

Attachment #1

De: Ivan Dario Castaño Perez <Contact Information Redacted>
Enviado: domingo, abril 7, 2019 9:39 p. m.
Para: Huseman, Brian
CC: Jehudi Castro Sierra; Maria Juliana Lopera Gomez; Contact Information Redacted
Thiago Braz Jardim Oliveira; Contact Information Redacted
Contact Information Redacted

goran.marby@icann.org; cherine.chalaby@board.icann.org; Contact Information Redacted

Asunto: Response to Amazon Inc regarding .amazon (Colombia)

Dear Mr Huseman,

Please find attached the response from the Colombian Government regarding the discussion about the .amazon domain.

Best,

--

Ivan Castano

Director – IT Industry Development

GAC Member - Colombia

Contact Information Redacted

Edificio Murillo Toro - Cra. 8a Between calles 12 y 13

Zip Code: 111711 - Bogotá D.C. - Colombia

www.mintic.gov.co

Attachment #2

The 7-April-2019 Communication that was attached to the email referenced in Attachment #1.



TO: **Brian Huseman**
Vicepresident Public Policy
Amazon Inc.

CC: **Cherine Chalaby**
Chair
ICANN Board of Directors

Göran Marby
CEO and President
ICANN

FROM: **Ivan Darío Castaño**
Director of IT Industry Development – Viceministry of Digital Economy
GAC Member - Colombia

Dear Mr. Huseman.

Thank you for your previous communications.

Before directly responding to the six points of “fundamental disagreement” cited in your communication, there are some key concerns that the Colombian government would like to formally enter into the record regarding the framework of these dialogues to date.

While we appreciate your acknowledgment of “the difficult political situation involving the ACTO organization and its member countries,” we have tried both individually and collectively with other ACTO members to engage in good faith discussions to find a mutually agreeable solution.

Unfortunately, we appear to find ourselves in a stand-off, in which Amazon Inc. seems content on running out the clock in the hopes that the ICANN Board will approve its proposed Public Interest Commitment (PIC) Specification. Even the countries of Colombia, Peru and Brazil presented different proposals within the period granted by ICANN to reach a mutually acceptable solution, but all were rejected, and their essential aspects were not taken into account to modify the position of Amazon Inc. In this regard, we now have a final proposal from Amazon Inc. that would seem to be more an “accession agreement” for the Amazon countries, than the result of a fruitful dialogue.



However, instead of ICANN having to pick winners and losers and potentially undermining the global multi-stakeholder model, we would like to put on the record the following comments for your consideration and the ICANN Board.

1. Ownership rights

It is important to frame our discussion supporting the following Brazil's statement on their last communication to Amazon Inc.:

It is a matter of common knowledge, I believe, that the name "Amazon" was selected as a brand because it means a certain region that was seen as "exotic and different", and because the Amazon River, the biggest river in the world, gave an idea of what was to become "the biggest bookstore in the world".

We would also like to add that "In 1994 Jeff Bezos, a former Wall Street hedge fund executive, incorporated Amazon.com, choosing the name primarily because it began with the first letter of the alphabet and because of its association with the vast South American river."¹

So, from our point of view, it is clear that Amazon Inc. got its name based on the Amazon region, hence our right to protect, discuss and even oppose any resolution that affects the heritage, culture and rights of the communities and countries that are the Amazon region.

2. Specification 13 Concerns

We would respectfully disagree with your characterization of the Specification 13 concerns that we raised to date. Specifically, you stated the governments "belief that the .AMAZON TLDs are a geographic term and are not eligible to be .BRAND TLDs under Specification 13." To be clear, the concerns of the Colombian government are focused on your proposed solution which on its face appears to violate the spirit of the Specification 13 guidance and the best practice of ICANN Org in approving Specification 13 requests.

As only the trademark owner, its affiliates and licensees are permitted **to use** domain names in a Specification 13 (aka Brand) TLD, we cannot see how Amazon Inc's. proposal to permit ACTO members to be beneficial registrants of the domain names is acceptable under the existing ICANN registry contractual framework. While it appears that Amazon Inc. has tried to comply with the "letter" of Specification 13 by proposing to register these domain names in its name, controlling the name servers, and holding exclusively editorial control over the context appearing on these website, the fact remains that the ACTO members would be the beneficial registrants and thus violate the terms of Specification 13. Unless of course Amazon Inc. was under the false impression that ACTO members would be entering a "license" agreement to use these domain names.

¹ See <https://www.britannica.com/topic/Amazoncom>



As we have previously disclosed, the Colombian government has submitted a Documentary Information Disclosure Policy (DIDP) request with ICANN to see further clarification on this point. Hopefully, the timely provisioning of any documents might help clarify this potential fundamental disagreement between the parties.

3. Proposed Joint Ownership of the TLD

We believe that Amazon Inc. has prematurely rejected the proposal of various ACTO members' proposals to jointly operate the TLD citing its intention to operate it as a Brand TLD.

