



Organização do Tratado  
de Cooperação Amazônica  
SP - Secretaria Permanente

Organización del Tratado  
de Cooperación Amazónica  
SP - Secretaría Permanente

Amazon Cooperation  
Treaty Organization  
SP - Permanent Secretariat

De Organisatie van de Overeenkomst  
voor Amazonische Samenwerking  
SP - Permanent Secretariaat

**PS/ACTO/ 522 /2018**

Brasilia, December 7, 2018

**To: ICANN Board**

Distinguished members of the ICANN Board,

Please find attached the official note adopted by the Member States of the Amazon Cooperation Treaty Organization (ACTO) at the XXI Ordinary Meeting of the Amazon Cooperation Council, held in Santa Cruz de la Sierra, on November 28-29, 2018.

I also take this opportunity to acknowledge receipt of the ICANN Board Chairman's letter dated December 3, 2018, which has been forwarded to ACTO Member States.

Sincerely,

**María Jacqueline Mendoza Ortega**  
Secretary General PS/ACTO

c/c: Cherine Chalaby, Chairman of the ICANN Board  
Göran Marby, ICANN President and CEO  
Manal Ismail, GAC Chair



*40 years of the signature of the Amazon Cooperation Treaty (1978-2018)*



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The governments of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, members of the Amazon Cooperation Treaty Organization (ACTO), as decided by their high-level authorities within the ambit of the Amazon Cooperation Council, deeply deplore and firmly refute the latest communications by the ICANN President and CEO regarding an alleged “facilitation process” associated with the .AMAZON applications dated November 20 and 28, 2018, which were addressed, respectively, to the ACTO Secretary-General and to the Chairman of the Governmental Advisory Committee (GAC). These communications contain untrue, misleading, unfortunate and biased statements.

In e-mails sent to the GAC on November 19, 27 and 30, 2018, the representative of Brazil to the said Committee already refuted most, if not all, claims made by the ICANN President and CEO regarding his alleged facilitation role “during the previous 12 months”. These communications are attached.

The present document is meant to set the record straight also before this board.

It also aims at expressing the firm rejection and deep disappointment of the eight Amazon countries at the inexplicable attitude of the ICANN Organization of ignoring the clear messages contained in the letters of September 5, 2018 and October 19, 2018 sent by ACTO on their behalf.

In these letters, it was stated and restated that, following an extraordinary meeting of the Amazon Cooperation Council held in Brasilia on August 27, 2018, the Amazon countries decided in good faith that they were ready to *initiate a dialogue* with the ICANN Board or its designee, *through the Amazon Cooperation Treaty Organization*, in order to *participate in the development of a potential solution* for the .AMAZON applications.<sup>1</sup>

Furthermore, at the Joint Meeting between the ICANN Board and the GAC, held on Tuesday, October 23, 2018, at ICANN 63 in Barcelona, Colombia reiterated the concerns and parameters set out by ACTO on August 27, 2018, as well as the “disposition of the eight countries to have a dialogue with the ICANN CEO on a future date for a meeting that would be held in Brasilia”.

Inexplicably, however, the ICANN President and CEO never reached out to the Amazon countries to follow up on that message, except for stating (in an e-mail to the ACTO Secretary-General on October 19, 2018) that “you *might be receiving in the coming period some related exchanges about [a] proposal*”.

<sup>1</sup> Further, it was indicated and reiterated that any such solution must necessarily *guarantee the Amazon countries’ fair, adequate and meaningful participation in the governance* of these TLDs, and in any case *requires their consent*.



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Therefore, in order to avoid any misunderstanding on the part of this Board and its members, let it be clear that the **ICANN Organization never sent – let alone discussed with – the Amazon countries any proposal.**<sup>2</sup>

Furthermore, in a letter dated November 28, 2018, the ICANN President and CEO claimed that a proposal “has been developed during a 12-month facilitation process that ICANN was leading and evolved from many discussions and ideas with all concerned parties, exchange of letters with Q&A in February 2018 between ACTO, ICANN and Amazon Corporation”.

