APPENDIX 1

DIDP REQUEST

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Our ref FPE/mne/129055

Flip Petillion
Contact Information Redacted

23 May 2014

To the attention of Mr. Cherine Chalaby
Chair, ICANN New gTLD Program Committee (NGPC)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

By regular mail and by e-mail: didp@icann.org

DIDP Request

Dear Sir,

Pursuant to ICANN's Documentary Information Disclosure Policy (DIDP), I hereby request on behalf of Amazon EU S.à.r.l. ('Amazon') the documents described below.

Relevant Background

Amazon is the applicant for the new gTLDs .AMAZON (application ID 1-1315-58086), .アマゾン (application ID 1-1318-83995) and .亚马逊 (application ID 1-1318-5591) (collectively, the 'Amazon Applications') among others. On 14 May 2014, the NGPC approved resolution 2014.05.14.NG03, deciding that the Amazon Applications should not proceed (hereinafter, the 'Decision').

The rationale for the Decision states that the NGPC considered several significant factors and that the NGPC had to balance the competing interests of each factor to arrive at a decision. The NGPC listed a selection of factors that it found to be significant. However, it is not apparent how the NGPC balanced the competing interests and what other factors the NGPC found to be significant. In addition, the NGPC itself notes that its decision is based on the advice of the GAC, an ICANN-created advisory committee.

Information Requested

Accordingly, Amazon respectfully requests that ICANN produce all documents directly and indirectly relating to (1) the balance of the competing interests of each factor and (2) the GAC's advice in relation to the Amazon Applications, including but not limited to:

1. All communications between individual members of ICANN's Board and GAC representatives or other government officials acting as GAC representatives directly or indirectly relating to any of the Amazon Applications;

2. All communications between ICANN's Board and the GAC directly or indirectly relating to any of the Amazon Applications;
3. All communications between individual members of ICANN's Board and ICANN's Staff directly or indirectly relating to any of the Amazon Applications;
4. All communications between individual members of ICANN's Staff directly or indirectly relating to any of the Amazon Applications;
5. All communications between individual members of ICANN's Board directly or indirectly relating to any of the Amazon Applications;
6. All communications between individual members of ICANN Staff and the Independent Expert M. Jerome Passa directly or indirectly relating to any of the Amazon Applications;
7. All communications between individual members of ICANN Staff and/or the ICANN Board and the Independent Objector M. Alain Pellet directly or indirectly relating to any of the Amazon Applications;
8. All communications between individual members of ICANN Staff and the Independent Objector M. Alain Pellet directly or indirectly relating to ICANN policies around conflicts of interest and/or M. Pellet's ongoing representation of governments;
9. All GAC deliberations from behind closed doors directly or indirectly relating to any of the Amazon Applications;
10. All GAC communications, including but not limited to a GAC vote on whether or not the GAC could obtain consensus against any of the Amazon Applications during the April 2013 ICANN meeting in Beijing;
11. All GAC communications, including but not limited to the GAC's inability to obtain consensus against any of the Amazon Applications during the April 2013 ICANN Meeting in Beijing;
12. All GAC communications, including but not limited to communications directly or indirectly relating to the decision to hold another vote on the Amazon Applications during the April 2013 ICANN Meeting in Durban;
13. All GAC communications directly or indirectly relating to the decision to make the GAC deliberations during the April 2013 ICANN Meeting in Beijing closed;
14. All GAC communications directly or indirectly relating to the Amazon Applications between the April 2013 ICANN Meeting in Beijing and the July 2013 ICANN Meeting in Durban.

The information requested herein is not publicly available, and is therefore a proper subject for a DIDP Request.

The information does not meet any of the defined conditions for nondisclosure:

- The information was not provided by or to a government or international organization. At most, it was provided by a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization. The GAC itself is not a government or international organization, but an advisory committee set up under ICANN. Their communications in relation to the Amazon Applications as well as communications by other government officials in relation to the Amazon Applications are not sensitive to governments, but relate to whether or not a public resource – the applied-for gTLDs in the DNS – should be allocated. As this decision has an impact on applicants, the concerned applicants have a right to know how the Decision was made;

- The information is not likely to compromise the integrity of ICANN's deliberative or decision-making process. Indeed, ICANN is required by its Articles of Incorporation and Bylaws to "*operate to the maximum extent feasible in an open and transparent manner*", including by "*employing open and transparent policy development mechanisms*" and "*making decisions by applying documented policies neutrally and objectively*". Without full transparency about the Decision that was taken outside the scope of any established policy, ICANN would seriously compromise the integrity of its deliberative or decision-making process. Disclosing the requested information can only improve ICANN's deliberative and decision-making process. As a result, there can be no justification for refusing to publish the requested documents;

- The information is not likely to compromise the integrity of the deliberative or decision-making process between ICANN and its constituencies or other entities, for the same reasons as noted above;

- The information is unrelated to any personnel, medical, contractual, remuneration, or similar records;

- The information is not likely to impermissibly prejudice any parties' commercial, financial, or competitive interests. Additionally, to the extent that any requested document contains such information, and the information is unrelated to the Amazon Applications (for example, any financial or contract information related to consulting services), such information can be redacted before the publication of the documents;

- The information is not confidential business information or internal policies or procedures;

- The information will not endanger the life, health, or safety of any individual nor prejudice the administration of justice;

- The information is not subject to attorney-client privilege;

- The information is not drafts of communications;

- The information is not related in any way to the security or stability of the Internet;

- The information is not trade secrets or financial information;

- The information request is reasonable, not excessive or overly burdensome, compliance is feasible, and there is no abuse.

Finally, to the extent any of the information does fall into one of the defined conditions for non-disclosure, ICANN should nonetheless disclose the information, as the public interest in disclosing the information outweighs any harm that might be caused by disclosure. Indeed, there can be no harm from disclosing the information, as the ICANN community is entitled to know the standards by which ICANN (together with any consultants) makes decisions that determine what new gTLDs will be added to the Internet. ICANN's transparency obligation, described by ICANN's own Bylaws and Articles of Incorporation, require publication of information related to the process, facts, and analysis used by (individual members of) the NGPC in making the Decision.

Moreover, unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies. Additionally, future applicants will have no reliable guidance for determining if an application which meets all criteria set forth in the multistakeholder created

policy will not be subjected to discretionary powers that the ICANN Board assigns to itself, which will result in significant waste of money and time in the submission of applications with no fair chance of success.

