

Brasilia, 23 April 2019

Dear Chairman Chalaby,

Distinguished Members of the ICANN Board,

Cc:

Mrs Alexandra Moreira, Secretary-General, ACTO

Mr Brian Huseman, Vice President, Amazon Inc

I would like to start by expressing my appreciation to you and all Board members for taking the time to read not only our messages directly addressed to you, but also for considering with care our exchanges with the company Amazon Inc, which, as I am sure you appreciate, make it clear that we have been engaged in a serious effort to find the mutually acceptable solution for the .AMAZON applications called for by GAC Advice, with an open mind and in good faith, exploring and weighing all possible alternatives.

In Mr Huseman's April 9 letter to you, it was stated that *"Amazon sincerely hopes that the ACTO member states will be able to provide for Amazon's consideration, before Amazon is required to file its proposal per the Board's March 10 Resolutions, a single, unified proposal endorsed by all eight ACTO countries"*. The point would have been to allow until April 21 for the filing of a proposal reflecting a solution acceptable to all eight ACTO member states, which the company said it was hopeful we could find.

In a letter dated April 15 from the Board Chairman to ACTO's Secretary-General, it was stated that the *"ICANN Board notes that the Amazon Corporation has helpfully agreed to accept additional inputs from ACTO and its member states after the 7 April 2019 deadline had passed, recognizing that ACTO countries would meet during this past week and that they might provide 'a single, unified proposal endorsed by all eight ACTO countries'"*.

However, two days later, on 17 April, the company submitted its proposal. It did so before ACTO members could convey to the ICANN Board and to Amazon Inc, on April 18, its unified proposal, as requested by the company. Here, I note the intrinsic complexity of consultations among several governments on an issue of such sensitivity.

The Brazilian government reacted to the company's April 17 filing with a public note issued on the next day, which, for your convenience, I reproduce below:

*"The Ministry of Foreign Affairs was informed that the company Amazon Inc. submitted to the Internet Corporation for Assigned Names and Numbers (ICANN), on 17/04/2019, a proposal for obtaining the .AMAZON top-level domain, which, in the view of Brazil, does not address important concerns of the countries of the Amazon Cooperation Treaty Organization (ACTO).*

*Brazil reiterates its willingness to seek, in good faith, a friendly and mutually acceptable solution to the controversy between the company Amazon Inc. and the ACTO countries, one that ensures: (1) that ACTO countries will share responsibilities with the company on central matters related to the governance of the top-level domain, through a Steering Committee that guarantees the effective sharing of these responsibilities; (2) that second-level domain names with significance for the promotion of the natural and cultural heritage of the Amazon countries will be protected or, in a few cases, delegated to these countries by mutual agreement; (3) that second-level domain names that can cause confusion or mislead about matters that can be reasonably associated with the Amazon region will not be used by the company; and (4) that changes to the governance regime of the .AMAZON domains will only be made by agreement between the parties.*

*In this spirit, over the past few months, the Brazilian government has been in dialogue with the other ACTO member countries, ICANN and the company Amazon Inc., in the hope of continuing the efforts towards mutual understanding that began last March, as a result of discussions held during the 64th ICANN Meeting in Kobe, Japan, in order to seek a mutually agreeable solution, as recommended by ICANN's Governmental Advisory Committee (GAC).*

*Any decision that ICANN will adopt should take into account the political sensitivity involved in the attribution exclusively to private interests of a domain name inextricably associated with the identity of millions of people. It should also fully consider the public interest of the Amazon countries, as well as the need to preserve a truly multi-stakeholder approach to Internet governance and to enhance the legitimacy of the mechanisms for the management of Internet's global resources.*

*The Brazilian government reaffirms its expectation that the parties involved will use all available opportunities, including with an appropriate extension of the time allowed for consultations between the company Amazon Inc. and the Amazon countries, in order to reach a mutually acceptable solution to the matter."*

As Amazon Inc chose to submit, before the April 21 deadline, a proposal for the delegation of the .AMAZON TLDs under conditions that are not acceptable to all parties, I respectfully request, on behalf of the Brazilian government, that the ICANN Board either refer that proposal back to the company for additional work with ACTO countries, or determine not to delegate the corresponding TLDs.

Additionally, it has been stated that Amazon Inc. was not asked to agree to an extension of the period of negotiations.

