really just stating some of the concerns that we had.

Marilyn Cade: What I'm saying is the audience was probably not complete enough.

Man: Agreed. So, this part about saying your office moving up.

Marilyn Cade: I'm happy to work with a small group of others.

Man: Okay. We'll certainly when it comes to discussion there's a lot of input there. And the final one was the overload on our volunteers - if there's nothing else on that?

((Crosstalk))

Stephane Hankins: Stephane here - when you do the actual meeting and you have these people introducing new topics - does it then go through a general discussion?

Man: Yes and the importance thing with these meetings is to make sure that the issue is that we caught forward there - our issue where there is a level of commonality in terms of support and it's worked pretty well. So, it really just sets the standard and then you open up for the dialogue and we're working it the same way this time. I think we'll go to Chris first and do that after if we can.

Woman: Okay, yes.

Man: Okay, so thanks. If we're through with that part of the agenda at this stage, I'd like to welcome - you coming to join us - we've got a couple of other things to work through before we're actually through with the whole agenda for the meeting. But this morning we had some discussion ICANN for business and we had a number of discussions about the recent initiative that is being launched by - maybe I should ask you at this stage - just to introduce that and say a few things about that particular initiative. It came quite late in the day perhaps, so obviously we very much appreciate you receiving the email notification. But what it didn't enable us to do obviously was have any discussion before we got here.

(Christopher Mondeen): It's a pleasure - I think I know most of you here - for those of you I don't, I'm (Christopher Mondeen) - (Decour Engagement Group) working with this engagement. I've been given additional responsibilities about a month ago with (Groups North America Engagement) and actually have been working on a lot of things from prior roles that I can. So I'm sort of on my fourth rotation - for those of you that have seen or heard about the model of engagement that we discussed which is the finding of the pathway of engagement and involvement from the outer circle to the inner circle of people who are active in participating - we've identified that there is a circle missing or some steps missing to get from unaware to participating - if somebody chooses to and wants to participate. So with regards to business engagement - my focus and my job has really been on those circles sort of raising awareness of - looking for in a business friendly way to communicate ICANN - the model and so forth.

The Linked In group ICANN for business is really an attempt - an experiment to be if some of the newer - the people that are newly exposed to ICANN choose to use it as a place to meet or discuss or learn more or to post. I found that in about a third of my time that I spend on business engagement, speaking to groups and producing material and so forth - that there is a great deal of interest. Sometimes it comes from audiences like business school students or engineering students who are entrepreneurs - but they're not really - what their really interested in doing is figuring out how they can stay aware. Certainly a big part of the communication is involved in explaining the constituency; explaining how to reach through and explaining how to identify information and so forth. But also, we're looking for some of those circles that are not quite in the very center but one step in from the creative circle.

So it's an attempt, nothing more - some of the newer audiences chose to use this as a meeting place; as a way to remain informed and share their views -

hopefully it will take on a life of its own as a forum to discuss the linkages between business and science and the work of ICANN.

Man: One question - how do you actually see these progressing towards the use of that site? I mean is this something that you see they are going to stumble upon or how do you see that step taking place?

(Christopher Mondeen): We can - we sort of as you noted - without again very much advanced discussion with the groups here - sort of a soft opening to the extent that newer audiences that you're speaking to or that my colleagues are speaking to are asking for an opportunity to, you know, what happens is I can have the experience where, for example, I spoke at a university and had business students say, okay, so where do - what should I do now? And I didn't really have an answer for them - they are interested in what's next for ICANN; they weren't in the country that's eligible for fellowships; they're not - I don't think people that are eligible for the constituency groups here but that could be wrong. And they are social media types, so to respond to that kind of a need - so to answer your question - I think it's more something that's available to any of us that's speaking to an audience that is perhaps not ready to jump to the center circle but are looking for ways to again, be alerted and be involved or communicate.

So, it's not - there isn't a lot of resource put behind it - there isn't a big communication plan - the best social media should be sort of viral and have a life of its own and that works. So we'll see how quickly it will take off through word of mouth and social connection.

Man: Okay, thanks. I'll open up for comments but just to offer something to start - certainly looking at that site - there were various issues that were referenced to ISPs and I don't know whether this constituency sits on this but from ISP

perspective, we would certainly be interested in putting some hooks into that site that actually point toward some of the activities that we are doing. And some of the issues we have come back to the whole engagement strategy - I think certainly, speaking for the ISPs, we are really struggling to understand how we fit in with the global engagement; how we fit in with the business engagement - I mean trying to do our own thing at the same time and it appears that we're going down - we're not actually working together on this stuff. And if this initiative is going to work I would think there has to be some conversation about how we can actually take advantage of that in terms of making sure the information there is correct and the right pointers are in at the right level - so that those people can be aware of what we do; what they could get out of becoming part of a constituency and if they don't fit, how they can actually integrate into the process. With that, I want to talk - there should be comments from others. Yes, (Mark).

(Mark)

Yes, one of the - in addition to talking about circles, I've also talked to a few of you about funnel - which is to say in terms of the engagement team and my own efforts are very focused on the wide end of the funnel - sort of attracting and informing and ideally - and again, we don't know if it will reach that point - but I could envision businesses very broadly define for me and for that site - so it's not really business from a particular constituency perspective - it's sort of business in a layman's term and - but what would be ideal is for your particular constituency groups that it's among your goals to recruit more - you might begin to see participants there and know already that they're informed or intrigued by what they have to say and then that's almost the stable of potential talents for you. So, I have to say that the attraction process is one where hopefully we can meet in the middle because I can't - to go around to each constituency group and ask about your particular plans for growth or your onboarding process or who you're trying to recruit or what you're seeking - would be one way to approach that but I almost think it would be more

helpful to just bring a world of interested new parties to the topic of ICANN and how it's important and relate to business and vice versa. And then have them somewhere where you could pick them and recruit them and develop them. So that may be an ambition but it's one that I hope will be win-win for all involved.

Man: I definitely take your point about the newbies and younger people, you know, wanting to act on information through social media - is there a social media policy for ICANN employees? Because one thing that occurred to me immediately - especially upon looking at the business - the Linked In for business one is that there's ICANN staff members posting articles and various pieces of information and you have to wonder - is that sponsored or endorsed by ICANN? Is that ICANN's view and, you know, I'm an advertising attorney and do social media policies all the time - it's critical to have a policy for any companies employees who engage in social media communications and activities for things like - making very clear whether or not their speaking on their personal behalf or speaking on behalf of the organization. That's one of the most fundamental components and that's the thing that I immediately noticed on the Linked In for business site. So, I think while it's a great idea in theory, you know, before you go too far or go any further on it, you have to have an established policy in place and your entire idea implodes if you get all these people who come to the site and they're getting incorrect information - which they think is coming from ICANN and the information has been misread. Before you make even another posting, you need to have a policy in place and I'd be happy to assist and I'm sure other people would as well. But, I mean, you know, it concerns me a lot when I hear you say, oh well, it can't be structured you have to just go with it. To some extent that's true, obviously, that's a reality of social media - but that has to be in the context of, you know, a framework of rules and policies in an educational program and people who are going to engage in social media including who's authorized to do that.



Man: (Chris), I'll gather some comments and then maybe you can come back. So that's all. Kristina, Aisha?

Woman: Aisha, then I'll go.

Man: Okay, Aisha.

Aisha Hassan: I guess I just would like to offer help and see if there's a possibility for us to work collaboratively. You know we do - I do - there are many members of the BC who work to educate our clients even outside of ICANN and we would be - I'm sure there are others besides myself that would be more than happy to work with you if that's something you would be amenable to.

Man: (Kristina)?

(Kristina): I would certainly offer the same on behalf of the IPP end. In fact I think there would certainly be - I think it might actually be more helpful for both you and us if we were able to identify maybe two or three members who would be willing to kind of serve as your liaison. I guess the question that I have and it really came to the fore as you were talking - is, you know, for purposes of business engagement, does that encompass the contracting parties or not? Because if the answer is no, then I have to respectfully disagree with your statement that you can't possibly consult with us because then there's only - I mean, there's three constituencies. Obviously you're talking about the contracting parties and that's a broader group of entities. But it would seem to me that there would be opportunities to provide kind of a more direct communication that would be I think mutually beneficial.

Man: Marilyn?

Marilyn Cade: I think we're arguing each of the constituencies have been doing a range of things and I think we could quickly put together the knowledgeable few people who are here and sit down with you and spend some time to hear the things we've tried - what we have found that works - because your role is incredibly important to us and we have been the under- represented and under-served community within the ICANN. The contracting parties have signed a formal liaison; the ALAC passed the same thing - it isn't that we don't have policy staff, but I'm talking about the help to us to grow and feed and to, you know, to deal with the person who all they want to do - looking at the circles is to deal with all of those. And we're all very interested in also increasing, what I just call brand awareness about ICANN. Not everybody wants the same meal or needs the same meal. I'm sure that we're interested in working with you but the other thing, Chris, that I just want to reinforce is the comment that Mark made, we have to have some understanding of the rules of the road and predictability on the validity and integrity of information that is served out to these communities - who we then pick up and process.

And it does give an aura of legitimacy and the ICANN brand on it. If there's a blog post or an article that's picked up - it could come across as being official ICANN policy and I'm very concerned that part of this is going to come across to business users as if the yay-yay; rah-rah buy your domain name now. And I don't think that's in any way the intent but there's a lot of business users out there that are just getting aware.

Man: Just on that one point Chris, I have some similar concerns because some of the information that has already been posted relating to the ICPs isn't particularly correct. But that's a minor issue we can take off line - it's just an example. So, Mikey, Zahid and Chris. Okay good.

Zahid Jamil: My colleagues have spoken about the help that we can give on out-reach - I just want to flag one little thing and it's slightly different is recruitment. What is considered to say it's slightly different and I'm often surprised considering the size of the ICANN organization of the corporation in the inbounding it must receive is how few to still their way down to certainly, the business constituency and that converts into members. So I'd like to flag recruitment as well as an objective. Thank you.

Man: Mikey?

Mikey O'Connor: This is Mikey O'Connor. I'm going to come at this another way. Why is it that this thing gets hijacked by folks like me? Like what if I come in and I just start spraying a whole bunch of stuff. And I say, "(Unintelligible), and that article is stupid."

And we get into a little internal rumpus on the LinkedIn site between constituency members who are sometimes speaking as individuals, and sometimes speaking as representatives of constituencies, and maybe not making that distinction, and maybe, you know, raising their pet peeves.

And suddenly you have this rumpus that's just delightful for a guy like me. You know, I'm a (unintelligible). I love that kind of stuff. But I'm not sure that you want that romper room to be the gateway for all businesses in the world without at least some adult supervision. You know what I mean?

And, you know, what I read in the stuff that was there was - I mean it was PR stuff. And as a (unintelligible), I was really tempted to come in and have some fun with you like I did with Chris Gift over the fact that he didn't register the domain name for ICANN Labs.

So social media's great, but I do want to amplify the policy issue that you guys have raised, and add to it the fact that, you know, you're launching a rocket into a pretty interesting space, and you may wind up with fireworks you weren't expecting.

Man: (Unintelligible) drops anyway now, Mikey.

Mikey O'Connor: Yeah, I know. I think I'm the first member. I'm not sure.

Man: So he...

Man: Well we have adult supervision, I think it's a good thing, (Chris), that you, you know, the continued engagement you've had with, say, the chairs of the various constituencies, especially the BC. I think that's a positive step, and hopefully that'll continue and, you know, that actually - make sure that some of that supervision is available.

But on the other note, what I really wanted to say was that - and, you know, make everybody in the room aware, the work that you had done, for instance, as an example, with the ICC.

And, you know, there was an event in Doha, and there I think that taking the opportunity to be able to message out what was happening in ICANN, and doing that with, you know, calling upon certain resources which are from business was, I think, a fantastic opportunity, because I can tell you that most people in the room had no idea what this was all about.

And some of them were quite - let's say it led to some pretty vigorous discussions. So having that sort of outreach - and some of them actually came up and said, "Well where can we join? How do we sort of engage?" And I

think that's - I just wanted to encourage that kind of outreach you're going to be able to do in, you know, different forms -- not just the ICC, maybe others. But I think that's a very good place to start. Thanks.

(Tony): I think - so Jonathan and Greg, and then after that we'll wrap up and throw it back to (Chris).

Jonathan Zuck: Hey, (Chris). Jonathan Zuck from ACT. I guess I'm concerned about an engagement outreach effort which is too disconnected from an engagement strategy.

I think as you look at your different spheres of separation from the inner circle, as you were sort of describing it, that it's important to do some real work figuring out what the sort of demographic look of those businesses are that you're trying to appeal to, and what you imagine their interaction with ICANN is going to be.

Because setting processes in place within the organization to actually have that engagement, I think has got to take priority over inviting people to engage in a process in which they're fundamentally not welcome at this point.

I mean this organization is made up primarily of people whose business is the Internet, which is not the broader business community that's represented at, you know, by the BC in some measure.

And so as they go out retail and literally - (Marilyn) has done yeoman's efforts trying to grab people and say, "You need to be here. You need to spend time spent in the BC. And I don't care if it's torture." Right?