Conclusion

In short, because there is no "compelling reason for confidentiality" and numerous compelling reasons for publication, and because publication is required by ICANN's own Bylaws and Articles of Incorporation, Amazon urges the publication of the requested information, including in particular the specific documents described above

Yours sincerely,

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

APPENDIX 2

DIDP RESPONSE

Response to Documentary Information Disclosure Policy Request

To: Mr. Flip Petillion, Crowell & Moring LLP

Date: 20 June 2014

Re: Request No. 20140523-1

Thank you for your Request for Information dated 23 May 2014 (the "Request"), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

In summary, the Request seeks "all documents directly and indirectly relating to (1) the balance of the competing interests of each factor" considered by the New gTLD Program Committee ("NGPC") in approving Resolution 2014.05.14.NG03, which determined that Amazon EU S.à.r.l.'s ("Amazon") applications for .AMAZON and the related internationalized domain names in Japanese and Chinese (collectively, the "Amazon Applications") should not proceed, "and (2) the Governmental Advisory Committee's ("GAC") advice in relation to the Amazon Applications." The Request identifies certain specific categories of documents, including:

1. All communications between individual members of ICANN's Board and GAC representatives or other government officials acting as GAG representatives directly or indirectly relating to any of the Amazon Applications;

2. All communications between ICANN's Board and the GAC directly or indirectly relating to any of the Amazon Applications;

3. All communications between individual members of ICANN's Board and ICANN's Staff directly or indirectly relating to any of the Amazon Applications;

4. All communications between individual members of ICANN's Staff directly or indirectly relating to any of the Amazon Applications;

5. All communications between individual members of ICANN's Board directly or indirectly relating to any of the Amazon Applications;

6. All communications between individual members of ICANN Staff and the Independent Expert M. Jeróme Passa directly or indirectly relating to any of the Amazon Applications;

7. All communications between individual members of ICANN Staff and/or the ICANN Board and the Independent Objector M. Alain Pellet directly or indirectly relating to any of the Amazon Applications;

8. All communications between individual members of ICANN Staff and the Independent Objector M. Alain Pellet directly or indirectly relating to ICANN policies around conflicts of interest and/or M. Pellet's ongoing representation of governments;

9. All GAC deliberations from behind closed doors directly or indirectly relating to any of the Amazon Applications;

10. All GAC communications, including but not limited to a GAC vote on whether or not the GAC could obtain consensus against any of the Amazon Applications during the April 2013 ICANN meeting in Beijing;

11. All GAC communications, including but not limited to the GAC's inability to obtain consensus against any of the Amazon Applications during the April 2013 ICANN Meeting in Beijing;

12. All GAC communications, including but not limited to communications directly or indirectly relating to the decision to hold another vote on the Amazon Applications during the April 2013 ICANN Meeting in Durban;

13. All GAC communications directly or indirectly relating to the decision to make the GAC deliberations during the April 2013 ICANN Meeting in Beijing closed;

14. All GAC communications directly or indirectly relating to the Amazon Applications between the April 2013 ICANN Meeting in Beijing and the July 2013 ICANN Meeting in Durban.

Response

The Request seeks the disclosure of various categories of documents related to NGPC Resolution 2014.05.14.NG03 ("Resolution"), by which the NGPC accepted advice from the GAC and determined that the Amazon Applications should not proceed.

A principal element of ICANN's approach to transparency and information disclosure is the commitment to make publicly available on its website a comprehensive set of materials concerning ICANN's operational activities as a matter of course. As a result, many of the items that are sought from ICANN within the Request are already publicly posted. For transparency and ease of reference, ICANN includes the following relevant links:

On 20 November 2012, the GAC representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications. (*Available at* https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en.)

On 12 March 2013, ICANN's Independent Objector ("IO") filed a Community Objection to the Amazon Applications on behalf of the "Amazon Community," i.e., the community of "South-American region with the same English name around the Amazon River." The 27 January 2014 Expert Determination overruling that objection is posted at http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf.

On 11 April 2013, in its Beijing Communiqué, the GAC identified the Amazon Applications as warranting further GAC consideration and advised the Board not to proceed beyond Initial Evaluation on the applications. (*Available at* https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf.) Amazon's response to that GAC advice is posted at http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf.

On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on the Amazon Applications. (*Available at* http://newgtlds.icann.org/en/applicants/gac-advice/durban47.) Amazon's response to that GAC advice is posted at http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf.

On 7 April 2014, the NGPC provided Amazon and the GAC with an independent, third-party report it had commissioned from French Law Professor Jérôme Passa regarding specific issues of law raised by the Amazon Applications. That report is posted at https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf. Amazon's response to the report is posted at https://www.icann.org/en/system/files/correspondence/hayden-to-crocker-et-al-14apr14-en.pdf.

The Resolution and accompanying rationale, are posted at https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en - /2.b. The Preliminary Report of the NGPC's 14 May 2014 meeting is available at https://www.icann.org/resources/board-material/prelim-report-new-gtld-2014-05-14-en. The minutes of the 14 May 2013 NGPC meeting were approved on 21 June 2013, and will be posted, together with accompanying Briefing Materials, at https://www.icann.org/resources/pages/meetings-2014-01-06-en.

On 20 May 2014, Amazon filed a Reconsideration Request, seeking reconsideration of the Resolution. That request, as well accompanying exhibits, are posted online at https://www.icann.org/resources/pages/14-27-2014-06-03-en.

Finally, correspondence sent and received by ICANN's Board with respect to the Amazon Applications has been posted as follows:

- 5 March 2013 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board, President and CEO, and General Counsel, *available at* https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf
- 4 July 2013 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board and President and CEO, *available at* https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf

- 13 September 2013 letter from Stefanos Tsimikalis to ICANN's Board and President and CEO, *available at* https://www.icann.org/en/system/files/correspondence/tsimikalis-to-crocker-chalaby-13sep13-en.pdf
- 4 October 2013 letter from Ernesto H. F. Araújo, Chargé d'Affairs for Brazil, to ICANN's President and CEO, *available at* https://www.icann.org/en/system/files/correspondence/araujo-to-chehade-04oct13-en.pdf
- 3 December 2013 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board and President and CEO, *available at* https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf
- 24 December 2013 letter from Fernando Rojas Samanéz, Vice Minister of Foreign Affairs of Peru, to ICANN's Board *available at* https://www.icann.org/en/system/files/correspondence/samanez-to-crocker-24dec13-en.pdf
- 10 January 2014 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board and President and CEO, *available at* https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf
- 3 March 2014 letter from Fernando Rojas Samanéz, Vice Minister of Foreign Affairs of Peru, to ICANN's Board and President and CEO, *available at* https://www.icann.org/en/system/files/correspondence/samanez-to-crocker-et-al-03mar14-en.pdf
- 25 March 2014 letter from Robby Ramlahkan, Secretary General of the Amazon Cooperation Treaty Organization to ICANN's Board, *available at* https://www.icann.org/en/system/files/correspondence/ramlakhan-to-crocker-25mar14-en.pdf
- 7 April 2014 letter from Cherine Chalaby, Chair of the NGPC, to Amazon EU S.à.r.l., *available at* https://www.icann.org/en/system/files/correspondence/chalaby-to-gradden-07apr14-en.pdf
- 7 April 2014 from ICANN's Board to the GAC, *available at* https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf
- 10 April 2014 letter from Cherine Chalaby, Chair of the NGPC, to Robby Ramlahkan, Secretary General of the Amazon Cooperation Treaty Organization, *available at* https://www.icann.org/en/system/files/correspondence/chalaby-to-ramlakhan-10apr14-en.pdf
- 11 April 2014 letter Fernando Rojas Samanéz, Vice Minister of Foreign Affairs of Peru, to ICANN's Board, *available at* https://www.icann.org/en/system/files/correspondence/samanez-to-crocker-11apr14-en.pdf
- 14 April 2014 letter from Cherine Chalaby, Chair of the NGPC, to Fernando Rojas Samanéz, Vice Minister of Foreign Affairs of Peru, *available at* https://www.icann.org/en/system/files/correspondence/chalaby-to-samanez-14apr14-en.pdf
- 14 April 2014 letter from the Ministries of External Relations and Science, Technology, and Innovation of Brazil to ICANN's Board, *available at*

https://www.icann.org/en/system/files/correspondence/filho-almeida-to-crocker-14apr14-en.pdf

- 14 April 2014 letter from Scott Hayden, Vice President, Intellectual Property, Amazon, to ICANN's Board, *available at* https://www.icann.org/en/system/files/correspondence/hayden-to-crocker-et-al-14apr14-en.pdf

ICANN further responds to your individual requests as follows:

Requests regarding ICANN's Communications Concerning the Amazon Applications – Items 1, 2, 3, 4, 5

Amazon applied for the Amazon Applications. On 20 November 2012, the GAC representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications. On 11 April 2013, in its Beijing Communiqué, the GAC identified the Amazon Applications as warranting further GAC consideration and advised the Board not to proceed beyond Initial Evaluation on the applications. On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on the Amazon Applications. On 14 May 2014, the NGPC passed the Resolution, accepting the advice in the GAC's Durban Communiqué and determining that the Amazon Applications should not proceed.

Items 1, 2, 3, 4, and 5 seek communications between ICANN and the GAC concerning the Amazon Applications, as well as internal ICANN communications concerning the Amazon Applications. These Items do not identify the time period for which responsive documents are sought and are therefore overbroad. Because Amazon submitted its applications on 23 March 2012, ICANN understands the relevant time period as including documents created from 23 March 2012 to the present. These Items are also overbroad and vague insofar as they seek all documents "directly and indirectly" relating to any of the Amazon Applications. So construed, the Items would require ICANN to produce thousands of documents, and would be "excessive or overly burdensome." (DIDP Policy, *available at* https://www.icann.org/resources/pages/didp-2012-02-25-en.) As is discussed above, the focus of Amazon's Request as noted in the "Relevant Background" section of the Request is obtaining information relating to the GAC's Advice on the Amazon Applications and to the Resolution. ICANN therefore interprets Items 1, 2, 3, 4, and 5 as seeking communications concerning the GAC's Advice in relation to the Amazon Applications. If Amazon chooses to revise its request to more specifically and narrowly describe the documents it seeks, ICANN will consider any such narrowed request.

Subject to the above, ICANN responds that many of the items that are sought from ICANN within the Request are already publicly posted on ICANN's website. ICANN further responds that given the scope and timing of the Request, ICANN has not completed its review of documents that may be responsive to the Items. Thus far, ICANN's review of documents that may be responsive to the Items 1, 2, 3, 4, and 5 show that any responsive document that has not already been publicly disclosed on ICANN's website is not appropriate for disclosure pursuant to the following DIDP Defined Conditions of Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; or (iii) complying with which is not feasible.

ICANN continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP's Defined Conditions for Nondisclosure as soon as practicable.

Requests regarding ICANN's Communications with the Independent Expert M. Jérôme Passa Concerning the Amazon Applications – Item 6

On 5 February 2014, in response to the consensus GAC Advice on the Amazon Applications, the NGPC announced that it was commissioning an "independent, third-party expert to provide additional analysis 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." (*See* Annex 1 to NGPC Resolution 2014.02.05.NG01, *available at* https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-05feb14-en.pdf.)

ICANN, however, did not directly retain Professor Passa. Professor Passa was retained by ICANN's outside counsel, and ICANN did not have any communications with him regarding the scope of his work or the substance of his conclusions. As a result, ICANN's search for documentary information in response to this Request revealed that no responsive documents exist within ICANN.

Requests regarding ICANN's Communications with the Independent Objector M. Alain Pellet Concerning the Amazon Applications – Items 7 and 8

Under the New gTLD Program, formal objections were permitted to be filed against applications. Specifically, an objection could have been based on four enumerated grounds: string confusion,

legal rights, limited public interest, and community. Module 3 of the New gTLD Applicant Guidebook ("Guidebook") and the New gTLD Dispute Resolution Procedure ("Procedure") set forth the procedures and process for filing objections. (*See* Guidebook, § 3, http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf.) Objections were, and continued to be, administered by independent Dispute Resolution Service Providers ("DRSPs") in accordance with the Procedure and the applicable DRSP's Rules. (*See* Procedure, Art. 1, http://newgtlds.icann.org/en/applicants/agb.) Community objections are administered by the International Center of Expertise of the International Chamber of Commerce ("ICC"). (*See* Guidebook, § 3.2.3.)

The IO was authorized to act in the best interest of global Internet users and to lodge limited public interest and community objections in cases where no other objection has been filed. The IO lodged a community objection against the Amazon Applications on 12 March 2013. An Expert Determination on that objection, finding against the IO, was issued on 27 January 2014.

Item 7 asks for documents constituting communications between ICANN and the IO relating to the Amazon Applications. This items overlaps with Item 8, which seeks documents in ICANN's possession or control concerning communications between ICANN and the IO concerning ICANN policies around conflicts of interest and/or the IO's "ongoing representation of governments."