**There were never discussions “with all the concerned parties” simply because there was never a facilitation process.**

In addition to the reasons outlined earlier, it is worth particularly expressing the following:

First, the several contacts between the ICANN President and CEO and Brazil’s representative to the GAC on the matter mentioned by Mr. Marby in his aforementioned letters were in any case informal and general conversations in which it was repeatedly and clearly indicated that no country had any mandate to negotiate on behalf of the other members of ACTO and that formal communications should always be directed to all members through the Organization’s Secretary-General.

Second, as recorded in various public documents and meetings, until the above-mentioned decision by the Amazon Cooperation Council on August 27, 2018, all that the Amazon countries had indicated was to consider Amazon Inc.’s proposal dated February 7, 2018. This was the *first* and *only* proposal ever submitted for their consideration until the proposal referred to in footnote 2 submitted by Amazon Inc. on November 26.

Third, in the so-called “exchange of letters with Q&A in February 2018” (that is, prior to the August 27, 2018 decision by the Amazon Cooperation Council), an ACTO Expert Working Group (set up by ACTO Foreign Ministers in December 2017 to make recommendations to them on the February Amazon Inc. proposal) asked ICANN to seek clarifications from the company about its proposal. The request was ignored. Instead, the company – which had been copied in the message to the ICANN Board – directly replied to the Amazon Cooperation Treaty Organization. It is inconceivable and unacceptable that these clarifying questions by the Expert Working Group are now unfaithfully presented as anything other than clarifying questions for the work of the Expert Working Group.

Fourth, based on the recommendations by the Expert Working Group, the Amazon Cooperation Council decided, on August 27, 2018, to reject the February 7, 2018 proposal in its entirety and to inform the ICANN Board that they were willing to ***initiate*** a dialogue with the Board on the matter.

<sup>2</sup> It was only on November 26, 2018 that Amazon Inc. – **not ICANN Org** – sent to the Amazon Cooperation Treaty Organization a proposal for the delegation of the “.AMAZON” TLDs. This was more than one month after Board resolution of October 25, 2018 authorized the removal of the “Will Not Proceed” status of the .AMAZON applications based on that proposal by the company.



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In light of the above, Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela do not and will not bear, collectively or individually, any responsibility for the failure of the ICANN President and CEO to facilitate the development of a mutually acceptable solution for the .AMAZON applications. The Amazon countries sincerely regret that no facilitation process by Mr. Marby was conducted, one in which they were ready and willing to engage in absolute good faith.

It is also in view of the above, that ACTO members could not agree with or find any reason for the Board resolution which removed the “Will Not Proceed” status of the .AMAZON applications and, therefore, submitted a reconsideration request. It is unfortunate and groundless that until very recently such request had not been acted upon by ICANN.

In such a difficult context, caused mainly by the failure of the ICANN President and CEO to establish a facilitation process as requested by the Board and his public allegations to the contrary, as well as the Board’s ill-informed and precipitated decision to adopt the resolution mentioned above, the Amazon countries had no choice but to postpone the meeting between them and the ICANN President and CEO. In addition, a week before such meeting ACTO Secretary-General had not received from the ICANN Organization any document or proposal for potential discussion at that meeting, nor any acknowledgment of the reconsideration request.

Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela will not take any further steps on this case before the reconsideration request is decided upon and the decision properly and duly communicated.

Finally, in accordance with ICANN norms in force, the present document should be posted on ICANN’s correspondence webpage without delay. Tardiness in doing so in the past and the outright failure to publish previous communications on this issue did not contribute to the building of trust among the parties.



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**De:** Benedicto Fonseca Filho

**Enviada em:** sexta-feira, 30 de novembro de 2018 18:59

**Para:** gac@icann.org

**Assunto:** RES: [GAC] FW: Letter from Goran Marby to the GAC chair about the Amazon facilitation process

Dear Manal,

Dear colleagues,

I was reluctant at first to offer any new comments in addition to the ones I have already provided before, but some of the "facts" stated in the ICANN President's 28 November 2018 letter addressed to the GAC Chair should be further clarified:

1) In the informal meeting held with Mr. Marby on 20 October 2018 (and not 19 October as stated in this letter), I was informed of his intention to travel to South America to meet ACTO representatives in order to discuss a proposal he said he had put together. He offered to show me the proposal in detail and indicated that Mr. John Jeffrey ("JJ"), ICANN's legal advisor,, who was also present , would be available for that purpose. I declined and indicated that said proposal should be channeled directly to the ACTO Secretariat in order to allow for due consideration by member states. Mr. Thiago Jardim accompanied me in that meeting. I reaffirmed I did not have a mandate to negotiate on behalf of ACTO as a whole. On the other hand, I did indeed express satisfaction at Mr. Marby's decision to meet ACTO member states representatives and reiterated that this meeting should precede any ICANN Board decision on the matter. It is therefore a gross misrepresentation of our exchanges to state, as Mr. Marby does in his letter, that "This proposal with its above-mentioned principles has been shared by our executive representatives in his conversation with the Brazil representative before the ICANN Board meeting of 25 October 2018 and there was encouragement that this was moving in the right direction".

2) On the other hand, a Senior Advisor to the ICANN President and CEO, upon receiving the 5 November 2018 ACTO's letter, called me on behalf of Mr. Marby to explore the possibility of Mr. Marby reacting to that letter and to ACTO's request of reconsideration of the 25 October Board resolution with another letter, addressed to ACTO's Secretary General, indicating that anything contained in the 25 October Board resolution would not be implemented until the outcome of Mr. Marby's then scheduled visit to Santa Cruz de la Sierra. Such a letter to the SG-ACTO, he suggested, should be responded to affirmatively, thereby expressing Amazon countries' acceptance that the reconsideration request could be put on halt. I expressed my opinion that it would be imperative that said resolution be cancelled (or frozen) before the meeting between Mr. Marby and ACTO representatives but that, in any case, a reaction from Mr. Marby only (and not on behalf of the full ICANN Board) might not meet the Amazon countries expectations. I advised anyway that Mr. Marby's proposal regarding the way to address the request of reconsideration should be conveyed directly to the ACTO Secretariat, in order to make sure it would be duly acknowledged and responded to. I shared that exchange immediately with the ACTO Secretariat with the purpose, among others, to allow them to reflect on how to react to the said proposal once it would have been received. However, such a formal consultation to the ACTO Secretariat never took place. In that light, it is also a gross misrepresentation of our dialogue on the matter to state, as Mr. Marby does in his letter, that "This reconsideration was placed on hold following discussions with the Representative of Brazil who indicated that it would be better taken up following the meeting with ACTO members in Bolivia, and that the ACTO member states do not expect any action prior to the Bolivia meeting".

There are other portions of the letter that should be further clarified but those two flagrant inaccuracies could not be left without a response and must be utterly rejected immediately.

Having said that I must state I have approached the dialogue with ICANN officials on the ".Amazon" in the same spirit and sense of duty, including from an ethical point of view, that has characterized my participation in so many other discussions both within ICANN (e.g in regard to Jurisdiction or the use of two-letter code in gTLDs) and in the context of other Internet Governance-related fora, including the UNGA Second Committee, the IGF, the CSTD, UNESCO and NETmundial, to name a few. The intransigent defense of the interests of the Brazilian government (and by extension, depending on the context, of a larger group of developing and/or like-minded countries) has been my constant and unique goal and aspiration. To consider that I could be flexible or remiss about those higher objectives, to the clear detriment of my government's positions (or those of ACTO, in the present case), by accepting to play a role in obscure and secret negotiations is offensive to both myself and my delegation.

I sincerely hope those unfortunate circumstances may be overcome and that a facilitation role worthy of that name can be performed in order to bridge differences between the interested parties, but I should vigorously encourage that full transparency and accuracy be followed and that statement of "facts" in a distorted way designed to support an equally distorted narrative be avoided.

Kind regards,

Benedicto

**De:** Benedicto Fonseca Filho  
**Enviada em:** terça-feira, 27 de novembro de 2018 20:23  
**Para:** gac@icann.org  
**Assunto:** [GAC] ".AMAZON" TLDs. Update.

Dear colleagues,

With reference to my communication of 19 November 2018, and with a view to updating developments on the matter, please find herein attached a copy of the following correspondence:

1) letter of 20 November 2018 by the ICANN President and CEO, addressed to ACTO Secretary General, Ambassador Jacqueline Mendoza. Through this letter, the ICANN President and CEO made some statements that from his perspective justified the adoption by the ICANN Board of the 25 October resolution, assuming that a common solution had been reached by the Amazon countries and Amazon the company. Mr. Marby states: "the new proposal has been developed during a 12 months facilitation process held by the ICANN organization and evolved from many discussions and ideas with all concerned parties, exchange of letter with Q&A back in February/March 2018 between ACTO technical committee, ICANN organization and Amazon Corp.". He also states his intent to meet ACTO's member states representatives on 29 November 2018 "to explain the proposal, listen and address any issues of concern from your side, correct any misconceptions or misinterpretations and take this matter forward in a constructive way".

2) letter of 22 November 2018 by ACTO Secretary General, Ambassador Jacqueline Mendoza, addressed to the ICANN President and CEO. By this letter, ACTO informs that the Amazon countries have neither been consulted nor endorsed any proposal, and suggests that the text of the proposal that, in the ICANN President and CEO's view, could lead to a mutually acceptable solution should be sent to ACTO as soon as possible with a view to allowing adequate preparation for the meeting with the ICANN President and CEO following due consultation process at both national and ACTO levels. It also recalls that no response to the ICANN Board letter dated 5 November 2018 and to the request for reconsideration of the 25 October resolution (which was based on an erroneous interpretation of the status quo of discussions and of the ACTO member states positions) had been received by ACTO. It therefore conveys the decision of ACTO member states to postpone the 29 November 2018 meeting in the interest of maintaining a constructive and positive dialogue. .

3) letter of 26 November 2018 by ACTO Secretary General addressed to the ICANN Board Chairman. By this letter, ACTO expresses concern about the 20 November 2018 letter by the ICANN President and CEO and asks the Board to respond to the letter previously sent to it on 5 November, including the request for reconsideration of Board resolution of 25 October 2018, which removed the "Will Not Proceed" status of ".AMAZON" based on the erroneous assumption that the Amazon countries agreed to some proposal for the delegation of ".AMAZON". Such a response in a way that clarifies the present state of play and provides transparency to the process is indicated as an indispensable pre-requisite for a meeting with the ICANN President and CEO (in the context of the facilitation role which had been previously assigned to him by the ICANN Board) to take place.

It should also be mentioned that in a quick reaction to the SG-ACTO-s letter of 22 November 2018, the ICANN President and CEO stated, among other things, in an e-mail dated 23 November 2018 addressed to the ACTO Permanent Secretariat, that "We understand there is a

proposal from Amazon, the company, that is being forwarded to you". Such a proposal was indeed only received subsequently, on 26 November 2018, directly from Amazon the company (and not through the ICANN President and CEO as mandated by the ICANN Board in accordance with GAC Advice). That was the first time that ACTO had the chance to look into any such a proposal -, which obviously means it had not been duly considered or endorsed by the Amazon countries.

In that light, I wish, on behalf of the Brazilian government - one of the eight ACTO member states - to reiterate that we look forward to meeting Mr. Marby with the possible urgency. We agree however with our fellow ACTO member states that it is of paramount importance to clarify the status quo of discussions before any such meeting takes place.

For the sake of clarity let me highlight relevant dates regarding ACTO member states consideration of the issue:

- Oct/Nov 2017 - ICANN meeting in Abu Dhabi - ACTO member states representatives to the GAC committed to elevate Amazon Inc.'s proposal to the appropriate instances with a view to receiving appropriate guidance

- Dec. 2017 - ACTO Ministers of Foreign Affairs met in Tena, Ecuador, and decided to establish a working group to prepare a report on Amazon Inc.'s proposal dated 7 February 2018 and make recommendations

- March 2018 - ICANN meeting in San Juan - ACTO member states representatives updated the GAC and the Board on the work being done by the working group