And I've brought, to date, you know, at least 40 small business owners to sit through an ICANN meeting. I have a real difficult time getting them to come to a second one, right? And so this process is wired for insiders, not for outsiders.

And understanding who those people are and what kind of communication they need so that they can effectively participate by looking at a sliver of a problem and understanding what question they're being asked and answer it, I think, is critical before making an invitation to participate. Because I think it becomes a bait and switch that ultimately will be disappointing to your outreach efforts.

(Tony): Greg?

Greg Shatan: Greg Shatan, IPC. I'll just say when I saw this, I thought - and heard about how it came about, I found it fundamentally bizarre that this launched without any engagement with the commercial stakeholder group. It's one phone call. It's one email -- maybe three.

I really - it seems to almost smack of a fundamental misunderstanding of the multi-stakeholder model. Because where do stakeholders come at ICANN if not through the stakeholder group that they have an affinity to and affiliation with?

And that this all went out there without a mention of the multi-stakeholder model, without a mention of this group, just - it almost seems like you kind of forgot about the GNSO and about the commercial stakeholder group, and instead there's just this paint-gun approach to just splatter this thing out there without - no aim and no strategy and no policy.

It just seems infantile. Not that I have a strong opinion about it, but it just seems to me to have been almost like some kind of strange fever dream that, you know, got out there.

And now, you know, all you've got is a Colombian entrepreneur that says we've all got to go buy domain names tomorrow and a bunch of guys who - and we found out about it only because Mikey finds this thing, you know, in the corners of the Internet.

And then, you know, you hear at the last minute to find out what the heck is going on. It's just - it seems to me that, you know, it's almost like ICANN isn't working for the stakeholders anymore. And I just felt leaving us out shows that the strategy and planning behind this, whatever it was -- it was supposed to be viral -- was yes, as a virus. But the virus were on a very high fever that caused rational thinking to be suspended.

And to put this out there this way without the participation of people -- anybody in this room, as far as I know -- although you say you engaged community leaders when you did this, in a little post on the blog - so I think, you know, which community leaders you engaged, if none of them were in this community? Or if they were, where they are? Thanks.

(Tony): Thanks. I said we'd end but, (Ron), want a couple of words?

(Ron): Thank you very much. (Chris), it's not easy to sit here and take all of this, but I think that summary right there really captures, for all of us, the frustration -- some of us around here 14 years, 13 years.

We've done outreach for years and we've tried to engage chambers of commerce, all kinds of things. And when we had our last meeting, we spoke

about this a little bit if you recall, in Beijing. It's a very frustrating thing for us because all of a sudden, out of the blue, we see this stuff.

What this is, quite clearly, is corporate environment. It's a corporation driving from the top -- very uncomfortable for us. I think the message that you might want to be taking back to your colleagues and your superiors is that we're very uncomfortable about the fact that we've got people, with all due respect, who don't know who we are.

A lot of new hires have no idea what ICANN is. They've never been to an ICANN meeting, let alone understand how the nature of this incredible institution works. And that's a frustration for us, because they try to do their best -- you included. Everyone's doing a lot of serious work.

But you can't do that in ICANN. ICANN is this incredible model of bottom-up. And we have to drive that message home, because what's happening now, we're seeing a corporate approach, and that's why stuff is being shown to us as opposed to being developed with us. And that's where the disconnects happen, and it's making a lot of people very uncomfortable.

And I think that Gregory just really kind of summarized it very well. We're pulling our hair out a little bit. We would like to see growth. We'd like to see expansion. We'd like to see development. But it cannot happen without us. We have to be all part of this thing to make it go forward.

And Fadi says it all the time, but unfortunately the actions we're seeing are somewhat different than what we're feeling. So I just want to say that I'm sorry we're beating the messenger a little bit, but it's important that the message gets back. Thank you.



(Tony): (Chris), I think it's appropriate now to kind of fall back to you if you want to (unintelligible) points to be making.

(Chris): Sure, well thanks for the comments. Thanks also for the offer to help and (unintelligible) and (Christina) and others who, you know, helped over the last few weeks since I've been doing the - there is a social media policy. I will get that to you.

There's sort of rules of the room which are on there to - it's early days, so there isn't much diversity of material. I think the thing has been open a day and a half, so sort of with the idea of raising the ICANN brand awareness among the broader world.

That, as I said, to me includes business in all categories, and to (Christiane)'s question, it's not directed really towards registries and registrars or even the (unintelligible) industry, because it's not directed anywhere yet.

There's a - what I think I could propose to do with this group is to share the social media policy; to ask for your input on sort of the rules of making - to see if they can help with your concerns about accuracy with the appropriate disclaimers and so forth.

I also think that there isn't a variety of material on there yet to judge what it's about in terms of the direction that it's going, and perhaps what I could have done was populated more of the categories of business, which right now there's just kind of a couple of mentions (unintelligible).

But groups like, as I mentioned, business students or entrepreneurs or all of the people at ICC that came to the Doha event, were invited to join and had (unintelligible) Singapore, too.

You know, again this is meant to be a tool to answer that question which I get, which I suspect you get, too, which is what's an easy way for me to stay informed. So I can speak with each of you about ways to answer that question.

This particular social media tool is really one of the first of what could be dozens coming down the pike. And I was very eager to get it going because I was seeing a lot of enthusiasm and a lot of demand (unintelligible). And short, you know, audiences that aren't ready to join a constituency, and I was at a loss for where to direct them.

So this has all been very helpful, and I think that I certainly - hopefully with your help even over the coming days, you'll see the site or the room or whatever it is, with a little bit more variety of categories of business and topics and articles and things covered.

The Colombian - the young, passionate Colombian entrepreneur who loved ICANN is a blogger and we cross-hosted that blog. There's a gentleman in India who is a blogger and passionate about ICANN, but he came to an ICANN meeting and he had a bad experience, and I don't know if he'll come again. But he still wants to know about what's going on, and he's passionate, too, but he's not ready to join anything yet.

So I would like to, you know, the growing team for engagements is there for all of ICANN as a tool to raise brand awareness and bring in many, many, many, many more eyes and ears to this wide end of the funnel. And we should do it hand-in-hand with you in a way that is informed, in terms of making it easy for you to benefit from that as well, and for the ICANN in future generations to benefit as well.

So when we talk in the broader forum this week about social media engagement or development of new platforms for collaboration, please raise the issues you've raised with me and I'll certainly raise them with my team.

And let me know who - if somebody wants to co-manage a social media group, it's a lot of time but I'm happy to accept that offer of help. If somebody wants to suggest guidelines that we should follow that we make public, I'd welcome that help, too.

So I'm being a little bit rambly, but I'm grateful for this. It's very helpful. And just understand, as (Marilyn) said, it's all good for you in my view. There's nothing that should be felt as detracting from your mission. And if it does feel like it's detracting from that, then I've failed. Thanks.

(Tony): Thank you, (Chris). I think the issue here is with anything that is viewed as business, then this group would feel that they needed to have some engagement in that, and we need to find a way of working to make that work.

I wonder how many of those folks who went to Doha and Singapore are actually aware of the constituencies and work that we do, in a way that they don't necessarily have to join us and come to all our meetings, but we can also provide channels back to them, information channels, and probably come in to speak to the other constituencies here.

But if there are any ISPs in there, that would clearly be our aim. And at the moment we very much feel that we're on the outside of this, and those connections won't be made. So if we can find a way of making that work, then maybe we've got something we can all use. So I'd like to thank you for coming along very much.

(Chris): I would - just at that last point, so I never engaged with any audience or group without describing the constituency groups -- what they do, what their Web site is, and tell them to please look and see what the criteria for joining are.

So those come above, on the slide, the LinkedIn group. So those are - you're all there. And there's also this social media platform if you want to just hang out and talk about ICANN things. So rest assured, you know, the numbers involved are getting bigger.

So but with ISPs in particular, I know that that's the particular focus of your group. So if I - I will seize upon anybody that shows interest, and I will introduce them personally to (unintelligible).

(Tony): Thanks, (Chris). My response to that would be that in terms of newcomers coming on, particularly those who don't know that much about ICANN, I think for all of us, our Web sites are the best places to start, because they're geared up for a particular use and they're geared towards those of us who vote in ICANN.

What is useful is that if we can get contact with those folks who are appropriate to our constituencies, we can start having dialogue with them. The BC, they have an excellent newsletter which is a good starting point to bring them in at a level that means something to them.

And it's getting to make that contact with those people at the right level that's critical. Just saying this is the BC or the ISPs, this is what you need to be a member and this is their Web site, it's probably going to be a complete turn-off in those early days. So we need to find other ways of working through this to do that.

(Chris): So help me understand a little bit. Between the options of directing them, say for the ISPCP group, directing them to the Web site or introducing them to you personally, are there other in-between options?

(Tony): (Unintelligible) approach, but the way I would prefer to see that working for our constituency, if you can point those people towards us probably initially through the (unintelligible) area, we can make that contact and we can follow up as is appropriate at the level to engage with those people. And that would seem a good starting point. So I'm sorry to draw this to a conclusion...

Woman: (Tony), I want to take this opportunity for all of us to remember to thank (Chris) for organizing the business outreach reception on Monday night that we're - and if you could just say a word about it, because we're all going to be there, but you've also done a lot of outreach to various partners.

Could you say a word about that, because you really listened to our views at Thursday morning breakfast for local folks from work, and you've come up with a better solution. So...

(Chris): So tomorrow we can all have a drink together. It's really meant to be a welcome again for newbies. Sadly, I don't know that we'll have that many newbies. You know, I almost think having an event later in the ICANN week allows for a sort of generation of some more buzz, although we have to keep trying whatever we can try.

Working with the local Durban Chamber of Commerce and Industry in particular and each of your groups, we're throwing a party. And so the idea is really it's not a structured thing. It's not panel discussions, videos. We don't want to - it's drinks.

So my vision is to just ask people in the room, if they're new, to raise their hands and let's see how many we get. And then step two, to point out (Tony) and (Alicia) and (Christina) and say, "Here's people to talk to," and let you all talk.

So, you know, I almost think that somehow for ICANN meetings, it is really one of the sad things about ICANN, is that the engagement with the local geography is not as good as it could be. So I offered actually to the Durban Chamber to come a week early and do a roundtable or brown-bag to talk about ICANN, so at least we get some local businesses to come. And I'm not sure there was even interest in that.

But whatever we can do - and if you have ideas, as we go to Buenos Aires, about how to sort of prime the pump or create fertile grounds so that whenever we have a cocktail or a business newcomer briefing, panel, outreach session, that we actually - they outnumber us, that would be success to me. But thank you, and I look forward to seeing you. It's in the Hilton Ballroom, 6:30 tomorrow night.

(Tony): Okay. I realize that we're at the end of our official time, and I've got a really difficult issue here which I'll seek your guidance on. On the agenda, Michelle had a slot to present on the meetings working group, and (Christina) also wanted to have some discussion on the resolutions that are going before Council.

So I'd like to A, seek your indulgence that we can continue for a little bit longer -- I can't hear you -- and ask if we can cover both of those issues within the next 20 minutes or so. Is that all of the business constituency?

Man: I'll stay. I can stay here.

(Tony): Okay. Are you okay with that (unintelligible) we continue anyway?

(Christina): Let me just - I'll just introduce the motion issue very quickly, simply because I wanted (unintelligible) of our closed meeting, and that is it is the view of the IPC that Jeff's motion to amend the by-laws should not pass.

We wanted to find out whether that is also the view of the ISPs and the BC. And if so, which I'm seeing not, so I think the answer is yes, or that we need to talk about it. And that if the answer is ultimately yes, then with the assistance of (Lanre) or one of the voting NPA's we can defeat the motion.

The other request was that de-locking the domain name in the UDRP - there's been a lot of push in the Council level to see whether that is a motion that could be voted on on Tuesday - on Wednesday, rather.

The IPC - we're still reaching out to our members. I think where we're going to end up is that we simply didn't, you know, we can't vote on it now, but we think it would make sense to have a 30-minute meeting for the Council in August so that you can vote on it and move it along.

But that's kind of the perspective from which I wanted to raise that. So, you know, I don't know where the ISPs and the BC are on the Neuman, you know, GNSO-rules-everything motion. But - okay.

(Tony): Quick response from the ISPs. This was on our agenda for our constituency meeting. Obviously we haven't discussed it. On the second point, the de-locking of the domain name, it seems to me to make an awful lot of sense to go down that path and have the meeting in August.

On the first motion, we're down to basically expressing views and we don't have a position. My own view, for what it's worth, is that it would be in accord with you. But we have our two councilors here, and maybe if you have any concerns over this, maybe just very quickly pick them up, even if we have to take it to the constituency meeting.

Man: Yeah, thank you. I'm sorry, (Christina). I'm not very happy that it came up so late. Right now we've had issues. So I think we need to talk about it (unintelligible) and would like to have a discussion on that, on (unintelligible) regards to the domain (unintelligible) motion on the by-laws.

((Crosstalk))

Man: Jeff's motion. So on the one hand I'd personally, as (Tony) said, we didn't discuss that in the ISP. But I personally - I'm open to that (unintelligible) as to this motion.