These Requests do not identify the time period for which responsive documents are sought and are therefore overbroad. Because Amazon submitted its applications on 23 March 2012, ICANN understands the relevant time period as including documents created from 23 March 2012 to present. Item 7 is also overbroad and vague insofar as it seeks all documents "directly and indirectly" relating to any of the Amazon Applications. Because the focus of Amazon's Request is the IO objection to the Amazon Applications, ICANN interprets Items 7 as seeking communications between the IO and ICANN regarding the Amazon Applications. Item 8 is overbroad and vague insofar as it seeks all documents "indirectly" relating to ICANN policies around conflicts of interest and/or M. Pellet's ongoing representation of governments. ICANN interprets Item 8 as seeking communications between the IO and ICANN directly relating to those issues. If Amazon chooses to revise its request to more specifically and narrowly describe the documents it seeks, ICANN will consider any such narrowed request.

Further, all communications during an objection proceeding regarding the objection must comply with Article 6 of the Procedure, which provides that the DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings. (*See* Procedure, Art. 6(b).) ICANN has the authority, pursuant to Article 10(b) of the Procedure, to monitor the progress of all proceedings and to take steps, where appropriate, to coordinate with DRSPs regarding individual applications for which objections are pending before more than one DRSP. (*See id*. at Art. 10(b).) However, ICANN is not otherwise involved

in the objection proceedings and ICANN generally does not communicate directly with the parties regarding the objection during the course of the proceedings.[1]

As such, unless the parties to the proceedings and/or the DRSP provide ICANN with copies of documents or correspondence submitted during the objection proceedings, ICANN would not be generally be in possession of such documents. In those circumstances where ICANN is copied on documents submitted during the objection proceedings, such documents would also equally be available to the parties to the objection proceedings.

Subject to the above, ICANN responds that given the scope and timing of the Request, ICANN has not completed its review of documents that may be responsive to these Items. Thus far, ICANN's review of documents that may be responsive to the Items 7 and 8 show that any responsive document that has not already been publicly disclosed on ICANN's website is not appropriate for disclosure pursuant to the following DIDP Defined Conditions of Nondisclosure.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.

- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; or (iii) complying with which is not feasible.

ICANN continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP's Defined Conditions for Nondisclosure as soon as practicable.

Requests regarding Internal Communications of the GAC Concerning the Amazon Applications - Items 9, 10, 11, 12, 13, and 14

ICANN's DIDP is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. A threshold consideration in responding to a DIDP request, then, is whether the documents requested are in ICANN's possession, custody, or control.

[1] In some circumstances, applicants communicate with ICANN and seek ICANN's involvement in the proceedings. In those circumstances, ICANN informs the applicants that ICANN does not become involved in objection proceedings and directs the applicants to contact the DRSP directly.

Items 9, 10, 11, 12, 13, and 14 all seek the disclosure of "GAC communications" concerning the Amazon Applications. ICANN's GAC is an advisory committee established pursuant to Article XI, Section 2.1 of ICANN's Bylaws "to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues." Membership in the GAC is open to all national governments and distinct economies recognized in international fora. ICANN does not hold membership in the GAC and does not participate or otherwise get involved in the GAC's operations or decision-making processes. As such, unless the GAC provided ICANN with copies of documents or correspondence concerning its communications relating to the Amazon Applications, ICANN would not be in possession of such documents. The GAC advice regarding the Amazon Applications, as well as the Early Warning regarding those applications that was submitted by the governments of Brazil and Peru, are both published. All of the materials are already publicly posted and are therefore equally available to Amazon. The links to those materials are included above, in the list of publicly available documents responsive to the Requests.

Furthermore, as noted, the DIDP is intended to ensure that information contained in documents concerning ICANN's operational activities is made public absent a compelling reason for confidentiality. The internal GAC documents requested in these Items do not constitute "documents concerning ICANN's operational activities" and are therefore not appropriately subject to the DIDP. (See DIDP Policy, *available at* https://www.icann.org/resources/pages/didp-2012-02-25-en.)

Subject to the above, ICANN responds that given the scope and timing of the Request, ICANN has not completed its search for documents that may be responsive to these Items. Thus far, ICANN's search for responsive documents shows that there are no responsive documents in ICANN's possession, custody, or control. ICANN continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP's Defined Conditions for Nondisclosure as soon as practicable.

About DIDP

ICANN's DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see http://www.icann.org/en/about/transparency/didp. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

APPENDIX 3

REQUEST FOR RECONSIDERATION

Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit http://www.icann.org/en/general/bylaws.htm#IV and http://www.icann.org/en/committees/board-governance/.

This form is provided to assist a Requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requester Information

Name: Amazon EU S.à.r.l.

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

C/o:

Name: Flip Petillion, Crowell & Moring LLP

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact nformation Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm. Requestors address, email and phone number will be removed from the posting.)

2. Request for Reconsideration of (check one only):

_X__ Board action/inaction

___ Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

Amazon EU S.à.r.l (hereinafter 'Amazon') seeks reconsideration of both actions and inactions of ICANN's Board of Directors. The specific actions/inactions of the Board are set forth in more detail below, specifically in response to Questions 8 and 10, and relate to the Board New gTLD Program Committee's ('NGPC') Resolution 2014.05.14.NG03, approved on May 14, 2014 and published on May 16, 2014 (hereinafter, the 'Decision'), attached as **Annex 1**. In sum, the Affirmation of Commitments, Article 7, requires "*ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.*" The NGPC itself notes at the outset of its Decision that the GAC, an advisory committee created by and for ICANN and thus falling within the same governing principles as all other ICANN-created entities, provided no thorough or reasoned explanation of its decision. Instead of rejecting the GAC Advice or conducting its own investigation to determine and record the rationale in a transparent manner,

as is the duty of the Board of Directors, the NGPC instead relied upon the specific statements of two interested governments as the consensus opinion of the GAC. The NGPC (1) failed to take into consideration material information, (2) relied on false and inaccurate information, (3) failed to take material action, and (4) took actions in clear violation of ICANN's obligations under its Articles of Incorporation, Bylaws, Affirmation of Commitments and established policies.

4. Date of action/inaction:

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

On May 16, 2014 at 21:12 PDT (May 17, 2014 at 4:12AM UTC) the Board published the Decision apparently taken on May 14, 2014 (**Annex 2**).

5. On what date did you became aware of the action or that action would not be taken?

(Provide the date you learned of the action/that action would not be taken. If more than fifteen days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

Amazon learned of the Decision on Friday May 16, 2014 at 21:20 PDT.