It is also important to recognize the fact that in the proposal received from Amazon Inc. in 2015, the issues raised in the virtual call dated 3rd April were not present, and we still believe that from the technical point of view it is possible to actually have concessions from Amazon Inc. on this matter, and we even believe that it Amazon's Inc concerns could be elevated to the Security and Stability Advisory Committee (SSAC), and governments can also commit to a safe and secure operation of the domain.

In support of our proposition, we would like to share the following data points recently uncovered as part of our due diligence in connection with these dialogues. The first is the .SAS TLD which was originally applied for by two companies claiming legal rights in the same extension, SAS AB and Research IP LLC. Despite these competing legal rights, the parties appear to have reached an agreement in which one applicant proceeded to entering into a "Registry Agreement" with ICANN, but one in which both seem to have retained rights to use the TLD as evidenced by the information contained on the NIC.SAS webpage.² What Amazon Inc. may also find of interest is that this co-use of the TLD does not appear to violate the terms of Specification 13 which ICANN Org has approved.

The co-use of a domain extension is not unique to SAS case cited above. Our additional research evidenced that this is in fact a long-established practice. For example, the domain name SCRABBLE.COM is currently operated as a gateway to direct consumers to two different website sites depending upon the geographic rights of the trademark licensee. We believe that these examples show that the concept of co-use of the domain substantiate the need for further discussions and potential creative ideas to resolve this situation.

In the interest of fostering a continued constructive dialog on this point, the Colombian government acknowledges that unlike the SAS example cited above Amazon Inc. was the only applicant for the .AMAZON extension. However, the Colombian government would like to point out the deficiency and inequality of the gTLD program as evident by the fact that South America was one of the most under represented regions with only 24 applications (1.2%) out of 1930 submitted to ICANN.³

² The following statement currently appears on the NIC.SAS webpage, "SAS is a Specification 13 registry exclusively to promote the SAS Institute and SAS Airline trademarked brands."

³ See <https://newgtlds.icann.org/en/announcements-and-media/announcement-13jun12-en>



Moreover, Amazon Inc. has rejected various ACTO members' proposals to jointly own and operate the TLD citing Amazon Inc. intention to operate it as a Brand TLD. We would like to point, that is not acceptable for us to be undermined in what we firmly believe are our rights, moreover now, that your company is appearing as a concession making actor, when we actually believe that is the other way around.

Additionally, Amazon Inc. presented, in 2015, its initial proposal to the Amazon countries, which, despite being rejected, included terms that could be considered as a minimum in any subsequent dialogue, while now there is a clearly inferior proposal.

4. Notice Requirement & Veto Authority

Amazon Inc. notes as its third point of fundamental objection the governments requirement "for advance notice and veto authority of domain names Amazon Inc. wants to register and use in the .AMAZON TLDs." Ironically, Amazon Inc. criticism of the governments' proposals is almost identical in nature and scope to the authority that it has set forth in its proposed PIC Specification. During the call, Amazon Inc. raised some additional security and stability concerns about having to disclose certain products before they launch.

Unfortunately, the parties find themselves at an impasse trying to anticipate future domain names that may give rise to cultural heritage significance. In an effort to break this impasse and potentially build further good will between the parties would Amazon Inc. be willing to share the following information with ACTO members. Specifically, would Amazon Inc. be willing to share with ACTO Members all non-confidential domain names contained in the Amazon Inc. (and affiliates) portfolio and all national trademark registrations and applications. We believe this effort, will go a long way toward identifying any points of cultural heritage significance and a framework for future dialog between the parties.

Notwithstanding this exercise to minimize the scope of domains that might give rise to potential cultural heritage significance, the reality is there will likely arise a situation in the future where the parties disagree. Instead of a framework where either Amazon Inc. or an ACTO Member can veto the objection of the other party, there is clearly the need for an objective third party to resolve such disputes. The Colombian government would like to put on the table for consideration the potential of engaging UNESCO to identify how they may be able assist. While UNESCO is uniquely qualified to make such determinations on cultural heritage using objective standards, their Convention may preclude them from taking on an operation role to solve this problem. If this limitation does exist, UNESCO may nevertheless still be able to identify a suitable third party.

In response to Amazon Inc's security and stability concerns about the vetting certain domain names prior to public disclosure, we believe the concept of a governance or steering committee could provide a framework for expedited review/approval. We believe it is also important to note that Amazon Inc. was able to become the world's wealthiest public company without the use of its own dot brand extension. Therefore, there are clear options that Amazon Inc. could elect that are not dependent upon the immediate inclusion of a second level domain within the .AMAZON zone file.



Nevertheless, it is clear that Amazon's Inc. vision over an inclusion of a steering committee into a possible agreement, is nothing different than an advisory committee, with any power to decide or oppose to any decision that can affect or contravene the interest of the countries of safeguarding the heritage and importance of the Amazon region or its significance. The ACTO member states, will ultimately know the decisions of the company and will not even be able to express its opinion as to whether it contravenes in any way the interests of the States of safeguarding the Amazon region and its heritage.