We had a discussion this morning with the Board about that, and it gave us some flavor of how the Board or how key members of the Board are thinking about that. In principle - so I would say I do not have a problem with that motion.

I would have some questions on how to think about that we do not - the Council does - do not suggest this kind of motion and then put it forward to the Council other than to discuss what should be - what could be the outcome of that, and could it be successful. So that is what my thinking is about it, so we need some discussion about that.

Woman: Okay, I am (unintelligible), and I think one of the things that you were thinking about is that given the policy implementation working group charter



is, in fact, in front of the Council. But, you know, this actually should get wrapped into that charter.

And obviously we can discuss it more. And I think, you know, given the ISPs don't have a position on it yet, then certainly, you know, certainly defer discussion until...

Man: I still have some concerns with (unintelligible) just to shift it over to the policy implementation group, because I wouldn't like to see that group is going to be overloaded with - this is ICANN. So but anyway, (unintelligible), (Christina).

(Tony): Just trying to cut through this and in the sake of saving time, I would suggest that we have some dialogue between us. But it won't be in the (CSG) session. I think we should take this into our constituency meeting on Tuesday. Whatever comes out of that we'll obviously advise you of where we are.

Man: (Unintelligible) anything, I checked out briefly on the possibilities to have a short meeting in August. I think that people are on vacation and so, so the reply was that probably too many that are not possible to attend. I think it's...

(Christina): Well then it looks like you guys are going to vote in September.

Man: Yeah, if we can't decide on it now.

Man: I don't see - (Tony), can I?

(Tony): Very quickly.

Man: Very quickly. Two points. On the UDRP, we are - we don't have a problem with the motion, but we're quite happy to defer it because of obvious reasons. I mean it's fine. We don't have a problem with that. That's our position.

On the issue which is the Jeff's motion aspect, I think it was interesting and we should take note of a transcript if we can get it. But Jeff himself said that he hasn't any idea what the definition of (vice) is. And that would be something that the policy implementation working group would have to work out.

That by definition means there's no way this motion can go through on the (unintelligible) first. So I think that's one thing we throw back at them. And in any case, the discussion we heard in the Board today, there was great opposition to this idea. And there were other workarounds for solutions as opposed to having amendments. That's just (unintelligible) from the BC. Thanks, sir.

Man: All right, so after all that and before coming over here, I talked to Jeff; asked him if he still intended to make the - to offer the motion. He said he did. I asked him if he would be open to stripping it down to closer to the underlying motivation.

Again speaking personally, I think the underlying motivation is good. There is an increase in the contacts that the Board is making with the Council. Either they are asking for advice on certain matters, or we are offering it outside the scope of a PDP. And so if they reject it, we'd like to know why, as a fairly prosaic approach to things.

My complaint initially about the motion was that it was over-architected. I didn't think we needed to get into the by-laws. (Ray), the Board member, and

he was, you know, running the GNSO review, said that his druthers would be to strip the GNSO and the other SOs and ACs out of the by-laws and let them stand on their own.

So I mean, you know, there is an underlying motivation that I think has integrity, but that the structure of the motion is just - it's totally over-architected. And if it's in its current form I suspect that there'll be many in the BC that have a problem with it.

(Tony): Okay, I really want to kill this now, this discussion, because I think it's got to go back into the constituencies...

Man: Can I just say - I'll say two very quick things. One, I am the IPC representative to the policy implementation drafting team, and I think that the subject of this motion is absolutely core to the working group that we are creating in that drafting team, and that doing this before giving the working group a chance to work is really gutting a large portion of the working group.

It's not overloading the working group. It's stripping the working group of a lot of its work.

And the other, in terms of the other motion, I think sometime in the last few months there was work on the Council on trying to set appropriate standards for when motions are made prior to a meeting, because there was some last-minute-motions-sneaking-in issue. And they actually made rules about when - or reiterated the rules about when motions could be made prior to a meeting.

So I think this would violate these rules, and I think that violating parliamentary procedure for good reasons or bad is a bad idea. Thank you.

(Tony): Okay, thanks. I really want to kill this, Mikey.

Mikey O'Connor: I know. And I want to finish it. I want to put a bullet in this. You know, we're waffling and I agree totally with the BC and the IPC on this. This motion drove me crazy.

(Tony): Okay.

Mikey O'Connor: I was moderately mollified when Jeff at least took the Council wording on it, but I can't say strongly enough my agreement with Greg.

(Tony): We're going to have a good discussion in the constituency meeting. That's for sure. So before everyone disappears, I really want to apologize to Michelle about the fact that a number of people have left for various reasons. And I have offered Michelle the opportunity of presenting first thing on Tuesday, but (unintelligible) do it now. And if that's the case, please feel free.

Michelle Chaplow: Okay. My presentation's only two or three minutes so, you know, and I'm here and ready. (Unintelligible) I'd prefer to actually just go and have it over and done with.

Basically I'd like to talk to you about the ICANN meeting strategy working group, which affects us all because we all come to the meetings, and we all have an opinion on this. And I'm going to briefly outline the charter structure and composition and deliverables within maximum five minutes.

The meeting strategy working group was created to discuss and propose strategy for the structure, purpose and locations of ICANN public meetings and conferences, commencing in 2015.

The group is composed of Board members, staff and community representatives, with actually 16 community members on the working group, and chaired by Sebastien Bachollet. The GNSO representatives are Paul Diaz, Donna Austin, (Poncelet) and myself.

Basically the group was divided into three sub-groups. So the first group, the first sub-group, is on scope, and you can see the list of people who are involved in the sub-group on scope. The second one is organization, and the third one is engagement and support. I actually volunteered to chair the third group.

And then the staff members that are involved are at the very bottom of the screen there. And I also made sure that we had a GNSO representative on each of those three sub-groups.

This is basically the structure, and the first group, Group 1 on scope, they look at objectives, number of meetings, et cetera. The second one is organization. So that particular working group, they're looking at receptions, (unintelligible), sponsorship.

And the third one, the engagement and support, is interpretation, languages, visas, hotels and the press and media, et cetera. So it's much more manageable now that we've broken it down into these three sub-groups.

Now deliverables, you know, what we're going to provide is metrics -- looking at increasing metrics, not creating new metrics for (unintelligible); and (unintelligible) current requirements, (unintelligible) that is being done already by ICANN; suggesting ideas to enhance the meeting and providing a report for further discussion.

We will shortly produce the initial draft -- we haven't produced any draft at the moment, so right at the beginning really -- and which will go out for public comment. And in the autumn, the draft final report for public comment. And the very final report will be presented to the Board at the end of this year.

(Unintelligible) two or three minute outline. On Thursday morning, right after the gala, there's an opportunity for you all to come along between 9:00 and 10:30. And there's going to be a brief instruction of those three sub-groups, Group 1, 2 and 3. And then we're going to break down into a working session where we can all receive your ideas and input into this working group. Thank you very much. I hope I haven't kept you too long.

(Tony): I wish all presentations were that swift. Thank you very much. Okay, thanks everyone. Thanks for staying on.

END

**C-095**



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 Samanez  
Vice Minister of Foreign Affairs

**C-096**



**C-097**

Redacted - Information Designated Confidential In This IRP

**C-098**

Redacted - Information Designated Confidential In This IRP

**C-099**



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GAC Advice re: Community Views on .HEALTH.....	p. 20-21
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## ANNEX 1

### **GAC Advice (Singapore, Buenos Aires, Durban, Beijing): Actions and Updates**

Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>



Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>

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**REFERENCE MATERIALS – NGPC PAPER NO. 2014.04.29.NG1a**

**TITLE: GAC Advice on .AMAZON (and related IDNs)**

**Process for Consultations between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws**

**Proposed Process:**

**Step 1:** Upon receipt of GAC advice (and prior to communicating its final decision), the Board will provide a written response to the GAC indicating:

- whether it has any questions or concerns regarding such advice;
- whether it would benefit from additional information regarding the basis for the GAC's advice;
- and a preliminary indication of whether the Board intends to take such advice into account.

The Board's response will be subject of an exchange between the Board and the GAC.

**Step 2:** In the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice, the ensuing consultations will be considered “Bylaws Consultations”. The Board will provide written notice to the GAC (the “Board Notice”) stating, in reasonable detail, the GAC advice the Board determines not to follow, and the reasons why such GAC advice may not be followed. The GAC will be afforded a reasonable period of time to review the Board’s Notice and explanation, and to assess whether there are additional elements of GAC advice that it believes have been rejected by the Board.

**Step 3:** As soon as possible after the Board Notice is issued (or within such time as otherwise agreed), the Chair of the GAC and the Chair of the Board will confer as to an appropriate time and agenda for a meeting between the GAC and the Board (the “Bylaws

Consultation”). It is intended that all issues related to the meeting are identified and agreed upon between the GAC and Board prior to the consultation.

**Step 4:** Within a timeline agreed to by the GAC Chair and Board Chair, the GAC and/or the Board may prepare written documents setting forth their respective positions on the intended Board action for presentation at the Bylaws Consultation. Subject to the agreement to publish documents, such documents should be communicated and will be published at least two (2) weeks prior to the Bylaws Consultation meeting. Where practicable, all communications and notices provided by the Board or GAC shall be posted to ICANN's website. In addition, a written transcript of the Bylaws Consultation meeting shall be posted to ICANN's website.

**Step 5:** During the Bylaws Consultation meeting, the GAC and the Board will each seek, in good faith and in a timely and efficient manner, to find a mutually acceptable solution to the conflict between the possible Board action and the GAC advice, including by proposing compromise positions with respect to the intended Board action, if feasible and appropriate.

**Step 6:** After the conclusion of the Bylaws Consultation, the Board will determine whether to reaffirm or reverse the intended Board action, or take mitigating action.

If the Board determines to reverse the intended Board action or take mitigating action based on GAC advice and the outcome of the Bylaws Consultation, the Board may as appropriate: (i) implement any compromise action proposed by or agreed with the GAC during the Bylaws Consultation, in either case without further GAC consultation; or (ii) formally reverse the Board's preliminary or interim decision. The Board's final determination will be communicated to the GAC, providing the GAC an opportunity to comment and/or to raise other issues raised anew by the Board's decision and therefore not addressed in the consultation.

As a general rule, the Bylaws Consultation process should conclude within six months.

The GAC and the Board can agree to a different time limit when necessary, taking into account the complexity of the issue and the scope of difference between the GAC and the Board's positions. Either the GAC or Board may initiate a request for expansion of the six-month time limit by providing a written request that sets out a new time-frame for completion and indicating the basis for the request.

**Step 7:** If the Board determines to take final action in contravention of GAC advice, then the Board will issue a final decision, stating the reasons why the GAC advice was not followed, as required in Article XI section 2.1.k of the ICANN Bylaws. The Board's final decision and explanation will be posted on ICANN's site.

## REFERENCE MATERIALS – NGPC PAPER NO. 2014.04.29.NG1a

**TITLE:** **GAC Advice on .AMAZON (and related IDNs)**

### **Timeline of GAC Advice on .AMAZON (and related IDNs)**

- 20 November 2012: “[T]he Governments of Brazil and Peru (GAC Members), with full endorsement of Bolivia, Ecuador and Guyana (Amazonic non-GAC members) and also the Government of Argentina, would like to request that the ‘.AMAZON’ gTLD application be included in the GAC early warning process.”
- 3 March 2013: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter notes that Amazon is supportive of the concept of public interest commitments (PIC) but was unable to submit a PIC at that time because the process had not yet been finalized.
- 12 March 2013: The Independent Objector files three community objections with the International Centre for Expertise of the International Chamber of Commerce (the “Centre”) concerning .AMAZON and related IDNs in Chinese and Japanese.
- 11 April 2013: In the Beijing Communiqué, the GAC advises the Board not to proceed beyond Initial Evaluation for the applied-for strings .AMAZON and IDNs in Chinese and Japanese.
- 22 May 2013: ICANN publishes applicant responses to the GAC’s Beijing Communiqué, which includes the applicant response on the .AMAZON GAC advice.
- 4 June 2013: The NGPC accepts the advice in the Beijing Communiqué and determines that at that time, ICANN will not proceed beyond initial evaluation of the identified strings.
- 4 July 2013: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter expresses Amazon’s willingness to work with Brazil and Peru, and provides public interest commitments that Amazon is willing to commit to in order to address the governments’ concerns.
- 18 July 2013: In the Durban Communiqué, the GAC advises the Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of the



Applicant Guidebook on the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)

- 28 August 2013: ICANN publishes applicant responses to GAC advice, which includes the applicant response on .AMAZON (and related IDNs) GAC advice.
- 10 September 2013: The NGPC adopts another iteration of the GAC-NGPC scorecard. The NGPC notes that Amazon submitted a response to the advice in the Durban Communiqué, and given the volume of information presented, the NGPC proposed to consider the information and take action at a future meeting.
- 13 September 2013: Letter from Mr. Stefanos Tsimikalis (Attorney, Tsimikalis Kalonarou). The letter notes that he has been following the issue with genuine interest, and suggests that “It cannot be disputed that the word Amazon is part of the Greek culture, and henceforth, of world culture and legacy. If any country had the right to object to Amazon’s application... that should be Greece.” The letter suggests that if ICANN follows the GAC’s advice it “would be acting as a judge of history and would be assigning quasi sovereign exclusivity on the name Amazon to Brazil and Peru, depriving the world of its cultural heritage.”
- 28 September 2013: the NGPC adopts another iteration of the GAC-NGPC scorecard. The NGPC notes that due to the complexity and uniqueness of the issues raised in the applicant’s response, and the volume of information submitted, the NGPC intends to further study and analyze the issues raised by this application and the GAC’s advice. The NGPC directs staff to prepare additional analysis regarding the advice and the issues raised in the applicant’s response.
- 4 October 2013: Letter from Mr. Ernesto H.F. Araújo (Chargé D’ Affaires, a.i., Brazilian Embassy). The letter notes that on 8 August 2013, the Committee on Foreign Affairs and National Defense of the Brazilian Senate approved a resolution requiring “the Brazilian Government to express to ICANN the Committee’s formal opposition to the registration of the gTLD ‘.amazon’ without the proper consent of the countries in whose territory the Amazon is located, among which Brazil.”

