

Approved Board Resolutions | Regular Meeting of the ICANN Board

29 Oct 2017

[https://www.icann.org/resources/board-material/resolutions-2017-10-29-en#2.a\[icann.org\]](https://www.icann.org/resources/board-material/resolutions-2017-10-29-en#2.a[icann.org])

- a. Request for New or Additional Information from the Governmental Advisory Committee re: Advice on Amazon Applications

Whereas, the Final Declaration in the Amazon EU S.à.r.l. (Amazon) v. ICANN Independent Review Process (IRP) was issued on 11 July 2017.

Whereas, in the Final Declaration, the Panel recommended that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." (Final Declaration at ¶ 125.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version on the Bylaws, the Board considered the Final Declaration at its 23 September 2017 meeting and determined that further consideration was needed regarding the Panel's non-binding recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications."

Whereas, the Board asked the Board Accountability Mechanisms Committee (BAMC) to review and consider the Panel's recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications," and to provide options for the Board to consider in addressing the Panel's recommendation.

Whereas, the BAMC has recommended that the Board ask the Governmental Advisory Committee (GAC) if it has: (i) any information to provide to the Board as it relates to the "merits-based public policy reasons," regarding the GAC's advice that the Amazon applications should not proceed; or (ii) any other new or additional information to provide to the Board regarding the GAC's advice that the Amazon applications should not proceed.

Resolved (2017.10.29.02), the Board asks the GAC if it has: (i) any information to provide to the Board as it relates to the "merits-based public policy reasons," regarding the GAC's advice that the Amazon applications should not proceed; or (ii) any other new

or additional information to provide to the Board regarding the GAC's advice that the Amazon applications should not proceed.

Resolved (2017.10.29.03), the Board asks the GAC that if it has any new or additional information (as requested above) to provide to the Board, it does so by the conclusion of the ICANN61 meeting scheduled to take place from 10-15 March 2018, in order to assist the Board's appropriate and prompt consideration.

Rationale for Resolutions 2017.10.29.02 – 2017.10.29.03

Amazon EU S.à.r.l. (Amazon) initiated Independent Review Process (IRP) proceedings challenging the New gTLD Program Committee's (NGPC's) 14 May 2014 decision to accept the Governmental Advisory Committee (GAC) consensus advice that three Amazon applications should not proceed. (Resolution 2014.05.14.NG03, available at [https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b\[icann.org\]](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b[icann.org]).)

Amazon applied for .AMAZON and its Chinese and Japanese character equivalents (Amazon Applications), which passed Initial Evaluation (see [https://newgtlds.icann.org/sites/default/files/ier/bqe3so7p3lu2ia8ouwp7eph9/ie-1-1315-58086-en.pdf\[newgtlds.icann.org\]](https://newgtlds.icann.org/sites/default/files/ier/bqe3so7p3lu2ia8ouwp7eph9/ie-1-1315-58086-en.pdf[newgtlds.icann.org]) [PDF, 46 KB]). In response to the Amazon Applications, the governments of Brazil and Peru, with the endorsement of Bolivia, Ecuador and Guyana, submitted an Early Warning through the GAC, in accordance with the Applicant Guidebook, in which the concerned governments stated that: "[g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for the purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." (Early Warning, available at [https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197938/Amazon-BR-PE-58086.pdf\[gacweb.icann.org\]](https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings?preview=/27131927/27197938/Amazon-BR-PE-58086.pdf[gacweb.icann.org]) [PDF, 79 KB].)

After indicating in the Beijing Communiqué (April 2013) that the Amazon Applications required further GAC consideration, the GAC provided consensus advice (GAC Advice) to the ICANNBoard in the Durban Communiqué (18 July 2013) that the Amazon Applications should not proceed ([https://gacweb.icann.org/display/GACADV/2013-07-18-Obj-Amazon\[gacweb.icann.org\]](https://gacweb.icann.org/display/GACADV/2013-07-18-Obj-Amazon[gacweb.icann.org])).

On 14 May 2014, the Board (acting through the NGPC) accepted the GAC Advice and directed ICANN not to proceed with the Amazon Applications. (Resolution 2014.05.14.NG03, available at [https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b\[icann.org\]](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b[icann.org]).) The NGPC's decision was without prejudice to the continuing efforts by Amazon and members of the GAC to pursue dialogue on the relevant issues.

In March 2016, Amazon initiated an independent review of ICANN Board Resolution 2014.05.14.NG03 directing that the Amazon Applications should not proceed.