6. Describe how you believe you are materially affected by the action or inaction:

Amazon applied for the gTLD strings .AMAZON (application ID 1-1315-58086), .アマゾン (application ID 1-1318-83995) and .亚马逊 (application ID 1-1318-5591) (collectively, the 'Amazon Applications' or 'Applications' or '.AMAZON gTLDs'). By accepting ICANN's Governmental Advisory Committee's ("GAC") untimely advice against the Applications, ICANN's Board of Director's New gTLD Program Committee ("NGPC") prevents Amazon from operating and

benefiting from the applied for .AMAZON gTLDs strings in connection with Amazon's globally well-known trade name and trademarks – in which Amazon has invested significant resources – and interferes with Amazon's legally protected rights in a discriminatory manner. Preventing Amazon from operating the applied for .AMAZON gTLDs in connection with its globally well-known trade name and trademarks, while allowing others to proceed, creates serious harm for a company operating primarily on the Internet.

As with other companies, Amazon places paramount importance on protecting one of its most valuable assets – its trademark "AMAZON" –. Amazon's AMAZON trademarks are registered, along with AMAZON-formative marks such as AMAZON.COM, AMAZON and Design, 亚马逊, and アマゾン (collectively "AMAZON Marks"), more than 1300 times in over 149 countries world-wide. This includes registrations for AMAZON Marks in the trademark offices and ccTLDs of Brazil, Peru, and the other regions that claim Amazon should not be allowed to use its global mark as a gTLD. The Decision has the effect of creating a new international legal rubric that interferes with existing international and national laws that protect Amazon and the AMAZON Marks. Allowing the GAC to create far-reaching new rules and non-transparent policies on the back of a single applicant seriously undermines ICANN's multistakeholder model and the GNSO policy development process.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

ICANN's failure to follow the policies created by the GNSO as well as its own Bylaws, Articles of Incorporation, and the Affirmation of Commitments

creates inconsistency, injects unfairness and a lack of transparency in the process, and calls into question the fairness of the gTLD program as a whole. The Decision creates dangerous precedence that will embolden other governments and future Boards to circumvent or ignore proper legal processes and multi-stakeholder created policy, with no accountability for their actions. Such action will inevitably have a chilling effect on new entrants into the gTLD space.

In addition, the Decision goes against the core objectives of the new gTLD program: opening up the top level of the Internet's namespace to foster diversity and to encourage competition for the benefit of Internet users across the globe. Rejecting the Amazon Applications unjustifiably limits both of these objectives.

8. Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means any information that is material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do

so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

(You may attach additional sheets as necessary.)

As will be demonstrated in greater detail below, the NGPC (1) disregarded material information, (2) relied on false and inaccurate material information, (3) failed to take material action, and (4) took action in violation of GNSO-created policy and ICANN's own Articles of Incorporation, Bylaws and Affirmation of Commitments.

I. The NGPC Failed to Deny GAC Advice that was Not Timely Submitted Per the Applicant Guidebook

The NGPC acknowledges that its decision to reject the Applications is based on the GAC Advice issued by the GAC from the Durban Communique. "*Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communique on 18 July 2013[.] Whereas, the GAC advised the ICANN Board in its Durban Communique that the GAC reached 'consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook[.]*"

The Applicant Guidebook ('AGB') states, "*to be considered by the Board during the evaluation process, the GAC Advice on new gTLDs must be submitted by the close of the objection filing period.*" (AGB, § 1.1.2.7; §3.1) ICANN's objection filing period closed on 13 March 2013.

The GAC issued its first Advice in relation to new gTLD applicants almost a month after the close of the objection filing period, on April 11, 2013 in its Beijing Communique. At that time the GAC was able to obtain consensus advice against two applications, but failed in its attempts to get consensus advice against the Amazon Applications. The GAC listed the Amazon Applications along with other strings such as .SPA, .WINE and .VIN, which the GAC identified as "*gTLD strings where further GAC consideration may be warranted*". At that point, the NGPC should have treated the GAC advice found in the Beijing Communique as it has otherwise treated advice against .SPA, .WINE and .VIN, as unable to obtain consensus. There was no basis for the GAC to postpone its attempts to reach consensus until after the close of the objection period, and certainly not until after the Beijing Advice. Similarly, there is no basis for the GAC to fail to report its unsuccessful attempts to obtain consensus advice against the Amazon Applications, and then to allow a second vote at another meeting several months later.

The failure of the GAC to provide timely advice was first put forward to the NGPC in Amazon's 10 May 2013 Response to the Beijing Advice. The NGPC has continuously failed to address the impact of accepting GAC Advice submitted in an untimely manner in violation of the AGB as part of its overall deliberations.

II. The NGPC Failed to Show Why the GAC Advice is "Exceptional" Per the Applicant Guidebook

Not only is the GAC's Durban Advice untimely (*supra*), there is nothing in the GAC Advice or NGPC Resolution explaining why the Board believes that the circumstances under which the Applications were filed or their content is

"exceptional." Section 5.1 of the AGB states, "*[u]nder exceptional circumstances, the Board may individually consider a gTLD application.*"

All three of Amazon's Applications passed initial evaluation, including the geographic review panel. All three successfully defended against community objections brought by the Independent Objector (who made the same arguments put forth by the Governments of Peru and Brazil to the GAC). No timely consensus advice was issued and, as noted by the NGPC, no clarification was given as to the rationale for the untimely advice.

The NGPC fails to explain why the facts in this case are "exceptional" – or "so exceptional as to move the NGPC to individually consider the Amazon Applications" – as opposed to those found in other similarly situated applications. As this creates disparate treatment with other applications, this cannot be considered immaterial.

III. The NGPC Failed to Apply the Appropriate GAC Governing Principles to the GAC Advice

The NGPC claims the AGB provides that GAC Advice creates "*a strong presumption for the ICANN Board that the application should not proceed.*"

Amazon refutes that the GAC had the right, under the AGB as created by the ICANN community (described in detail in Amazon's August 23, 2013 Response to the ICANN Board of Directors on the GAC Durban Advice), to object to the Amazon Applications based on the 2007 GAC Principles. For the sake of argument, however, even if the GAC did have the right to make this objection, the only GAC Advice that can be taken into account under the rules of the AGB is, arguably, the Beijing GAC Advice from April 2013. And, as already

noted, under the Beijing GAC Advice, the NGPC should have treated the Amazon Applications in the same manner it treated the applications for .SPA, .WINE and .VIN (or should have allowed the Amazon Applications to proceed as no consensus was reached against these applications).

The Durban GAC Advice, therefore, should be reviewed by the NGPC as it would review any other GAC Advice. As noted by the NGPC in the Decision, "*the ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies.*" In other words, ICANN's Bylaws do not apply a "strong presumption" to GAC Advice – particularly GAC Advice that does not contain a detailed explanation of how the advice affects public policy or the reasons for the "consensus" advice.

As a result the NGPC failed to apply the appropriate principles governing the review of GAC Advice.