- 20 November 2013: In the Buenos Aires Communiqué the GAC requested an update on the current status of the implementation of the GAC's advice on .AMAZON (and related IDNs).
- 3 December 2013: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter details the steps Amazon has taken to meet with the concerned governments to discuss its applications for .AMAZON (and related IDNs).
- 24 December 2013: Letter from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru). The letter presents additional information concerning geographical protections in an effort to further advance the objections of Peru, Brazil and other countries objecting to the .AMAZON stings.
- 10 January 2014: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter comments on the GAC's advice regarding .AMAZON, and reiterates its previous position on the matter.
- 27 January 2014: The Independent Objector's objections against .AMAZON (and related IDNs) are dismissed and the applicant (Amazon) prevails.
- 5 February 2014: The NGCP adopts another iteration of the GAC-NGPC scorecard. The NGPC agreed to send an update to the GAC on its progress to address the .AMAZON (and related IDNs) GAC advice.
- 10 February 2014: In a letter to the GAC Chair, Ms. Heather Dryden, the NGPC provides an update on its progress to address the GAC's advice concerning .AMAZON (and related IDNs). The letter notes that ICANN has commissioned an independent, third party expert to provide additional advice on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.
- 3 March 2014: Letter from Mr. Fernando Rojas SamanéZ (Vice Minister of Foreign Affairs, Peru). The letter reiterates the position of the Peruvian government and requests that ICANN adopt a clear resolution in Singapore to responded to the GAC's advice.
- 25 March 2014: Letter from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization). The letter urges the Board to move

forward and accept the GAC's consensus advice that the applications for .AMAZON (and related IDNs) be rejected.

- 7 April 2014: The NGPC sends a letter to the GAC and to Amazon to provide a copy of the third party analysis to keep the parties informed and to welcome the submission of any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.
- 11 April 2014: Letter from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON.
- 14 April 2014: Letter from Mr. Benedito 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.
- 14 April 2014: Letter from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the independent, third party advice and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

**REFERENCE MATERIALS – NGPC PAPER NO. 2014.04.29.NG1b**

**TITLE:** **GAC Advice regarding Community Views -  
.HEALTH and health-related TLDs**

Agenda Item Not Considered.

Agenda Item Not Considered.

## Report of Public Comments

<b>Title:</b>			
<b>Publication Date:</b>		24 April 2014	
<b>Prepared By:</b>		Christine Willett	
<b>Comment Period:</b>		<b>Important Information Links</b>	
Comment Open Date:	11 February 2014	Announcement	
Comment Close Date:	12 March 2014	Public Comment Box	
Reply Close Date:	3 April 2014	View <a href="#">View</a> Comments <a href="#">Submitted</a>	
Time (UTC):	23:59 UTC	Report of Public Comments	
<b>Staff Contact:</b>	Christine Willett	<b>Email:</b>	christine.willett@icann.org
<b>Section I: General Overview and Next Steps</b>			
<p>At the direction of the ICANN Board New gTLD Program Committee (NGPC), ICANN solicited public comment on a proposed review mechanism to address the perceived inconsistent Expert Determinations in certain New gTLD Program String Confusion Objection proceedings. If adopted, the proposed review mechanism will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.</p>			
<b>Section II: Contributors</b>			
<p><i>At the time this report was prepared, a total of thirty-five (35) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>			
<b>Organizations and Groups:</b>			
<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>	
Commercial Connect LLC	Patrick D. McPherson/ Jeff Smith	COMCON	
DERCars LLC	David E. Weslow	DCARS	
Domain Venture Partners	Charles Melvin	DVP	
Donuts Inc.	Jonathon Nevett	DONUTS	
Famous Four Media Limited (representing dot Agency Limited)	Peter Young	FFM	
Google	Andy Abrams	GOOG	
HOTEL Top-Level-Domain GmbH	Dirk Krischenowski	HTLD	
ICANN At-Large Advisory Committee	Olivier MJ Crépin-Leblond	ALAC	
ICANN Business Constituency	Steve DelBianco	BC	
Intellectual Property Constituency	Brian J. Winterfeldt	IPC	
MarkMonitor	Kiran Malancharuvil	MM	
Neustar	Justyna Burr	NEU	
Radix Registry	Shweta Sahjwani	RADIX	

Uniregistry, Corp.	Bret Fausett	UNI
United TLD Holdco Ltd.	Statton Hammock	UNITED
Universal Postal Union	Paul Donohoe	UPU
Valideus Ltd	Brian Beckham	VAL
VeriSign, Inc.	Thomas Indelicarto	VSIGN

**Individuals:**

Name	Affiliation (if provided)	Initials
Rudi Fras		RF
Mike Gailer		MG
Jean Guillon		JG
Noreply		NO
Chris Penn		CP
s s		SS

**Section III: Summary of Comments**

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

The comments submitted during the public comment period generally fall into the following categories and themes, each of which is explained in more detail below:

- Do not adopt the Proposed Review Mechanism. (8 commenters)
- Adopt the Proposed Review Mechanism. (2 commenters)
- Adopt a Review Mechanism with an expanded scope. (5 commenters)
- Do not adopt the Proposed Review Mechanism or expand the scope. (3 commenters)
- Adopt some form of review, but not necessarily the Proposed Review Mechanism. (2 commenters)
- Recommended modifications to the framework principles of the Proposed Review Mechanism, if a review mechanism is adopted.

***Do Not the Adopt Proposed Review Mechanism.***

Eight commenters suggest that the NGPC should not create a review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations in this round of the New gTLD Program. These commenters argue that changing the rules after the fact would be unfair, would constitute a breach of contract, and may be creating top-down policy changes outside of the GNSO policy development process. These commenters suggest that applicants agreed to the process included in the Applicant Guidebook, which did not include this review mechanism, and applicants relied on these rules. Some commenters also expressed concern that adopting such a review mechanism may be a breach of ICANN’s Bylaws. Additionally, commenters suggest that adopting the

review mechanism at this time would call into question all other objection/contention sets, which would serve to undermine many other parts of the New gTLD Program. Also, some commenters suggest that future rounds should include a review mechanism, although such a review mechanism may not be appropriate for this round.

“The ‘framework principles’ proposed are utterly absurd. And by what right are the NGPC involved? ... The NGPC is treading on hallowed ground of policy change. The GNSO have to tell them in no uncertain terms that they should stay off the heart of GNSO terrain.” RF

“The proposed appeal review materially prejudices our investment and we are obtaining formal legal advice on this matter. It is our understanding that a change of process as proposed would open up potential contractual claims around the application process itself based on the contractual terms to which all applicants signed up.... We strongly request that ICANN should reconsider the review proposals and honour the process which all application agreed to and therefore returning to an environment in which all applicants are treated equally and fairly.” DVP

“A right of appeal is a fundamental change to the [New gTLD Dispute Resolution] Procedure – which the Board simply did not have the due competence and authority to make.... Dot Agency Limited fully intends to make a Request for an Independent Review Panel under Article IV, Section 3 of the ICANN Bylaws, should the Framework Review be adopted for implementation by the NGPC....” FFM

“...[W]e do not believe there is a need for an entirely new review process intended solely to re-litigate two specific instances in which an objection proceeding resulted in a dubious ruling, when other inconsistencies (e.g., with the community objection proceedings) have not merited similar treatment. Without resorting to a new mechanism, there is already existing guidance for dealing with inconsistent string contention scenarios within the language of the Applicant Guidebook. As set forth in the Guidebook (and suggested in our previous public comment on auction rules), a reasonable solution for the .CAR/CARS and .CAM/COM strings would be to simply move all of the relevant applications into a single contention set for the purposes of the auction procedure, whether through direct or indirect contention. Such an approach is the fairest and most predictable manner in which to handle an imperfect situation, and certainly easier for ICANN to administer than a new review mechanism aimed at only two specific contention sets.” GOOG

“It is my formal request that ICANN cease these community discussions, which serve only as a point of distraction; and rather adhere to the guidelines discussed to exhaustion in the planning period. ICANN does not need an overhaul of its systems it simply needs to do what it promised initially. Evaluate not just CAM/COM AND CAR/CARS but all TLDs for Visual, Audial and Meaning as per set policies and guidelines.” CP

“In any future gTLD application rounds, MarkMonitor supports a widely applicable and reliable String Confusion Objection appeals mechanism. Consumer protection experts both within the



ICANN community as well as external to the ICANN community should develop objective criteria by which to judge string similarity in future rounds.” MM

“The Applicant Guidebook provided no mechanism for appeals, and all parties applied for their top-level domains under the express promise by ICANN, and the reasonable contractual expectation of the applicants, that decisions by the dispute resolution providers would be final. The proposal to further reconsider these decisions on what appears to be an arbitrary selection basis for such reconsideration is an invitation for all parties dissatisfied with outcomes to lobby for ad-hoc changes to the new TLD process.” UNI

“The Proposed Review, rather than addressing the core problem which has directly caused the inconsistent String Confusion Objections (“SCO”) Determinations, exacerbates the problem by artificially constraining the review to purposefully avoid recognizing the extent of the inconsistent SCO Determinations and its impact on the participations.” COMCON

***Adopt the Proposed Review Mechanism.***

Two commenters recommended that ICANN adopt the proposed review mechanism. These commenters suggest that ICANN’s Bylaws require it to address the perceived inconsistencies, and to allow the inconsistencies to stand would cause an unfair prejudice.

“Central to ICANN’s proposed review mechanism is the recognition that, consistent with its Bylaws, ICANN must administer its programs in a manner that is neutral, objective, and does not cause disparate treatment to any party unless justified by ‘substantial and reasonable cause....’ As a policy matter, where two or more expert panels considering the same strings, the same objector arguments, and the same standards reach diametrically different conclusions, it is a clear indication of an untenable outcome resulting in one or more applicants facing ‘disparate treatment’ that cannot be ‘justified by substantial and reasonable cause,’ in direct contravention of Art. II, § 3 of the ICANN Bylaws (Non-Discriminatory Treatment).” DCARS

“United TLD believes that review of inconsistent SCO Expert Determinations should be confined to those involving the EXACT SAME string. The .CAM/.COM decision affecting United TLD and the .CAR/.CARS decision affecting DERCars LLC are exceptional cases that have nothing to do with singular vs. plural confusion. ICANN has correctly identified these two circumstances as the only two truly inconsistent Expert Determinations....United TLD urges ICANN to implement the proposed review mechanism IMMEDIATELY so that the applicants for the exact same string can resolve contention and move forward in the program as all applicants have been substantially delayed as a result of the uncertainty caused by these two .CAR and .CAM SCO Expert Determinations.” UNITED

***Adopt a Review Mechanism with an Expanded Scope.***

Five of the comments submitted generally support the idea of a review mechanism but urge the NGPC

to expand the scope of the review mechanism beyond the two identified String Confusion Objections (.CAM/.COM and .CAR/.CARS). These commenters suggest that the proposed mechanism is too narrow as currently defined. The commenters express varying degrees to which the scope should be expanded. While some suggest that the scope be expanded to other String Confusion Objections, such as those related to .shop/.shopping, others recommend an even broader scope that would be widened to include “inconsistencies” in Community and Limited Public Interest Objections. Additionally, some commenters suggest that the NGPC to expand the scope of the review mechanism such that “inconsistencies” subject to review should include singular and plural versions of the same string.