On 11 July 2017, the IRP Panel (Panel) issued its Final Declaration in the Amazon IRP (<https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>[\[icann.org\]](#) [PDF, 294 KB]). The Panel's findings and recommendation are summarized below, and available in full at <https://www.icann.org/resources/pages/irp-amazon-v-icann-2016-03-04-en>[\[icann.org\]](#).

In a 2-1 decision, the Panel declared Amazon to be the prevailing party, and declared that the "Board, acting through the NGPC, acted in a manner inconsistent with its Articles, Bylaws and Applicant Guidebook because, [...] by giving complete deference to the consensus advice of the [GAC] regarding whether there was a well-founded public policy reason for its advice, the NGPC failed in its duty to independently evaluate and determine whether valid and merits-based public policy interests existed supporting the GAC's consensus advice." (Final Declaration at ¶ 2.) The Panel further declared that "ICANN shall bear the costs of this IRP as well as the cost of the IRP provider," and "shall reimburse Amazon the sum of \$163,045.51." (Final Declaration at ¶ 126.)

In addition, the Panel recommended that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." If the Board determines that the Amazon Applications should not proceed, the Panel indicated that "the Board should explain its reasons supporting that decision"; the "GAC consensus advice, standing alone, cannot supplant the Board's independent and objective decision with a reasoned analysis." (Final Declaration at ¶ 125.) In the alternative, if the Board determines that the Amazon Applications should proceed, the Panel recommended that ICANN conduct its "'meet and confer' with the GAC" "within sixty (60) days of the issuance of this Final Declaration." (Final Declaration at ¶ 125.) In coming to its conclusions, the Panel stated that "under the facts of this IRP, the procedural fairness obligation applicable to the GAC, at a minimum, required that the GAC allow a written statement or comment from a potentially adversely affected party, before it decided whether to issue consensus advice objecting to an application[; and the] Board's obligation was to see that the GAC, as a constituent body of ICANN, had such a procedure and that it followed it." (Final Declaration at ¶ 94.)

The Panel further concluded that "GAC consensus advice, although no reasons or rationale need be given, nonetheless must be based on a well-founded public interest concern and this public interest basis must be ascertained or ascertainable from the entirety of the record before the NGPC." (Final Declaration at ¶ 103.) According to the Panel, "the NGPC deferred to the consensus GAC advice regarding the existence of a valid public policy concern and by so doing, it abandoned its obligation under ICANN governance documents to make an independent, merits-based and objective decision whether or not to allow the applications to proceed." The Panel further noted that, "[b]y failing to independently evaluate and articulate the existence of

a well-founded public policy reason for the GAC advice, the NGPC, in effect, created a conclusive or irrebuttable presumption for the GAC consensus advice." (Final Declaration at ¶ 116.)

In accordance with Article IV, section 3.21 of the applicable version on the Bylaws, the Board considered the Final Declaration at its meeting on 23 September 2017 and determined, among other things, that further consideration was needed regarding the Panel's non-binding recommendation that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications." The Board asked the BAMC to review and consider the Panel's recommendation, and to provide options for the Board to consider in addressing the Panel's recommendation.

After reviewing and considering the Final Declaration, the Panel's recommendation, and all relevant materials, the Board Accountability Mechanisms Committee (BAMC) concluded that it would be beneficial to receive any new or additional information that the GAC might choose to offer regarding its advice that the Amazon Applications should not proceed. The Board believes that any such new or additional information would assist the Board in conducting a comprehensive re-evaluation of the Amazon Applications in accordance with the Panel's recommendation. The BAMC therefore has recommended that the Board ask the GAC if it has any new or additional information to provide to the Board regarding the GAC's advice that the Amazon Applications should not proceed.

The Board recognizes the importance of this decision and wants to make clear that it takes the results of all ICANN accountability mechanisms very seriously, which is further evidenced by the creation of the new BAMC and why the Panel's recommendation was referred to the BAMC.

Taking this decision is within ICANN's Mission and in furtherance of the public interest as the ultimate result of ICANN's consideration of this matter is a key aspect of coordinating the allocation and assignment of names in the root zone of the domain name system (DNS). Further, the Board's decision is in the public interest, taking into consideration and balancing the goals of resolving outstanding gTLD disputes, respecting ICANN's accountability mechanisms and advisory committees, and abiding by the policies and procedures set forth in the Applicant Guidebook, which were developed through a bottom-up consensus-based multistakeholder process over numerous years of community efforts and input.

Taking this decision is not expected to have any direct financial impact on the ICANN Organization. This action will not have any impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