And even if the GAC Advice created a strong presumption, *quod non*, this does not prevent the NGPC from rejecting the GAC Advice, provided the NGPC gives "*a rationale for doing so*" (AGB, §1.1.2.7). As demonstrated by Amazon in its response to the Durban communiqué and in its subsequent communications, accepting the GAC Advice would violate various provisions of ICANN's Bylaws, Articles of Incorporation and Affirmation of Commitments. Not only did Amazon provide the NGPC with a rationale for rejecting the GAC Advice, it showed that the NGPC had no choice but to reject the GAC Advice. As a result, any presumption that could have been created by the GAC Advice was clearly rebutted by Amazon's communications (which the NGPC failed to consider).

IV. The NGPC Improperly Reviewed an Early Warning as Rationale for GAC Advice

The Decision states "*[a]lthough the NGPC does not have the benefit of the rationale relied upon by the GAC in issuing its consensus advice in the Durban Communique on the applications for .AMAZON (and related IDNs) the NGPC considered the reason/rationale provided in the GAC Early Warning submitted on behalf of the governments of Brazil and Peru[.]*" An Early Warning is not GAC rationale for consensus GAC Advice. The AGB is clear that an Early Warning is "*a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application.*" (AGB, §1.1.2.4) In addition, "*GAC Consensus is not required for a GAC Early Warning to be issued.*" (Id. (emphasis added)) Finally, an Early Warning is not even required before the GAC can issue consensus advice.

The rationale provided in the Early Warning and relied upon by the NGPC reflects only the concerns of two governments and cannot be used as the consensus rationale of the entire GAC. The NGPC should not have relied upon the Early Warning in making its Decision and, should, instead, have conducted further inquiry of the GAC as to the basis and reason for the consensus advice. The NGPC's failure to perform this inquiry, is an unjustified refusal to consider material information. In addition, by relying on the opinions of two governments as representative of the consensus of the GAC, the NGPC is inaccurately

presenting this information and is relying on the false premise that this information contains the rationale for the GAC Advice.

V. The NGPC Took the Advice of Two Governments in Violation of the Applicant Guidebook and ICANN Bylaws and Articles of Incorporation and Failed to Consider Material Information

The Decision states that "*the concerns raised by the relevant parties highlight the difficulty of the issue.*" In the matter of the NGPC's review of GAC consensus advice, however, the only relevant parties are the GAC and Amazon. Instead of considering the GAC rationale or, in its absence making the appropriate inquiry into the rationale, the NGPC accepts the views of two governments and infers that these opinions represent consensus advice of all GAC members.

The GAC has not expressed any explanation of how or why it arrived at its late consensus opinion that the Amazon Applications should not proceed. The GAC website states that "the GAC produces various kinds of written advice for communication to the Board, including: 1) letters signed by the GAC Chair on behalf of the GAC; and 2) communiques and submissions endorsed by the GAC at face-to-face GAC meetings." In addition, Article XII of the GAC's Operating Principles states, *"[a]dvice from the GAC to the ICANN Board shall be communicated through the Chair."* The only communications regarding consensus advice from the GAC itself are contained in the Beijing, Durban, Buenos Aires and Singapore Communiques.

Two individual countries, Brazil and Peru, who have representatives within the GAC, expressed concerns with the .AMAZON application as reflected in an

Early Warning (**Annex 3**). No Early Warning was expressed in relation to .アマゾン or .亚马逊. But as noted above, an Early Warning represents only notice to an Applicant that a government may have concerns with a particular application – nothing more.

In addition, the NGPC also considered and relied upon letters submitted to the NGPC by representatives of the Governments of Brazil and Peru, at least one of which misstates the facts (*infra*).

Similarly, on April 7, 2014 the NGPC sent both Amazon and the GAC a copy of M. Jerome Passa's Expert Report for comment. The NGPC specifically asks the GAC and Amazon to provide comment on the report for the NGPC deliberations. The GAC did not provide comment, however both representatives from Brazil and Peru submitted correspondence on behalf of their individual governments. The opinions of the two governments – again, as opposed to the opinion of ICANN's GAC – were considered in this process. Amazon's response was not considered (*infra*).

This begs the question why, if the NGPC is to consider the submissions by individual third-parties, it did not seek out the opinions of other governments (*infra)* or take into account the volume of public comments made to the Board in Durban in opposition to the GAC Advice? These comments represent many individuals, organizations, business interests, stakeholder groups, and others in opposition to the GAC Advice on the Applications. (**Annex 4**) Nothing in the Decision suggests the NGPC considered comments submitted to the Board by the ICANN Community as part of ICANN's formal comment process.

As set forth in detail in Amazon's GAC Advice Response, the Governments of Brazil and Peru had the opportunity to make their individual case against Amazon's Applications through the proper channel set forth in the AGB, which was to file a Community Objection against the Applications (as the Government of Argentina did with .PATAGONIA). Brazil and Peru chose not to file an objection, but instead the NGPC has allowed Brazil and Peru to file a *de facto* objection that is clearly not allowed by the AGB and which is not based on objective criteria. In fact, it is not based on any criteria at all. This denied Amazon the benefit of an independent panelist's review of the Governments claims, as provided for in the AGB and in violation of GNSO and Board approved policy. Had Brazil or Peru chosen to object to the Amazon Applications on the basis of the AGB criteria, such objection would have failed, as is shown by the independent panelist's rejection of the Community Objection in ICC Decision Case No. Exp/396/ICANN/13 (*infra*).

VI. The NGPC Relied on False and Inaccurate Material Information

The NGPC considered letters submitted to the NGPC by representatives of the Governments of Brazil and Peru. These letters do not represent the consensus opinion of the GAC, but rather the opinion of two Governments in particular. The letter dated April, 11 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru) – which the NGPC indicates was considered as part of the NGPC's deliberations – even misstates the existence of the term 'Amazon on the ISO-3166 lists'. It states (**Annex 5**):

> *"4. The Durban communique voices the opinion of the community of countries that integrate the ICANN. Such*

> *communique 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 evoque strategic, historical and cultural values for the eight countries of the Amazon basin and their people."*

None of the applied for strings in the Amazon Applications are recognized by relevant ISO codification. (The GAC representative for Peru made a similar misstatement before the GAC vote in Durban. "[Amazon] has been allotted the three-digit code number. So it is in that 3166-2 list." (http://durban47.icann.org/meetings/durban2013/transcript-gac-plenary-16jul13-en.pdf).) In addition, and as demonstrated again below, the Durban communiqué does not "*voice the opinion of the community of countries that integrate the ICANN*".