5. ACTO Member's Scope of Use of Permitted Domains

Amazon Inc. in their proposed PIC Specification has provided very prescriptive details on how ACTO Members can use their domain names, including a prohibition regarding any commercial use of the domain name and a requirement to review all content appearing on the website. This on its face does not appear to any type of compromise if one party holds all the power, at best it could be deemed as a benevolent dictatorship.

We as governments, as we have tried to point out from the beginning, do not have an interest on getting revenues from the usage of the domain, instead we would like to promote the Amazon region and to preserve, protect and promote its cultural heritage and its communities. That does not mean, that promotional information about the richness in culture, heritage and nature, could not be seen as commercial information and in those terms, practice a veto authority.

This point is relevant having into account that the content and development of these domains will be supervised by the company, and should be limited to sharing informative subjects about the region, but never of promotion as we have tried from the beginning, neither in the same page, nor redirecting.

The intention of ACTO Member States as communicated early on in this process was our desire to use the .AMAZON domain to promote the Amazon region and its importance to the world. While we are not currently able to provide an enumerated list of these activities, we could envision one or more of these domain names being used to promote eco-tourism and the richness in culture, heritage and nature that the region offers. Unfortunately, similar to the joint-use of the domain discussion above, Amazon Inc. summarily cut-off any discussion on potential technical solutions to address their security and stability concerns.

We believe that the use of pop-up notifications could be an effective technical solution to minimize any potential confusion. For example, any Internet user seeking to access an ACTO Permissible Domain would be prompted with a pop-up notification informing them that they were accessing a website maintained by an ACTO Member and that any user seeking information about Amazon Inc. could be directed to a URL of Amazon Inc. choice. We believe this approach provides a much more elegant solution to permit co-use of ACTO Permissible Domains within the .AMAZON extension, while removing Amazon Inc. from the burden of micromanaging ACTO Member activities. To respect the joint responsibility that ACTO Member States would share in safeguarding the .AMAZON namespace, the Colombian government would be supportive of an industry security best practice to prevent any abused within the domain.



6. Dispute Resolution & Decision over the Denominations that will be Reserved due to its Significance to the region

Amazon Inc. remains steadfast in their position that any disputes regarding the PIC Specifications be administered by the PICDRP standing panel, as opposed to any potential formal arbitration process citing the “add[ed] complexity and commercial uncertainty.” Speaking in its own capacity, the Colombian government has two primary concerns about replying on the PICDRP to administer any disputes between the parties. First, the current standing panel does not appear to have any panelists with subject matter expertise to enable them to make determinations on what domain names may or may not raise cultural sensitivity. Second, the Amazon Inc. proposal would place ICANN Org in the unenviable task of being the gatekeeper to determine if any third-party complaints merit referral to the PICDRP Panel.

While it is important the proposal where the operator will commit to not use domain names in the .amazon TLD terms, that have a primary and well recognized significance for the culture and heritage specific to the Amazon region, it is certainly problematic and incoherent, the fact that according to the proposal, the decision making over the actual significance for the region of a given name, does not lie with the States of such region.

The Colombian government remains aligned with other ACTO members that advocate in support of a formal arbitration process to resolve any disputes between the parties regarding any PIC Specification and/or Memorandum of Understanding. The Colombian government believes the use of a similar binding ICC arbitration process as contained in the Registry Agreements between ICANN and Governments / Intergovernmental Organizations is the appropriate legal framework to resolve any dispute between private and public parties. As noted above, we also believe this approach removes ICANN Org from being in the unenviable task of being the gatekeep to refer any disputes to the PICDR Panels.

Regarding the number of denominations with special importance and meaning for the region, it could be bigger each day, but when it comes to say, who is going to be in charge to determine whether it has or hasn't special importance or significance to the region, the countries will not have any role, it will be decided by the company. And in those terms, it loses all effectiveness.

7. Conclusion

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. While it would be our preference for the ICANN Board to grant an extension to the parties to continue a constructive dialog on the substantive points raised in this communication, we recognize that such an extension may not be granted.



El futuro digital
es de todos

Gobierno
de Colombia
MinTIC

In the event that the ICANN Board decides to act in connection with the .AMAZON extension, we would ask that they please address each of the points raised in this communication in any Rationale for Resolution.

Finally, although we really appreciate the respectful dialogue that has happened during the past 4 weeks, we must point out, that we never felt the willingness from Amazon Inc. to consider our government concerns, but was only seeking our conformance to its latest PIC.

Best,

--
Iván Castaño

Director – IT Industry Development
GAC Member - Colombia
Contact Information Redacted

Edificio Murillo Toro - Cra. 8a Between calles 12 y 13
Zip Code: 111711 - Bogotá D.C. - Colombia
www.mintic.gov.co



El futuro digital
es de todos

Gobierno
de Colombia
MinTIC