“The ALAC supports the details of the process described, but recommends that it be widened to include cases such as the various .shop objections where the objected-to strings were not identical, but the results were just as inconsistent.” ALAC

“We generally are supportive of a limited review process to address inconsistent string confusion objection *outcomes* and not just inconsistent determinations.... [T]his limited review should be extended to include a third contention set where there is an incongruent outcome. In the .SHOP vs. .SHOPPING objection, the same panelist who found .SHOP to be confusion to a Japanese .IDN found in favor of the objector with regard to the Donuts’ .SHOPPING application.... Finally, we urge ICANN to undergo a similar review mechanism in cases of inconsistent outcomes with the Limited Public Interest and Community objections.” DONUTS

“The BC has repeatedly requested a broader appeals mechanism for new gTLD objections, in particular with respect to those involving singular and plural versions of the same generic TLD strings.... In light of this strong community sentiment in favor of a broader appeals process, the BC is disappointed with the limited scope of the present review mechanism proposed by ICANN. We continue to believe that a more comprehensive review is necessary for singular/plural string confusion objections....” BC

“[I]f a review process were to be created, Google supports the standing request from the Business Constituency for ICANN to: (1) Publish any evidence considered by expert panels, arbitration providers, and ICANN staff in its evaluation of string confusion determinations; and (2) Publish more specific objective criteria used to judge string similarity, while creating a broader appeal system to allow parties to challenge prior ICDR decisions on singular-plural TLDs.” GOOG

“The Board should expand their inquiry to ensure that the twin Policy goals of predictability and fairness are met. To do otherwise will impugn the integrity of the new gTLD process and program.... In particular, we recommend that: [t]he scope of inconsistent objections must be expanded and the Board should agree to take up the issue of inconsistencies in Community and Limited public interest objections.” RADIX

“...ICANN’s Proposal misses yet another opportunity to mitigate user confusion about which ICANN has been repeatedly warned but as yet continues to bedevil this program.... There is no

compelling rationale to exclude from appeal Versign's unsuccessful objections. If ICANN believes that the inconsistencies in the com/cam situation cannot stand, then all three decisions should be consolidated and reviewed on appeal and the appeal panel should be required to issue one ruling covering all three objections.... Verisign therefore joins with others such as the BC, the IPC and the GAC in calling on ICANN to revisit and reverse its decision to allow singular and plural versions of the same string to proceed to delegation." VSIGN

***Do Not Adopt the Proposed Review Mechanism or Expand the Scope of the Proposed Review.***

Three of the comments submitted suggest that the NGPC should either expand the scope of the proposed review mechanism to address other "inconsistencies", or do not adopt a review mechanism at all. These commenters generally seem to recommend an "all or nothing" approach.

"While the IPC appreciates the work ICANN has dedicated in proposing a review mechanism, we identify serious fairness concerns since only two contention sets would potentially be reviewed. Further, assuming *arguendo* that some form of appeal mechanism does move forward, we feel that key changes are necessary." IPC

"Whilst no one would deny that the objection process has given rise to some laughable results (shop and 通販 are confusingly similar?), how can they single out just two sets of strings for review? ICANN already absolved themselves of responsibility by asking third parties to make these sorts of determinations for them. Some may say that was a smart move. So why now are they doing exactly the opposite, by selecting just a couple of string confusion decisions for review, when panellists have made much worse decisions and been more inconsistent? Surely any review must be all or nothing?" JG

"A limited review which allows relief to only randomly-selected members of the ICANN community makes no sense. The Guidebook did not provide for a review process, we should all have a right of redress, or none at all." NO

***Adopt Some Form of a Review, But Not Necessarily the Review Mechanism Proposed.***

Two commenters suggest that some form of a review mechanism is needed, but these commenters do not necessarily advocate for the adoption of the review mechanism proposed. One of the comments outlines alternative review mechanisms that could be adopted by the NGPC.

"The entire String Confusion Objections had significant deficiencies and there have been a number of controversial decisions when looking at all the decisions. Therefore, ICANN together with ICDR and independent experts must review all decisions and define clear rules under which parties concerned may apply for an appeal of their decision." The commenter provides rules for an appeal based on the percentage of visual similarity as determined by the SWORD tool. HTLD

"I would like to voice my opinion that the .CAM gtld will be confusing with the existing .COM

gTLD and therefore I hope that ICANN will do the right thing (for once) and refuse the application for .CAM.” MG

***Suggested Modifications to the Proposed Review Mechanism, If Adopted.***

Various comments submitted during the public comment forum suggest that the NGPC modify the framework principles of the Proposed Review Mechanism, if the NGPC decides to move forward with adopting a review mechanism. Some of the commenters note that they are not advocating for approval of the review mechanism, but merely suggesting improvements if the NGPC is inclined to take action to adopt the Proposed Review Mechanism. The suggestions for modifications to the framework principles generally focus on the following: (1) the scope of the Proposed Review Mechanism, (2) the applicable standard of review, (3) the parties who have standing to use the Proposed Review Mechanism, and (4) the composition of the Panel of Last Resort.

Scope

Comments on expanding the scope of the framework principles included in the Proposed Review Mechanism are addressed above.

Applicable Standard of Review

The proposed standard of appellate review is flawed in that it focuses on the subjective reasonableness of the underlying decision as determined by application of the Applicant Guidebook and procedural rules.... we believe strongly that the clearly erroneous standard of appellate review is more appropriate.” GOOG

“United TLD proposes adding the following language to the standard of review:

*Could the Expert Panel have reasonably come to the decision reached on the underlying SCO through an appropriate application of the standard of review as set forth in the Applicant Guidebook and procedural rules and not unfairly prejudice any applicant by being inconsistent with other SCO determinations for the exact same string?* UNITED

“The appropriate common law standard of appellate review for such factual determinations is the clearly erroneous standard—a highly deferential standard.... Conversely, the standard proposed by ICANN appears to subjectively dissect the reasonableness of the determination, and it seemingly lacks any real deference to the initial panel.” IPC

“Members of the Intellectual Property Constituency (IPC) suggested that ICANN’s proposed standard of review be changed and a “clearly erroneous” standard be adopted for the review by the Panel of Last Resort. Applying such a standard is wholly misplaced given that review is not an appeal process but ultimately, a review of ICANN’s compliance with its bylaws and the Applicant Guidebook.” UNITED

“...the standard of review should not be merely whether it was reasonable for a panelist to have reached that decision. Rather, the standard should include whether it is reasonable to have inconsistent outcomes in the same contention set.... If any one .CAM applicant is permitted to proceed, both .CAM and .COM will be active TLDs. Hence, any confusion on the part of the public between .CAM and .COM will exist. As such, the review should look at the reasonableness of the outcome in light of the other outcomes and the end result.” DONUTS

### Standing

“We further join with the comments of the BC and the IPC insofar as they request that ICANN’s Proposal be modified at least to permit the objectors an equal right to appellate review as the applicants.” VSIGN

“Fundamental principles of fairness and due process dictate that both parties in a dispute have an equal right to appeal an unfavorable determination.... [T]he BC urges ICANN to allow both losing objectors and the applicants to have standing to appeal the results of an inconsistent ICDR decision.” BC

“United TLD supports the recommendation made by Donuts that only losing applicants be allowed to seek redress under the review mechanism. To allow objectors to file for review would amount to allowing a second round of objections and effectively change the AGB in a way that materially harms the applicants.” UNITED

“Fundamental principles of fairness dictate that either party in a dispute have the right to appeal an unfavorable determination. Vesting appellate discretion solely with ‘Losing Applicant[s]’ creates an impermissible presumption that only cases where objectors were successful were wrongly decided and are somehow problematic. Rather, convention and equity dictate that both losing objectors and applicants have the right to appeal unfavorable decisions.” GOOG

“If the Board decides to add an appeal mechanism not contemplated by the Applicant Guidebook, the principle that makes the appeal available only to the ‘applicant for the application that was objected to in the underlying SCO and lost’ should be adopted subject to appropriate opportunity for comment, and not decided as a ‘process detail.’” UNI

### Panel of Last Resort

“[A]ny Panel of Last Resort should be composed entirely of arbitrators with demonstrated experience in new gTLD program string confusion objections—and ideally, arbitrators who also have some degree of experience in the relevant target industries, such as the automotive or hospitality industries.” GOOG

“[T]he BC proposes that any review or appeals panel be comprised entirely of arbitrators with specific demonstrated experience in the new gTLD program string confusion objections. To the

extent that any arbitrators also have some degree of experience in the relevant target industries, such as the automotive (e.g., for .CAR/.CARS) or hospitality industries (e.g., for .HOTEL/.HOTELS), such qualifications would also be preferable.

“United TLD disagrees with ICANN’s view that only two potential outcomes may occur.... It seems clear that the only two potential outcomes should be these: 1) that the Panel determines that the strings at issue are confusingly similar in all three applications or, 2) the strings are not similar, for all three applications. These are the only outcomes for a review if ICANN wishes to avoid prejudicing any one applicant.” UNITED

“...[T]here will have to be clear guidelines offered on what standards of evidence and burden of proof apply - there will have to be a review of the case law to date and a serious critical effort made to analyse the decisions, draw out the common themes and to agree on the correct judicial approach. This is a task which should clearly not be entrusted to the existing dispute resolution service providers, but to an independently convened panel of academics who understand the rules of evidence and how they should be applied in a global context.” NO

#### **Other Comments.**

“ICANN’s recognition of community concern over what it has characterized as a ‘limited universe ...limited to two circumstances’ of so-called inconsistent Objection determinations, coupled with its own proposal for a Review Mechanism, highlights the need for a formal appeals process for future new gTLD application rounds (if nothing more than to avoid situations such as the present where a makeshift post hoc review process is under consideration).” (A footnote indicates that Valideus does not “mean to suggest that the concerns herein should be seen as inapplicable to the current objection process; [Valideus] is aware however of the complexity of addressing these concerns in the current round.”) VAL

“I want to be clear, however, that ‘consistent’ application of the confusingly similar standard DOES NOT require the ‘same’ outcome for all applications for the exact match for a particular string. If that were the case, then the dispute resolution panels would be required to evaluate the likelihood of confusion without regard to each applicant's unique plan for a gTLD string and their arguments articulating why such plans would not cause confusion. That would be a huge mistake. In fact, the proposed use of a new gTLD is highly relevant to the question of whether or not there is a likelihood of confusion. Indeed, it is to be expected that expert panels might reasonably conclude, as has apparently happened, that the string ".cam" is confusingly similar to ‘.com’ in one case but not in another.... In fact, the complained-of inconsistency in other cases appears to arise from the panel's failure to actually take account of the context in which a proposed gTLD would operate. Examples include translation cases where the different markets were likely not considered.” NEU

#### **Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

After reviewing feedback from the public comment forum, the NGPC will consider options to address the perceived inconsistent String Confusion Objection Expert Determinations, including whether to allow the Expert Determinations to stand as is, and whether or not to adopt the proposed review mechanism. The summary of public comments will be included in the briefing materials as part of the NGPC's deliberations on this matter.

**C-100**



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## **ANNEX 1 to Resolution 2014.05.14.2**

### **GAC Advice (Singapore, Buenos Aires, Durban, Beijing): Actions and Updates**

Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>



Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>

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Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>





**Summary of Applicant Responses to GAC Advice in the  
Singapore Communiqué**

7 May 20142014



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## Executive Summary

This report is intended to provide a summary of applicant responses to GAC Advice presented in the GAC Singapore Communiqué issued on 27 March 2014<sup>1</sup>. Per Section 3.1 of the Applicant Guidebook, ICANN provided all applicants with 21 calendar days to submit a response to the GAC Advice for the ICANN Board's consideration. The deadline for responses was 2 May 2014.

Broadly, the applicants express their appreciation of the GAC's Advice, and have encouraged ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué.

Community applicants have commented on the reiteration of GAC Category 1 Safeguard Advice and the GAC's support of community applications. Community applicants have also indicated that community-based applications represent the best form of a binding commitment to long-term protections, and several have emphasized that they had such safeguards in place in their original applications (as submitted before the issuance of GAC Advice).

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<sup>1</sup> The full list of applicant responses can be accessed at:  
<http://newgtlds.icann.org/en/applicants/gac-advice/singapore49>



## Solicitation of Responses

In the Singapore Communiqué, the GAC issued advice to the ICANN Board that could affect all applications. ICANN provided all applicants with the opportunity to respond. Responses from 8 applicants pertaining to 11 applications were received, and have been summarized in the “Summary of Responses ” section.

## GAC Advice to the Board in the Singapore Communiqué

The GAC Advice to the Board in the Singapore Communiqué was organized as follows. Applicants were provided with the opportunity to respond to any categories that they chose.

1. Internet Assigned Numbers Authority (IANA) Functions: US Government Announcement
2. Safeguard Advice Applicable to all new gTLDs and Category 1 (consumer protection, sensitive strings and regulated markets) and Category 2 (restricted registration policies) Strings
3. Community Applications
4. Specific Strings
  - a. .spa
  - b. .amazon
  - c. .ram and .indians
  - d. .wine and .vin
5. Singular and Plural Versions of the Same String
6. WHOIS
7. Data Retention and Data Provision Waivers
8. Protection of Inter-Governmental Organisation (IGO) Names and Acronyms
9. Protection of Red Cross/Red Crescent Names
10. Accountability and Transparency
11. Tracking of Key Issues
12. Briefings on Compliance
13. NETmundial Meeting
14. High Level Meeting



## Summary of Responses

### CORP, INC, LLC, LLP

*Dot Registry, LLC*

*Application IDs 1-880-39342 ([Response](#)), 1-880-35979 ([Response](#)), 1-880-17627 ([Response](#)), and 1-880-35508 ([Response](#))*

The applicant commends the GAC for its “re-iteration of recommendations for Category 1 strings, which denotes the insufficient protections created by the non-binding nature of public interest commitments (PICS) and the necessity for pre-verification of registrant data for Category 1 strings.”

The applicant supports the GAC Advice on the preferential treatment of community applications.

The applicant encourages ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué and to respond with “concrete, enforceable requirements that mandate verification that mitigates fraud and consumer harm in these sensitive strings.”

### DESI

*Desi Networks, LLC*

*Application ID 1-870-27617 ([Response](#))*

The applicant acknowledges the GAC Advice.

### GMBH

*TLDDOT GmbH*

*Application ID 1-1273-63351 ([Response](#))*

The applicant appreciates the GAC’s “re-iteration of recommendations for category 1 strings, which denotes the insufficient protections created by the non-binding nature of public interest commitments (PICS) and the necessity for pre-verification of registrant data for Category 1 strings.”

The applicant is working to ensure that safeguards for a corporate identifier such as .GMBH are implemented appropriately. The applicant suggests that other applicants who did not include specific policies and mechanisms in their applications or adhere to the GAC recommendations should not be awarded Category 1 strings.



The applicant encourages ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué.

The applicant advises ICANN that it would be preferable for ICANN to not approve corporate identifier gTLDs, rather than approve gTLD applications that have been “upgraded” with change requests, Public Interest Commitments, and safeguards in order to comply with GAC Advice.

#### HOTEL

*HOTEL Top-Level Domain S.a.r.l.*

*Application ID 1-1032-95136 (Response)*

The applicant encourages ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué.

The applicant advises ICANN that it would be “against competitive rules to allow applicants to upgrade their applications in order to comply with the GAC requirements.” As a community applicant, the applicant is committed to verifying and validating registrations in its proposed TLD.

The applicant agrees that allowing singular and plural version of the same strings could lead to consumer harm.

#### MED

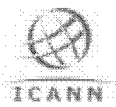
*HEXAP SAS*

*Application ID 1-1192-28569 (Response)*

The applicant asserts that it has policies in place that will “maximize transparency and build confidence”, and it agrees with the GAC to increase focus on community applications.

The applicant asserts that community applications and the accountability associated with them are the safest way to protect Internet users. The applicant describes the measures it intends to implement to be accountable to the community, including limiting registrations to practitioners, healthcare facilities and institutions, and excluding health-related businesses (such as insurance companies) and individuals.

The applicant points out that it has one of only two community health-related applications, and supports the GAC’s advice to increase the focus on community applications. “MED” has been identified as a sensitive string, and this application



includes specific safeguards that satisfy the requirements for accountability and transparency.

## MUSIC

*.music LLC*

*Application ID 1-959-51046 (Response)*

The applicant indicates that the safeguards in GAC Category 1 Advice were part of its application as originally submitted, reflecting its commitment to its community and to serving the public interest.

The applicant asks what mechanisms are/will be in place to ensure that the GAC's Advice is considered in regards to Community Priority Evaluation. The applicant notes that this means "not only following the established guidelines and scoring system as set out in the AGB, but also applying a holistic and 'common sense' approach to ensure applications with substantial and demonstrable community support (such as ours), do in fact receive preferential treatment."

The applicant also looks forward to the New gTLD Program Committee's response to question 4 of the Attachment to GAC Singapore Communiqué, regarding the rules for gTLD auctions.

## RAM

*Chrysler Group LLC*

*Application ID 1-2055-15880 (Response)*

The applicant is committed to addressing the government of India's concerns about the religious implications of the string "RAM." The applicant indicates that it is willing to meet with government representatives to discuss the resolution of the matter.

## SPA

*Asia Spa and Wellness Promotion Council Limited*

*Application ID 1-1309-81322 (Response)*

The applicant makes reference to Section 2.2.1.4.2 of the Applicant Guidebook, which provides that "an application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name" is considered a geographic name and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities. The applicant states that the that the remaining two applications for .SPA indicate that



the applicants intend to use the string “primarily for purposes associated with the city name’ (even if it is not for purposes associated with the city or its citizens).” The applicant has indicated that based on the GAC Advice, it is clear that the relevant government entity for the “SPA” application is the City of Spa. The applicant includes excerpts from both remaining applications for “SPA,” and asserts that the applications for .SPA meet the criteria for requiring evaluation from the Geographic Names Panel. The applicant indicates that the appropriate path forward is for ICANN to accept the GAC Advice and proceed with the Geographic Names evaluation as described in the Applicant Guidebook. The applicant is prepared to cooperate with this evaluation.

#### SPA

*Foggy Sunset, LLC*

*Application ID 1-1619-92115 (Response)*

The applicant notes that the GAC has finalized its consideration of this string, and asserts that the applications should proceed through the standard string contention resolution procedures as defined in the Applicant Guidebook.

The applicant states that “.SPA” does not meet the criteria of a geographic name requiring support from the relevant government body, per Section 2.2.1.4.2. of the Applicant Guidebook.

The applicant asserts that it has made an effort to engage with the City of Spa to provide specific protections, and believes that “the city’s interests are well protected by the AGB requirements, the additional protections Donuts committed to for all of its TLDs, and the further safeguards Donuts voluntarily would provide for this TLD should it become the registry operator.”

In spite of “the GAC’s ‘welcoming’ of an agreement between one applicant and the City of Spa,” the applicant notes that “nothing in the AGB (Donuts’ contract with ICANN) empowers the ICANN Board to select a ‘winner’ in the case of competing applications based on the concerns of one government.”

#### VIN, WINE

*Holly Shadow, LLC (a subsidiary of Dozen Donuts, LLC)*

*Application ID 1-1538-23177 (Response)*

*June Station, LLC (a subsidiary of Dozen Donuts, LLC)*

*Application ID 1-1515-14214 (Response)*

The applicant notes that the “disposition of applications for .WINE and .VIN have been at issue for some time.” The applicant cites multiple communications and statements made by the GAC and by the ICANN Board’s New gTLD Program



Committee (NGPC). Based on the Board's 4 April 2014 resolution, the applicant notes that there is no reason to further delay the processing of these applications.

The applicant asserts that it will continue its negotiations with concerned members of the wine industry. However, these negotiations may continue after the applicant has executed Registry Agreements for one or both TLDs.

The applicant states that it respects the concerns that have been raised, but that the safeguards in place are more than sufficient.

The applicant also notes that "ICANN is likely not the appropriate venue to address complex trade negotiations on politically sensitive issues, such as the rights of Geographic Indicators."

The applicant encourages ICANN to continue processing these applications. The applicant believes that if the applications are processed, it will be more likely that an agreement between the registry operator and the wine makers can be reached.

**REFERENCE MATERIALS – NGPC PAPER NO. 2014.05.14.2a**

**TITLE: GAC Advice on .AMAZON (and related IDNs)**

**Process for Consultations between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws**

**Proposed Process:**

**Step 1:** Upon receipt of GAC advice (and prior to communicating its final decision), the Board will provide a written response to the GAC indicating:

- whether it has any questions or concerns regarding such advice;
- whether it would benefit from additional information regarding the basis for the GAC's advice;
- and a preliminary indication of whether the Board intends to take such advice into account.

The Board's response will be subject of an exchange between the Board and the GAC.

**Step 2:** In the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice, the ensuing consultations will be considered “Bylaws Consultations”. The Board will provide written notice to the GAC (the “Board Notice”) stating, in reasonable detail, the GAC advice the Board determines not to follow, and the reasons why such GAC advice may not be followed. The GAC will be afforded a reasonable period of time to review the Board’s Notice and explanation, and to assess whether there are additional elements of GAC advice that it believes have been rejected by the Board.

**Step 3:** As soon as possible after the Board Notice is issued (or within such time as otherwise agreed), the Chair of the GAC and the Chair of the Board will confer as to an appropriate time and agenda for a meeting between the GAC and the Board (the “Bylaws

Consultation”). It is intended that all issues related to the meeting are identified and agreed upon between the GAC and Board prior to the consultation.

**Step 4:** Within a timeline agreed to by the GAC Chair and Board Chair, the GAC and/or the Board may prepare written documents setting forth their respective positions on the intended Board action for presentation at the Bylaws Consultation. Subject to the agreement to publish documents, such documents should be communicated and will be published at least two (2) weeks prior to the Bylaws Consultation meeting. Where practicable, all communications and notices provided by the Board or GAC shall be posted to ICANN's website. In addition, a written transcript of the Bylaws Consultation meeting shall be posted to ICANN's website.

**Step 5:** During the Bylaws Consultation meeting, the GAC and the Board will each seek, in good faith and in a timely and efficient manner, to find a mutually acceptable solution to the conflict between the possible Board action and the GAC advice, including by proposing compromise positions with respect to the intended Board action, if feasible and appropriate.

**Step 6:** After the conclusion of the Bylaws Consultation, the Board will determine whether to reaffirm or reverse the intended Board action, or take mitigating action.

If the Board determines to reverse the intended Board action or take mitigating action based on GAC advice and the outcome of the Bylaws Consultation, the Board may as appropriate: (i) implement any compromise action proposed by or agreed with the GAC during the Bylaws Consultation, in either case without further GAC consultation; or (ii) formally reverse the Board's preliminary or interim decision. The Board's final determination will be communicated to the GAC, providing the GAC an opportunity to comment and/or to raise other issues raised anew by the Board's decision and therefore not addressed in the consultation.

As a general rule, the Bylaws Consultation process should conclude within six months.

The GAC and the Board can agree to a different time limit when necessary, taking into account the complexity of the issue and the scope of difference between the GAC and the Board's positions. Either the GAC or Board may initiate a request for expansion of the six-month time limit by providing a written request that sets out a new time-frame for completion and indicating the basis for the request.

**Step 7:** If the Board determines to take final action in contravention of GAC advice, then the Board will issue a final decision, stating the reasons why the GAC advice was not followed, as required in Article XI section 2.1.k of the ICANN Bylaws. The Board's final decision and explanation will be posted on ICANN's site.



## REFERENCE MATERIALS – NGPC PAPER NO. 2014.05.14.2a

**TITLE:** **GAC Advice on .AMAZON (and related IDNs)**

### **Timeline of GAC Advice on .AMAZON (and related IDNs)**

- 20 November 2012: “[T]he Governments of Brazil and Peru (GAC Members), with full endorsement of Bolivia, Ecuador and Guyana (Amazonic non-GAC members) and also the Government of Argentina, would like to request that the ‘.AMAZON’ gTLD application be included in the GAC early warning process.”
- 3 March 2013: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter notes that Amazon is supportive of the concept of public interest commitments (PIC) but was unable to submit a PIC at that time because the process had not yet been finalized.
- 12 March 2013: The Independent Objector files three community objections with the International Centre for Expertise of the International Chamber of Commerce (the “Centre”) concerning .AMAZON and related IDNs in Chinese and Japanese.
- 11 April 2013: In the Beijing Communiqué, the GAC advises the Board not to proceed beyond Initial Evaluation for the applied-for strings .AMAZON and IDNs in Chinese and Japanese.
- 22 May 2013: ICANN publishes applicant responses to the GAC’s Beijing Communiqué, which includes the applicant response on the .AMAZON GAC advice.
- 4 June 2013: The NGPC accepts the advice in the Beijing Communiqué and determines that at that time, ICANN will not proceed beyond initial evaluation of the identified strings.
- 4 July 2013: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter expresses Amazon’s willingness to work with Brazil and Peru, and provides public interest commitments that Amazon is willing to commit to in order to address the governments’ concerns.
- 18 July 2013: In the Durban Communiqué, the GAC advises the Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of the

Applicant Guidebook on the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)

- 28 August 2013: ICANN publishes applicant responses to GAC advice, which includes the applicant response on .AMAZON (and related IDNs) GAC advice.
- 10 September 2013: The NGPC adopts another iteration of the GAC-NGPC scorecard. The NGPC notes that Amazon submitted a response to the advice in the Durban Communiqué, and given the volume of information presented, the NGPC proposed to consider the information and take action at a future meeting.
- 13 September 2013: Letter from Mr. Stefanos Tsimikalis (Attorney, Tsimikalis Kalonarou). The letter notes that he has been following the issue with genuine interest, and suggests that “It cannot be disputed that the word Amazon is part of the Greek culture, and henceforth, of world culture and legacy. If any country had the right to object to Amazon’s application... that should be Greece.” The letter suggests that if ICANN follows the GAC’s advice it “would be acting as a judge of history and would be assigning quasi sovereign exclusivity on the name Amazon to Brazil and Peru, depriving the world of its cultural heritage.”
- 28 September 2013: the NGPC adopts another iteration of the GAC-NGPC scorecard. The NGPC notes that due to the complexity and uniqueness of the issues raised in the applicant’s response, and the volume of information submitted, the NGPC intends to further study and analyze the issues raised by this application and the GAC’s advice. The NGPC directs staff to prepare additional analysis regarding the advice and the issues raised in the applicant’s response.
- 4 October 2013: Letter from Mr. Ernesto H.F. Araújo (Chargé D’ Affaires, a.i., Brazilian Embassy). The letter notes that on 8 August 2013, the Committee on Foreign Affairs and National Defense of the Brazilian Senate approved a resolution requiring “the Brazilian Government to express to ICANN the Committee’s formal opposition to the registration of the gTLD ‘.amazon’ without the proper consent of the countries in whose territory the Amazon is located, among which Brazil.”