As a result, the abovementioned letter contains false and inaccurate information. It misleads its readers as to the content of relevant ISO codification.

The NGPC states that it has considered this letter, but failed to identify any false and inaccurate information contained in this letter. In conclusion, the NGPC relied on false and inaccurate information in making its Decision. This is an express ground for reconsideration under Article IV(2)(c) of the Bylaws.

VII. The NGPC Failed to Consider Material Information From the US Government

The NGPC failed to consider material information provided by the United States Government. In its July 2013 statement on the decision to remain neutral in the GAC deliberations on the Applications, the United States Government states:

> "*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.*" (**Annex 6**)

The Statement goes on to note that the rules found in the AGB do not "*specifically prohibit or condition*" strings such as Amazon's. (**Annex 6**)

Nothing in the United States Government's statement implies that the United States agreed to GAC Consensus Advice based on its concerns that the Applications would harm the public interest, as the NGPC suggests was the GAC rationale based on the Early Warning. Quite the contrary, the United States Government suggests the pending GAC Advice may in fact result in limitations on free expression.

The statement from the U.S. Government calls into direct question the belief that the Durban Advice is clearly representative of the consensus adoption by the entire GAC of the opinion set forth by Brazil and Peru in its Early Warning or follow-up correspondence. The letter infers, instead, that the GAC process is being used to create rights in government otherwise unsupported by international law. This statement should raise additional concerns by the NGPC that the GAC Advice – even if, for sake of argument, it should be given a "strong presumption" – in fact violates ICANN's Bylaws and Articles of Incorporation. In addition, this statement makes clear that any GAC consensus advice was not based on strict

agreement with the opinions of Brazil and Peru on why the Applications should or should not be allowed to proceed. The NGPC failed to conduct an inquiry as to how and why the GAC arrived at consensus advice, which would allow the NGPC to make an informed determination as to whether or not the GAC advice is "exceptional" as required by the AGB.

VIII. The NGPC Failed to Consider the Expert Determination in ICC Decision Case No. Exp/396/ICANN/13

Despite awareness that the Community Objection process is the appropriate avenue designated by ICANN for individual governments wanting to contest geographic terms not included in the Applicant Guidebook, no representative from Brazil or Peru (or any of the other Amazonia region countries, the OTCA or any other country) filed a Community Objection. Instead, a third party – the "Independent Objector" (the 'IO', who represented the Government of Peru at the time he was contracted with by ICANN) – filed a Community Objection on behalf of the region.

The Expert Panelist assigned to make a determination in this case rejected the IO's objection in ICC Decision Case No. Exp/396/ICANN/13 (the 'Expert Determination') and *inter alia* considered that "'*Amazon' has been used as a brand, trademark and domain name for nearly two decades also in the States arguably forming part of the Amazon Community. It is even registered in those States. There is no evidence, or even allegation, that this has caused any harm to the Amazon Community's interest, or has led to a loss of reputation linked to the name of the region or community or to any other form of damage*" (**Annex 7**, para. 102). The Expert considered that "*there is no evidence either*

that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community, or that Amazonia and its specificities and importance for the world will be removed from public consciousness, with the dire consequences emphasized by the IO. Were a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. '.Amazonia' springs to mind" (**Annex 7**, para. 103). Amazon has made it clear that it would not object to the strings .AMAZONIA, .AMAZONAS or .AMAZONICA.

The NGPC's Decision, however, did not consider the Expert Determination and fails to consider that: 1) the GAC was involved in a community-derived process and resulting policy that provided the specific avenue of a filing of a Community Objection for individual governments and/or interested parties to address localized concerns with applied-for strings that did not require government support; 2) the Brazilian and Peruvian Governments chose not to raise a Community Objection against the Amazon Applications, which did not require government support; and 3) such Community Objection would have been deemed to fail if they did, since the criteria for objecting would not have been met, as is demonstrated by the Expert Determination.

This is all material information – directly rebutting the claims made by the Governments of Brazil and Peru upon which the NGPC relies – that was disregarded by the NGPC in reaching its Decision despite being available to it.

The Expert Determination shows that there was no reason for the NGPC to accept the GAC Advice and all reason to reject the GAC Advice.

IX. The NGPC Failed to Consider the Expert Report and the Request for Additional Studies

ICANN commissioned a single legal opinion by an independent third party expert, M. Jérôme Passa ('Expert Report') (**Annex 8**).

The NGPC states that it has considered the Expert Report. However, the NGPC fails to address how it took the Expert Report into account in reaching its Decision. In addition, the NGPC failed to consider Amazon's request for additional studies.

On April 7, 2014, ICANN provided the Expert Report to Amazon and noted that "*it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the [GAC Advice]*" (**Annex 1**). In a letter dated April 14, 2014 from Amazon's Vice President, Intellectual Property, M. Scott Hayden, Amazon raised the issue that the Expert Report was limited in scope, as it only dealt with legal principles of intellectual property. The Expert Report did not address the other principles of international law raised by Amazon in its Response to the GAC's Durban Advice nor the fundamental principles of ICANN's Bylaws and Articles of Incorporation that require ICANN – and the GAC, which was created by and operates under these governing documents – to follow its policies in accordance with relevant international law.

Of particular concern to Amazon is ICANN Staff's apparent instructions to the Independent Expert to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the

term ‘Amazon’ or whether ICANN was ‘obliged’ to grant .AMAZON based on pre-existing trademark registrations. These are not, however, the questions Amazon requested ICANN seek independent advice on (nor are they the claims made by Amazon). The real question is whether, by accepting the GAC advice, which is not rooted in any existing law, ICANN would be violating either national international law.

Despite Amazon’s requests that ICANN conduct this analysis, there are no indications that ICANN even considered commissioning additional studies to analyze the other relevant principles of international law raised by Amazon. To the contrary, the fact that ICANN did not act on these requests – as demonstrated above, in Amazon’s response to the GAC Advice (**Annex 9**) and in M. Scott Hayden’s letter (**Annex 10**) – shows that ICANN failed to consider this material information and failed to take specific action necessary for it to make a balanced determination on whether or not GAC Advice is in contravention with ICANN’s governing documents, including Articles I(2), II(3) and III(1) of ICANN’s Bylaws, Article 4 of ICANN’s Articles of Incorporation, or Sections 4, 5, 7 and 9.3 of the Affirmation of Commitments.