- June 2018 - ICANN meeting in Panama - ACTO member states representatives updated the GAC and the ICANN Board on the work being done by the working group. The WG had concluded its work on 15 June 2018. In the light of the Tena ministerial Declaration, its recommendations would have to be considered and decided upon by an appropriate high-level meeting. [Please note those progress reports referred to actions being undertaken within ACTO and not to "the ICANN org facilitation process between the ACTO countries and the Amazon corp.", which, logically, could not be taking place yet]

- Aug. 2018 - Following internal consideration in each ACTO member state, an extraordinary meeting of the Amazon Cooperation Council (ACC) was held in Brasilia with the exclusive purpose of considering the working group's report. The ACC decided (i) to reject Amazon Inc.'s proposal which had been presented back in February 2018; but (ii) expressed its willingness to explore, under the mediation of the ICANN President and CEO, a mutually accepted solution and indicated parameters which could be found acceptable to ACTO member states.

- 5 Sept. 2018 - ACC's decision was communicated to the ICANN Board [Please note that before that date the ACTO member states had not formally expressed their willingness to explore a mutually satisfactory solution nor indicated general conditions for that. From a formal point of view, this should be seen as the fact that created conditions for an actual mediation effort to take place]

- 16 Sept 2018 - ICANN Board adopts a resolution directing the ICANN President and CEO to develop a proposal addressing both Amazon's interests and the concerns expressed by the GAC

- 19 Oct. 2018 - On behalf of ACTO member states, the SG-ACTO reaffirms the interest in pursuing a common solution and invites ICANN President and CEO to meet the Amazon countries representatives at the ACTO Headquarters to participate in the development of a mutually acceptable solution that could potentially lead to some form of delegation of the ".AMAZON".



19 Oct. 2018 – the ICANN President and CEO addresses a letter to the SG-ACTO making reference to the 16 September 2018 Board resolution mandating him to work on a new proposal and informs that “in this context, you might be receiving in the coming period some related exchanges about this proposal”

- 25 Oct. 2018 - ICANN Board adopts a resolution indicating that a path forward has been found and removing the "Will not proceed" status, on the basis of Public Interest Commitments to be provided by Amazon the company.

- 5 November 2018 – ACTO formally files a request for reconsideration of the 25 Oct. 2018 Board resolution, which was based, inter alia, on the erroneous information provided to the ICANN Board by ICANN Org that “the parties would have identified a path forward”, including based on a proposal for the delegation of “.AMAZON” that the Amazon countries had actually never seen.

I should conclude by saying I regret that so many misunderstandings have appeared at this stage of the process, which otherwise seemed to be geared to a positive outcome. Brazil has worked intensively and actively towards that positive outcome – which we still consider could represent a landmark in regard to difficult cases opposing contrasting interests – both within ICANN/GAC and ACTO. I personally regret that any contacts I may have held with ICANN officials either by phone or in person on the margins of ICANN (and other IG) meetings might have been interpreted as official contacts on behalf of ACTO and therefore added to the confusion. Actually, I never refused to maintain contact both by telephone and presentially with Mr. Marby and other ICANN officials on many occasions, always at their initiative. They used to call me before every ICANN meeting and also upon receiving any SG-ACTO letter in order to seek clarifications or updates. They also invited Brazil and the other representatives from ACTO member states to discuss the issue on the margins of ICANN meetings. On those occasions I made a point to explicitly mention that neither me nor the other representatives that participated in ICANN meetings had a mandate to negotiate on behalf of ACTO as a whole and that any comments we made should be seen as personal contributions to assist the president and CEO in the facilitative role the GAC had requested him to play. We consistently indicated that any idea or proposal that in ICANN org’s view could lead to a mutually satisfactory solution should be channeled through ACTO’s secretariat in order to ensure due consideration by all member states. I should mention that GAC representatives ordinarily exchange viewpoints and perspectives with other governmental representatives, representatives from other constituencies and even the secretariat in regard to issues under consideration. Those exchanges cannot however be considered as equivalent to formal negotiating processes, which, naturally, have to follow established procedures. I may, by the way, have kept a written record of such exchanges clarifying those points.