- 20 November 2013: In the Buenos Aires Communiqué the GAC requested an update on the current status of the implementation of the GAC's advice on .AMAZON (and related IDNs).
- 3 December 2013: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter details the steps Amazon has taken to meet with the concerned governments to discuss its applications for .AMAZON (and related IDNs).
- 24 December 2013: Letter from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru). The letter presents additional information concerning geographical protections in an effort to further advance the objections of Peru, Brazil and other countries objecting to the .AMAZON stings.
- 10 January 2014: Letter from Stacey King (Sr. Corporate Counsel – Amazon). The letter comments on the GAC's advice regarding .AMAZON, and reiterates its previous position on the matter.
- 27 January 2014: The Independent Objector's objections against .AMAZON (and related IDNs) are dismissed and the applicant (Amazon) prevails.
- 5 February 2014: The NGCP adopts another iteration of the GAC-NGPC scorecard. The NGPC agreed to send an update to the GAC on its progress to address the .AMAZON (and related IDNs) GAC advice.
- 10 February 2014: In a letter to the GAC Chair, Ms. Heather Dryden, the NGPC provides an update on its progress to address the GAC's advice concerning .AMAZON (and related IDNs). The letter notes that ICANN has commissioned an independent, third party expert to provide additional advice on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.
- 3 March 2014: Letter from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru). The letter reiterates the position of the Peruvian government and requests that ICANN adopt a clear resolution in Singapore to responded to the GAC's advice.
- 25 March 2014: Letter from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization). The letter urges the Board to move

forward and accept the GAC's consensus advice that the applications for .AMAZON (and related IDNs) be rejected.

- 7 April 2014: The NGPC sends a letter to the GAC and to Amazon to provide a copy of the third party analysis to keep the parties informed and to welcome the submission of any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.
- 11 April 2014: Letter from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON.
- 14 April 2014: Letter from Mr. Benedito 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.
- 14 April 2014: Letter from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the independent, third party advice and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

**REFERENCE MATERIALS – NGPC PAPER NO. 2014.05.14.2b**

**TITLE: GAC Advice regarding Community Views -  
.HEALTH and health-related TLDs**

Agenda Item Not Considered.

Agenda Item Not Considered.

## Report of Public Comments

<b>Title:</b>																																													
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<b>Prepared By:</b>		Christine Willett																																											
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<b>Section I: General Overview and Next Steps</b>																																													
<p>At the direction of the ICANN Board New gTLD Program Committee (NGPC), ICANN solicited public comment on a proposed review mechanism to address the perceived inconsistent Expert Determinations in certain New gTLD Program String Confusion Objection proceedings. If adopted, the proposed review mechanism will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.</p>																																													
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<p><i>At the time this report was prepared, a total of thirty-five (35) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>																																													
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Uniregistry, Corp.	Bret Fausett	UNI
United TLD Holdco Ltd.	Statton Hammock	UNITED
Universal Postal Union	Paul Donohoe	UPU
Valideus Ltd	Brian Beckham	VAL
VeriSign, Inc.	Thomas Indelicarto	VSIGN

**Individuals:**

Name	Affiliation (if provided)	Initials
Rudi Fras		RF
Mike Gailer		MG
Jean Guillon		JG
Noreply		NO
Chris Penn		CP
s s		SS

**Section III: Summary of Comments**

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

The comments submitted during the public comment period generally fall into the following categories and themes, each of which is explained in more detail below:

- Do not adopt the Proposed Review Mechanism. (8 commenters)
- Adopt the Proposed Review Mechanism. (2 commenters)
- Adopt a Review Mechanism with an expanded scope. (5 commenters)
- Do not adopt the Proposed Review Mechanism or expand the scope. (3 commenters)
- Adopt some form of review, but not necessarily the Proposed Review Mechanism. (2 commenters)
- Recommended modifications to the framework principles of the Proposed Review Mechanism, if a review mechanism is adopted.

***Do Not the Adopt Proposed Review Mechanism.***

Eight commenters suggest that the NGPC should not create a review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations in this round of the New gTLD Program. These commenters argue that changing the rules after the fact would be unfair, would constitute a breach of contract, and may be creating top-down policy changes outside of the GNSO policy development process. These commenters suggest that applicants agreed to the process included in the Applicant Guidebook, which did not include this review mechanism, and applicants relied on these rules. Some commenters also expressed concern that adopting such a review mechanism may be a breach of ICANN's Bylaws. Additionally, commenters suggest that adopting the



review mechanism at this time would call into question all other objection/contention sets, which would serve to undermine many other parts of the New gTLD Program. Also, some commenters suggest that future rounds should include a review mechanism, although such a review mechanism may not be appropriate for this round.

“The ‘framework principles’ proposed are utterly absurd. And by what right are the NGPC involved? ... The NGPC is treading on hallowed ground of policy change. The GNSO have to tell them in no uncertain terms that they should stay off the heart of GNSO terrain.” RF

“The proposed appeal review materially prejudices our investment and we are obtaining formal legal advice on this matter. It is our understanding that a change of process as proposed would open up potential contractual claims around the application process itself based on the contractual terms to which all applicants signed up.... We strongly request that ICANN should reconsider the review proposals and honour the process which all application agreed to and therefore returning to an environment in which all applicants are treated equally and fairly.” DVP

“A right of appeal is a fundamental change to the [New gTLD Dispute Resolution] Procedure – which the Board simply did not have the due competence and authority to make.... Dot Agency Limited fully intends to make a Request for an Independent Review Panel under Article IV, Section 3 of the ICANN Bylaws, should the Framework Review be adopted for implementation by the NGPC....” FFM

“...[W]e do not believe there is a need for an entirely new review process intended solely to re-litigate two specific instances in which an objection proceeding resulted in a dubious ruling, when other inconsistencies (e.g., with the community objection proceedings) have not merited similar treatment. Without resorting to a new mechanism, there is already existing guidance for dealing with inconsistent string contention scenarios within the language of the Applicant Guidebook. As set forth in the Guidebook (and suggested in our previous public comment on auction rules), a reasonable solution for the .CAR/CARS and .CAM/COM strings would be to simply move all of the relevant applications into a single contention set for the purposes of the auction procedure, whether through direct or indirect contention. Such an approach is the fairest and most predictable manner in which to handle an imperfect situation, and certainly easier for ICANN to administer than a new review mechanism aimed at only two specific contention sets.” GOOG

“It is my formal request that ICANN cease these community discussions, which serve only as a point of distraction; and rather adhere to the guidelines discussed to exhaustion in the planning period. ICANN does not need an overhaul of its systems it simply needs to do what it promised initially. Evaluate not just CAM/COM AND CAR/CARS but all TLDs for Visual, Audial and Meaning as per set policies and guidelines.” CP

“In any future gTLD application rounds, MarkMonitor supports a widely applicable and reliable String Confusion Objection appeals mechanism. Consumer protection experts both within the

ICANN community as well as external to the ICANN community should develop objective criteria by which to judge string similarity in future rounds.” MM

“The Applicant Guidebook provided no mechanism for appeals, and all parties applied for their top-level domains under the express promise by ICANN, and the reasonable contractual expectation of the applicants, that decisions by the dispute resolution providers would be final. The proposal to further reconsider these decisions on what appears to be an arbitrary selection basis for such reconsideration is an invitation for all parties dissatisfied with outcomes to lobby for ad-hoc changes to the new TLD process.” UNI

“The Proposed Review, rather than addressing the core problem which has directly caused the inconsistent String Confusion Objections (“SCO”) Determinations, exacerbates the problem by artificially constraining the review to purposefully avoid recognizing the extent of the inconsistent SCO Determinations and its impact on the participations.” COMCON

***Adopt the Proposed Review Mechanism.***

Two commenters recommended that ICANN adopt the proposed review mechanism. These commenters suggest that ICANN’s Bylaws require it to address the perceived inconsistencies, and to allow the inconsistencies to stand would cause an unfair prejudice.

“Central to ICANN’s proposed review mechanism is the recognition that, consistent with its Bylaws, ICANN must administer its programs in a manner that is neutral, objective, and does not cause disparate treatment to any party unless justified by ‘substantial and reasonable cause....’ As a policy matter, where two or more expert panels considering the same strings, the same objector arguments, and the same standards reach diametrically different conclusions, it is a clear indication of an untenable outcome resulting in one or more applicants facing ‘disparate treatment’ that cannot be ‘justified by substantial and reasonable cause,’ in direct contravention of Art. II, § 3 of the ICANN Bylaws (Non-Discriminatory Treatment).” DCARS

“United TLD believes that review of inconsistent SCO Expert Determinations should be confined to those involving the EXACT SAME string. The .CAM/.COM decision affecting United TLD and the .CAR/.CARS decision affecting DERCars LLC are exceptional cases that have nothing to do with singular vs. plural confusion. ICANN has correctly identified these two circumstances as the only two truly inconsistent Expert Determinations....United TLD urges ICANN to implement the proposed review mechanism IMMEDIATELY so that the applicants for the exact same string can resolve contention and move forward in the program as all applicants have been substantially delayed as a result of the uncertainty caused by these two .CAR and .CAM SCO Expert Determinations.” UNITED

***Adopt a Review Mechanism with an Expanded Scope.***

Five of the comments submitted generally support the idea of a review mechanism but urge the NGPC

to expand the scope of the review mechanism beyond the two identified String Confusion Objections (.CAM/.COM and .CAR/.CARS). These commenters suggest that the proposed mechanism is too narrow as currently defined. The commenters express varying degrees to which the scope should be expanded. While some suggest that the scope be expanded to other String Confusion Objections, such as those related to .shop/.shopping, others recommend an even broader scope that would be widened to include “inconsistencies” in Community and Limited Public Interest Objections. Additionally, some commenters suggest that the NGPC to expand the scope of the review mechanism such that “inconsistencies” subject to review should include singular and plural versions of the same string.

“The ALAC supports the details of the process described, but recommends that it be widened to include cases such as the various .shop objections where the objected-to strings were not identical, but the results were just as inconsistent.” ALAC

“We generally are supportive of a limited review process to address inconsistent string confusion objection *outcomes* and not just inconsistent determinations.... [T]his limited review should be extended to include a third contention set where there is an incongruent outcome. In the .SHOP vs. .SHOPPING objection, the same panelist who found .SHOP to be confusion to a Japanese .IDN found in favor of the objector with regard to the Donuts’ .SHOPPING application.... Finally, we urge ICANN to undergo a similar review mechanism in cases of inconsistent outcomes with the Limited Public Interest and Community objections.” DONUTS

“The BC has repeatedly requested a broader appeals mechanism for new gTLD objections, in particular with respect to those involving singular and plural versions of the same generic TLD strings.... In light of this strong community sentiment in favor of a broader appeals process, the BC is disappointed with the limited scope of the present review mechanism proposed by ICANN. We continue to believe that a more comprehensive review is necessary for singular/plural string confusion objections....” BC

“[I]f a review process were to be created, Google supports the standing request from the Business Constituency for ICANN to: (1) Publish any evidence considered by expert panels, arbitration providers, and ICANN staff in its evaluation of string confusion determinations; and (2) Publish more specific objective criteria used to judge string similarity, while creating a broader appeal system to allow parties to challenge prior ICDR decisions on singular-plural TLDs.” GOOG

“The Board should expand their inquiry to ensure that the twin Policy goals of predictability and fairness are met. To do otherwise will impugn the integrity of the new gTLD process and program.... In particular, we recommend that: [t]he scope of inconsistent objections must be expanded and the Board should agree to take up the issue of inconsistencies in Community and Limited public interest objections.” RADIX

“...ICANN’s Proposal misses yet another opportunity to mitigate user confusion about which ICANN has been repeatedly warned but as yet continues to bedevil this program.... There is no

compelling rationale to exclude from appeal Versign’s unsuccessful objections. If ICANN believes that the inconsistencies in the com/cam situation cannot stand, then all three decisions should be consolidated and reviewed on appeal and the appeal panel should be required to issue one ruling covering all three objections.... Verisign therefore joins with others such as the BC, the IPC and the GAC in calling on ICANN to revisit and reverse its decision to allow singular and plural versions of the same string to proceed to delegation.” VSIGN

***Do Not Adopt the Proposed Review Mechanism or Expand the Scope of the Proposed Review.***

Three of the comments submitted suggest that the NGPC should either expand the scope of the proposed review mechanism to address other “inconsistencies”, or do not adopt a review mechanism at all. These commenters generally seem to recommend an “all or nothing” approach.

“While the IPC appreciates the work ICANN has dedicated in proposing a review mechanism, we identify serious fairness concerns since only two contention sets would potentially be reviewed. Further, assuming *arguendo* that some form of appeal mechanism does move forward, we feel that key changes are necessary.” IPC

“Whilst no one would deny that the objection process has given rise to some laughable results (shop and 通販 are confusingly similar?), how can they single out just two sets of strings for review? ICANN already absolved themselves of responsibility by asking third parties to make these sorts of determinations for them. Some may say that was a smart move. So why now are they doing exactly the opposite, by selecting just a couple of string confusion decisions for review, when panellists have made much worse decisions and been more inconsistent? Surely any review must be all or nothing?” JG

“A limited review which allows relief to only randomly-selected members of the ICANN community makes no sense. The Guidebook did not provide for a review process, we should all have a right of redress, or none at all.” NO

***Adopt Some Form of a Review, But Not Necessarily the Review Mechanism Proposed.***

Two commenters suggest that some form of a review mechanism is needed, but these commenters do not necessarily advocate for the adoption of the review mechanism proposed. One of the comments outlines alternative review mechanisms that could be adopted by the NGPC.

“The entire String Confusion Objections had significant deficiencies and there have been a number of controversial decisions when looking at all the decisions. Therefore, ICANN together with ICDR and independent experts must review all decisions and define clear rules under which parties concerned may apply for an appeal of their decision.” The commenter provides rules for an appeal based on the percentage of visual similarity as determined by the SWORD tool. HTLD

“I would like to voice my opinion that the .CAM gTld will be confusing with the existing .COM

gTLD and therefore I hope that ICANN will do the right thing (for once) and refuse the application for .CAM.” MG

***Suggested Modifications to the Proposed Review Mechanism, If Adopted.***

Various comments submitted during the public comment forum suggest that the NGPC modify the framework principles of the Proposed Review Mechanism, if the NGPC decides to move forward with adopting a review mechanism. Some of the commenters note that they are not advocating for approval of the review mechanism, but merely suggesting improvements if the NGPC is inclined to take action to adopt the Proposed Review Mechanism. The suggestions for modifications to the framework principles generally focus on the following: (1) the scope of the Proposed Review Mechanism, (2) the applicable standard of review, (3) the parties who have standing to use the Proposed Review Mechanism, and (4) the composition of the Panel of Last Resort.

Scope

Comments on expanding the scope of the framework principles included in the Proposed Review Mechanism are addressed above.

Applicable Standard of Review

The proposed standard of appellate review is flawed in that it focuses on the subjective reasonableness of the underlying decision as determined by application of the Applicant Guidebook and procedural rules.... we believe strongly that the clearly erroneous standard of appellate review is more appropriate.” GOOG

“United TLD proposes adding the following language to the standard of review:

*Could the Expert Panel have reasonably come to the decision reached on the underlying SCO through an appropriate application of the standard of review as set forth in the Applicant Guidebook and procedural rules and not unfairly prejudice any applicant by being inconsistent with other SCO determinations for the exact same string?* UNITED

“The appropriate common law standard of appellate review for such factual determinations is the clearly erroneous standard—a highly deferential standard.... Conversely, the standard proposed by ICANN appears to subjectively dissect the reasonableness of the determination, and it seemingly lacks any real deference to the initial panel.” IPC

“Members of the Intellectual Property Constituency (IPC) suggested that ICANN’s proposed standard of review be changed and a “clearly erroneous” standard be adopted for the review by the Panel of Last Resort. Applying such a standard is wholly misplaced given that review is not an appeal process but ultimately, a review of ICANN’s compliance with its bylaws and the Applicant Guidebook.” UNITED

“...the standard of review should not be merely whether it was reasonable for a panelist to have reached that decision. Rather, the standard should include whether it is reasonable to have inconsistent outcomes in the same contention set.... If any one .CAM applicant is permitted to proceed, both .CAM and .COM will be active TLDs. Hence, any confusion on the part of the public between .CAM and .COM will exist. As such, the review should look at the reasonableness of the outcome in light of the other outcomes and the end result.” DONUTS

### Standing

“We further join with the comments of the BC and the IPC insofar as they request that ICANN’s Proposal be modified at least to permit the objectors an equal right to appellate review as the applicants.” VSIGN

“Fundamental principles of fairness and due process dictate that both parties in a dispute have an equal right to appeal an unfavorable determination.... [T]he BC urges ICANN to allow both losing objectors and the applicants to have standing to appeal the results of an inconsistent ICDR decision.” BC

“United TLD supports the recommendation made by Donuts that only losing applicants be allowed to seek redress under the review mechanism. To allow objectors to file for review would amount to allowing a second round of objections and effectively change the AGB in a way that materially harms the applicants.” UNITED

“Fundamental principles of fairness dictate that either party in a dispute have the right to appeal an unfavorable determination. Vesting appellate discretion solely with ‘Losing Applicant[s]’ creates an impermissible presumption that only cases where objectors were successful were wrongly decided and are somehow problematic. Rather, convention and equity dictate that both losing objectors and applicants have the right to appeal unfavorable decisions.” GOOG

“If the Board decides to add an appeal mechanism not contemplated by the Applicant Guidebook, the principle that makes the appeal available only to the ‘applicant for the application that was objected to in the underlying SCO and lost’ should be adopted subject to appropriate opportunity for comment, and not decided as a ‘process detail.’” UNI

### Panel of Last Resort

“[A]ny Panel of Last Resort should be composed entirely of arbitrators with demonstrated experience in new gTLD program string confusion objections—and ideally, arbitrators who also have some degree of experience in the relevant target industries, such as the automotive or hospitality industries.” GOOG

“[T]he BC proposes that any review or appeals panel be comprised entirely of arbitrators with specific demonstrated experience in the new gTLD program string confusion objections. To the

extent that any arbitrators also have some degree of experience in the relevant target industries, such as the automotive (e.g., for .CAR/.CARS) or hospitality industries (e.g., for .HOTEL/.HOTELS), such qualifications would also be preferable.

“United TLD disagrees with ICANN’s view that only two potential outcomes may occur.... It seems clear that the only two potential outcomes should be these: 1) that the Panel determines that the strings at issue are confusingly similar in all three applications or, 2) the strings are not similar, for all three applications. These are the only outcomes for a review if ICANN wishes to avoid prejudicing any one applicant.” UNITED

“...[T]here will have to be clear guidelines offered on what standards of evidence and burden of proof apply - there will have to be a review of the case law to date and a serious critical effort made to analyse the decisions, draw out the common themes and to agree on the correct judicial approach. This is a task which should clearly not be entrusted to the existing dispute resolution service providers, but to an independently convened panel of academics who understand the rules of evidence and how they should be applied in a global context.” NO

#### ***Other Comments.***

“ICANN’s recognition of community concern over what it has characterized as a ‘limited universe ...limited to two circumstances’ of so-called inconsistent Objection determinations, coupled with its own proposal for a Review Mechanism, highlights the need for a formal appeals process for future new gTLD application rounds (if nothing more than to avoid situations such as the present where a makeshift post hoc review process is under consideration).” (A footnote indicates that Valideus does not “mean to suggest that the concerns herein should be seen as inapplicable to the current objection process; [Valideus] is aware however of the complexity of addressing these concerns in the current round.”) VAL

“I want to be clear, however, that ‘consistent’ application of the confusingly similar standard DOES NOT require the ‘same’ outcome for all applications for the exact match for a particular string. If that were the case, then the dispute resolution panels would be required to evaluate the likelihood of confusion without regard to each applicant’s unique plan for a gTLD string and their arguments articulating why such plans would not cause confusion. That would be a huge mistake. In fact, the proposed use of a new gTLD is highly relevant to the question of whether or not there is a likelihood of confusion. Indeed, it is to be expected that expert panels might reasonably conclude, as has apparently happened, that the string “.cam” is confusingly similar to ‘.com’ in one case but not in another.... In fact, the complained-of inconsistency in other cases appears to arise from the panel’s failure to actually take account of the context in which a proposed gTLD would operate. Examples include translation cases where the different markets were likely not considered.” NEU

#### **Section IV: Analysis of Comments**

*General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.*

After reviewing feedback from the public comment forum, the NGPC will consider options to address the perceived inconsistent String Confusion Objection Expert Determinations, including whether to allow the Expert Determinations to stand as is, and whether or not to adopt the proposed review mechanism. The summary of public comments will be included in the briefing materials as part of the NGPC's deliberations on this matter.



**Pages 41/47 – 47/47 Removed.  
Agenda Item Not Considered.**

**C-101**

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## Details

ICANN (Internet  
Corporation for Assigned  
Names and Numbers)  
Blog

Author: Sally Costerton

18 Jul 2013

## New Position for Everton Lucero



During today's [GAC \(Governmental Advisory Committee\)](#) Plenary session in Durban we announced that Everton Lucero our Stakeholder Engagement Manager based in Brazil will be leaving [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#). Everton has accepted an offer to work for the Brazilian Government and long time colleague and former boss, Minister of External Relations, Antonio Patriota.

We will be sad to see Everton leave our team, but we are proud and excited for him as well. He has made a remarkable contribution to the [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) community in a staff role and I know he will expand that still further in his new role. I also want to thank the Brazilian Government for working with us so constructively on this issue. I have no doubt that our partnership will deepen and broaden with Everton in this new role.

During the [GAC \(Governmental Advisory Committee\)](#) meeting I was very encouraged by the supportive nature of the comments made by Romulo Neves, interim Brazilian [GAC \(Governmental Advisory Committee\)](#) representative, saying that Everton's skills and expertise are critical to help the government to organize the debate internally not only around Internet Governance but also about Internet-related public policies in general. He made a particular point of emphasizing that this appointment is evidence of Brazil's commitment to [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) and its multistakeholder model.

Everton will continue at ICANN (Internet Corporation for Assigned Names and Numbers) till mid-August as he transitions to his new position, and working with us to identify a successor. We will miss him, but we are looking forward to working with him in his new role at the Brazilian Foreign Ministry.

Congratulations Everton!

## Comments

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**C-102**

**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**

**JOINT STIPULATION OF AMAZON EU S.À.R.L AND ICANN**

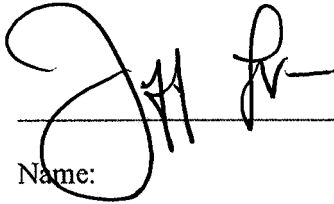
Amazon EU S.à.r.l. (“Amazon”) and the Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby enter the following stipulations for purposes of the above-captioned proceeding only:

1. The strings that are the subjects of Amazon’s applications 1-1315-58086, 1-1318-5591, and 1-1318-83995 (collectively, “Amazon Applications”) do not fall within the criteria for geographic names contained in Section 2.2.1.4 of the Applicant Guidebook. In reasonable reliance on ICANN’s representation referenced in this paragraph, Amazon has agreed not to pursue production of documents concerning the Geographic Names Review (Applicant Guidebook Section 2.2.1.4) conducted in the Initial Evaluation of the Amazon Applications.
2. The ICANN Independent Objector commenced community objections before the International Centre for Expertise of the International Chamber of Commerce (“ICC”) concerning the Amazon Applications. Professor Luca G. Radicati di Brozolo (the Independent Expert selected by the ICC) issued an Expert Determination (marked by Amazon as Exhibit C-047) dismissing those community objections. As referenced in the New gTLD Program Committee (“NGPC”) briefing materials for its 14 May 2014 meeting, the Expert Determination was included in the NGPC Reference Materials. In deciding to accept the GAC’s advice that the Amazon Applications should not proceed, the NGPC did not rely on the substantive rulings made in that Expert Determination. In reasonable reliance on ICANN’s representations referenced in this paragraph, Amazon has agreed not to pursue Amended Request for Production No. 5.
3. ICANN’s procedures require that complaints to the ICANN Ombudsman be kept confidential. Accordingly, ICANN does not seek nor maintain access to the documents in the possession of the office of the ICANN Ombudsman. The Ombudsman published a report entitled “New Ombudsman Report on Dot Amazon” on 28 May 2015 (available at <https://omblog.icann.org/index.html%3Fm=201505.html>), which did not provide any recommendation for ICANN Board action regarding the Amazon Applications

("Ombudsman Report"). ICANN has represented that it will not rely on the Ombudsman Report, or the fact that the Ombudsman Report did not issue a recommendation for Board action regarding the Amazon Applications, for any purpose in these IRP proceedings. In reasonable reliance on ICANN's representations referenced in this paragraph, Amazon has agreed: (i) not to pursue discovery of documents concerning the ICANN Ombudsman; and (ii) that Amazon will not rely on the Ombudsman Report for any purpose in these IRP proceedings.

4. ICANN has represented to Amazon that, to the best of its knowledge, neither the ICANN Board nor any of its members had any communications with the Independent Objector in forming the ICANN Board's decision to accept the GAC's advice that the Amazon Applications should not proceed. In reasonable reliance on ICANN's representations referenced in this paragraph, Amazon has agreed not to pursue discovery of documents concerning communications between the ICANN Board and its members, on the one hand, and the Independent Objector, on the other.

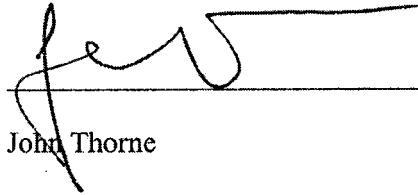
Agreed to by the Parties:



Name:

Date:

Counsel for Respondent Internet Corporation for Assigned Names and Numbers



John Thorne

Date: March 3, 2017

Counsel for Claimant Amazon E.U. S.à.r.l.

So entered.

\_\_\_\_\_  
Panel Chair