In Brazil's email to the company on April 5, we wrote:

*"The deadline of 7 April may have been useful in speeding up our negotiations, but it was always evident to us that four weeks would not be sufficient for us to reach total agreement. However, I am encouraged by the fact that we have clearly defined areas of agreement and disagreement and that both governments and the company have put forward their positions in writing.*

*We would like to propose, therefore, that we continue working in the following weeks with a view to developing a mutually-agreed solution before ICANN 65 in Marrakesh."*

Peru's April 7 email to the company made an identical request:

*"Because the agreement required by the Board has not been reached yet with all the Amazonian countries and given the difficult political situation in the Amazon region, which we hope will be resolved soon, we strongly believe that continue negotiating would be more convenient for all, especially since you have recognized that the governments attended the video conference "on only an "informational" and technical basis"."*

See also Colombia's April 8 email to the company:

*"Unfortunately, the Colombian government does not believe the four-week time frame provided to the parties by the ICANN Board to reach a mutually resolution was sufficient. While such an expedited timeline may be sufficient for private / commercial entities, sovereign States simply require more time to engage in the necessary consultative processes to ensure that the best interest of our people and their heritage are properly safeguarded."*

On April 18, as ACTO's Secretary General conveyed to the ICANN Board and Amazon Inc a compromise proposal for the delegation of the .AMAZON TLDs endorsed by all eight ACTO member States, she referred back to these previous calls for an extension of the negotiation period, and added that ACTO *"reiterates to the company the request that it accepts the extension of the negotiations period called for, taking the 7 June as the suggested deadline"* (our translation from the Spanish original: "se reitera la oferta a la empresa Amazon Inc. de que acepte esta ampliación, sugiriéndose como fecha de término el 7 junio").

The above shows that requests for the continuation of the dialogue were specifically put in writing to the company.

It has been further stated that ACTO's request for an extension of negotiations would not be in line with the Board resolution. ACTO's reiteration of requests for an extension of the negotiation period was based on the suggestion made by the Board Chairman in his April 17 letter, which indicated that 7 June would be a suitable deadline.

As to the substance, the company's proposal of April 17 cannot be said to accommodate the principles of shared responsibility and shared governance called for by ACTO members. The Steering Committee, as envisaged by Amazon Inc, would be established by a unilateral act of the company and tasked only with making suggestions, instead of being part of the legally enforceable obligations contained in the Public Interest Commitment (PIC).

The proposal would also adopt an overly restrictive definition of the concept of "Culture and heritage specific to the Amazon region", which would not even include the names

of cities, towns, villages, rivers, culinary dishes, typical ingredients, animals and plants, touristic attractions, and travel-related services, among others.

It has also been stated that “international trademark law” or “international intellectual property law” would favor Amazon Inc’s proposal for the delegation of the .AMAZON TLDs. While acknowledging that the ICANN Board is not a court of law and without prejudice to other legal and public policy principles, I would like to draw your attention to the following conclusion by the third-party expert commissioned by ICANN to provide additional advice on the .Amazon applications in 2014:

*“As regards the application for assignment of the new gTLD ‘amazon’ filed by the Amazon company: [...] there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN to accept this application.”*

It has been also stated that there are technical difficulties for implementing the public interest commitment as proposed by ACTO members. One such alleged difficulty would be that the applied-for string would be operated as a closed .BRAND gTLD, which would foreclose the actual sharing of domains under the .AMAZON TLDs for purposes other than the protection and promotion of the brand. However, Amazon Inc itself proposed in 2015 what the company now claims to be technically impossible. What ACTO members propose now is significantly less than the company’s 2015 proposal, so that a mutually acceptable solution as technically and legally possible as the 2015 proposal should also be achievable.

It has been additionally suggested that under ICANN rules, in particular the Applicant Guidebook 2012 (AGB 2012), there would be no obstacles for the .AMAZON TLDs to move forward. I would like to point out that the Applicant Guidebook specifically provided for an objection procedure based on GAC consensus advice against *any* new gTLD strings “that are identified by governments to be problematic” “or that raise sensitivities”. According to the AGB 2012, “strings that could raise sensitivities include those that ‘purpose to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or a particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)’”.

These rules, which were relied upon by the GAC to oppose delegation of the .AMAZON TLDs without a mutually acceptable solution for ACTO members, were developed through a multi-stakeholder bottom-up process. To ignore them would disregard the multi-stakeholder model of governance on which ICANN is based and, additionally, its own Bylaws, which expressly recognize “that governments and public authorities are responsible for public policy”.

In sum:

a. ACTO members have engaged with Amazon Inc. in good faith and in a timely manner;

b. In several instances, ACTO members have collectively and individually requested the extension of the period for negotiations with Amazon Inc.;

c. The alleged shortcomings, difficulties or legal inconsistencies identified by the company in the ACTO 18 April unified proposal are simply not so; and

d. On the contrary, ACTO unified proposal is conceptually, legally and technically sound and acknowledges the commercial concerns of Amazon Inc., while upholding the legitimate public interests of ACTO members and its national societies.

In closing, let me reiterate that the Brazilian Government remains fully committed to working with the ICANN Board and Amazon Inc. to find a mutually acceptable solution as soon as possible and not later than ICANN 65.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Achilles Zaluar', written in a cursive style.

Achilles Zaluar

Ambassador  
Director, Department for Technological Promotion  
Ministry of Foreign Affairs, Brazil