I think it is still time to put the negotiations back on track and move towards a conclusion of this case in a way that takes into account all parties’s interests. It would be of paramount importance in that regard that the ICANN Board – the ultimate guarantor of the functioning of the multistakeholder model within ICANN – recognizes that the 25 October decision was ill-informed, unnecessary and extemporaneous, thereby injecting an element of perturbation in a process that could have otherwise unfolded in a smoother way and acknowledges the obvious fact that any mediation process, which we value and encourage, can only be declared successful in case it leads to a solution that is developed with the participation of all parties involved, in full transparency and in respect of each party’s due process.

Best regards,

Benedicto

**De:** Benedicto Fonseca Filho  
**Enviada em:** segunda-feira, 19 de novembro de 2018 16:15  
**Para:** gac@icann.org  
**Assunto:** [GAC] ".AMAZON" TLDs. Reconsideration Request.

Dear all,

Please find herein a letter dated 5 November 2018 that was sent by the Secretary General of the Amazon Cooperation Treaty Organization, H.E Ambassador Jacqueline Mendoza, on behalf of ACTO's member States, to the Chairman of the ICANN Board and the ICANN President and CEO.

The letter confirms, with reference to the 25 October 2018 Board resolution, that the Amazon countries are willing to discuss a mutually acceptable solution for the delegation of the ".AMAZON" top-level domains and in that context look forward to meeting the ICANN President and CEO in the near future. This will be the first time he will be meeting and discussing with ACTO. In the same letter, the SG-ACTO clarifies, however, that a mutually acceptable solution has not been agreed upon yet and that the Amazon countries have not even received a written proposal. With a view to ensuring that the upcoming meeting between Mr. Marby and ACTO member States representatives takes place in its correct context, Ambassador Mendoza calls for the nullification of the 25 October Board resolution and announces that a formal reconsideration request would be filed accordingly as per the pertinent bylaws (this was done simultaneously with the expedition of the 5 November 2018 letter).

On behalf of the Brazilian government, I would like to add that we look forward to a meaningful interaction with Mr. Marby and that we will work constructively and as speedily as possible towards achieving a formula that adequately addresses all the involved parties's interests. However, as it becomes abundantly clear from the letters exchanged between the SG-ACTO and the ICANN President and CEO, no direct contacts have been made so far to that effect. No proposal that might have been developed has been shared with the Amazon countries, which until now, in regard to substance, have only indicated that the proposal put forward by Amazon Inc. back in 2015 contained better terms (and might therefore serve as a better starting point) than the one presented in the beginning of this year. Brazil, as well as the other Amazon countries, was therefore surprised with the Board's resolution to direct "*the President and CEO, or his designee(s), to remove the "Will Not Proceed" status and resume processing of the .AMAZON applications according to the policies and procedures governing the 2012 round of the New gTLD Program. This includes the publication of the Public Interest Commitments, as proposed by the Amazon Corporation, according to the established procedures of the New gTLD Program*".

In that light, the request of reconsideration should not be interpreted as a backtrack from the previously manifested intent to negotiate (which was reaffirmed by the 5 November 2018 letter) but rather as an initiative aimed to set the record straight, thereby removing a Board's ruling that is premature and pre-empts the outcome of discussions yet to take place. The Amazon countries are not aware, for example, of what would be the "Public Interest Commitments, as proposed by the Amazon Corporation". Are those the ones contained in the 2018 proposal (which was rejected by ACTO)? Or something altogether different developed without the Amazon countries' participation? (By the way, not even the proposal to delegate the ".AMAZON" TLDs subject to Public Interest Commitments had been put forward to ACTO before). This is one among many other problematic parts of the 25 October 2018 resolution

which, in general, seems to be based on an erroneous interpretation of both the state of play and the Amazon countries perspectives - which should, by the way, expressed by the Amazon countries themselves in a proper context.

We consider that the upcoming visit of the ICANN president and CEO might lead to a successful outcome in this case if the ICANN Board remains committed to working towards a mutually acceptable solution. We have been working towards that goal and intend to continue to do so. However, we also consider that the 25 October resolution will not help in that regard as it adds confusion and may lead to erroneous interpretations, among which the perception that the Amazon countries and Amazon Inc. have already agreed to the main elements of a future shared regime for the ".AMAZON" TLDs - which is not the case.

Best regards,

Benedicto