X. The NGPC Failed to Consider Its Fundamental Obligations Under the ICANN Bylaws and Articles of Incorporation

The Decision does not take Articles I(2), II(3) and III(1) of ICANN’s Bylaws, Article 4 of ICANN’s Articles of Incorporation, or Sections 4, 5, 7 and 9.3 of the Affirmation of Commitments into account. In addition, and as evidenced by each of Amazon’s responses in this matter, the failure of the Board to reject GAC

Advice violates GNSO policy that (1) all new gTLD registry applicants should be evaluated against transparent and predictable criteria, fully available to applicants prior to the submission of applications (Council Policy Recommendation 1); and (2) there must be a clear and pre-published application process using objective and measurable criteria (Council Policy Recommendation 9).

By way of example, the AGB is clear about what types of strings are blocked and/or require government approval to proceed. The AGB does not give the Board and/or the GAC carte blanche discretion – without a legitimate reason – to override this GNSO created policy. Among the factors cited to in the Decision is the Early Warning's claim that one of the Applications "matches part of the name, in English, of the 'Amazon Cooperation Treaty Organization', an international organization[.]" The AGB does not, however, give the NGPC or the Board the right to object to an applied for string because it represents part of the name of an international organization in any language.

Under this logic, the GAC could reject an application for .UNITED because the word "united" is found in the trade name of the United Nations. The GAC could similarly reject .VERMELHO or .RED because the word "red" is contained in the trade name of the 'Red Cross'. If the NGPC accepts this argument as legitimate, as it appears to have accepted in its Decision, the NGPC is in clear violation of ICANN's governing documents and GNSO-created policy.

Compliance with ICANN's obligations under its Bylaws and Articles of Incorporation cannot be seen as 'not significant' or as information that is 'not

material'. If the NGPC wishes to revise the AGB, it should have suspended all applications and opened the consensus building process again to prevent these principles from being violated. At a minimum, the NGPC should have sought comment from the GNSO as to whether or not the changes proposed by the untimely GAC Advice are in violation of GNSO Policy as claimed by Amazon in its many filings. Such action is not unknown to the NGPC, which sought this very input from the GNSO in connection with the unrelated Specification 13 as recently as March 2014. The NGPC should not consider its obligation to the GNSO, or the GNSO's role, as discretionary.

XI. The NGPC Failed to Consider the Fiscal Implications of Its Decision

The NGPC states there are no foreseen fiscal impacts to ICANN associated with its Decision. As stated above, however, the NGPC (1) failed to conduct an investigation into the question of whether or not ICANN violates national and/or international law by refusing the Amazon Applications; (2) failed to conduct itself in a transparent and accountable manner, as required by its Affirmation of Commitments, Bylaws, and Articles of Incorporation; and (3) made a Decision after ignoring available material information, mistakenly relied on correspondence from interested third-parties as equivalent to the GAC, and failed to conduct a thorough review of and inquiry into the "international legal and policy principles" consensus GAC advice is supposedly based upon.

Should it be determined that the Decision in fact violates various national and international laws, the costs of defending an action (whether through the Independent Review Process or through U.S. courts) will have significant fiscal

impacts on ICANN, not to mention the impact on ICANN's reputation as a neutral, transparent, and accountable multi-stakeholder organization. The NGPC failed to make the appropriate inquiry into the fiscal impact of its decision.

9. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

Amazon asks ICANN to reverse Resolution 2014.05.14.NG03, to direct the NGPC to reject the GAC advice identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon, and to direct the President and CEO, or his designee, that 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) filed by Amazon EU S.à r.l. should proceed.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, Requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested from the BGC must be capable of reversing the harm alleged by Requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

I. <u>The NGPC Failure to Consider Material Information Harmed Amazon</u>

As demonstrated above, the NGPC failed to consider material information, including fundamental principles of International law and of ICANN's own Bylaws and Articles of Incorporation. ICANN also failed to make a fair application of its own policies, developed through years of multistakeholder-created consensus.

ICANN not only failed to consider material information, ICANN's failure resulted in (1) the NGPC adopting a resolution that violates the abovementioned fundamental principles, (2) creates disparate treatment without any justified cause, and (3) directly harms Amazon.

Indeed, Amazon has made its investment in the gTLD program with a view to acquire and operate the gTLDs identified in the Amazon Applications. These investments were made because Amazon believes the operation of these gTLDs will allow Amazon to better communicate with the Internet user and to benefit from the opportunities that a proprietary brand TLD gives to Amazon. The Decision does not allow Amazon to proceed with its applications for strings that reflect its globally protected trade name and trademarks. The Decision blocks the applications for strings otherwise permitted for registration by ICANN's policy as outlined in the Applicant Guidebook. In addition, Amazon has invested significant time and effort in defending the Amazon Applications against unreasoned GAC Advice, which asks the Board to supersede the community-derived process and policy in contravention with ICANN's Bylaws and Articles of Incorporation. As a result of this GAC Advice, the Amazon Applications have suffered unnecessary delays and are currently experiencing further delays because of the Decision.

II. The requested relief reverses most of the harm

Although the requested relief in this Reconsideration Request does not compensate for the lost time and effort, it reverses most of the harm in that the relief allows Amazon to proceed with operating safe and secure gTLDs, using the trademark and trade name users trust and recognize due to the goodwill Amazon has created in the online space, for the benefit of its consumers globally.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

____ Yes

__X__ No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm.

1. NGPC Resolution 2014.05.14.NG03
2. Communication on May 16, 2014 by ICANN indicating the timestamp of the publication of NGPC Resolution 2014.05.14.NG03
3. GAC Early Warning by the GAC representative of Peru and the GAC representative of Brazil
4. Examples of public comments made to the Board in Durban in opposition to the GAC Advice
5. Letter dated April 11, 2014 from Mr. Fernando Rojas Samanéz (Vice Minister of Foreign Affairs, Peru)
6. U.S. Statement on Geographic Names in Advance of ICANN Durban Meeting, July 2013

7. ICC Decision Case No. Exp/396/ICANN/13
8. Legal opinion by M. Jérôme Passa
9. Amazon's GAC Advice Response
10. Letter dated April 14, 2014 from M. Scott Hayden

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

May 29, 2014

Signature

Date

Contact Information Redacted

crowell moring

May 29, 2014

To the attention of the members of the

ICANN Board Governance Committee

4676 Admiralty Way, Suite 330

Marina del Rey, CA 90292

By e-mail: reconsideration@icann.org

Request for Reconsideration of the Decision of August 21, 2013 Materially Affecting Amazon EU S.à.r.l..

Dear Sir,

Please find attached a Reconsideration Request relating to the Decision of May 14, 2014, submitted on behalf of Amazon EU S.à.r.l.

This Reconsideration Request is submitted to you in your capacity of members of the ICANN Board Governance Committee, within the 15-day window of opportunity to submit such a request.

Yours sincerely,

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted