

GAC Advice – Marrakech Communiqué: Board Action (8 September 2019)

GAC Advice Item	Advice Text
None.	The Board notes that the GAC has not included consensus advice in the Marrakech Communiqué – please see below for follow-up to previous advice items.

GAC Advice – Marrakech Communiqué: Follow-up to Previous Advice (8 September 2019)

GAC Follow-up on Previous Advice Item	Follow-up on Previous Advice Text	Board Understanding	Board Response
<p>1. .AMAZON applications</p>	<p>The GAC asks the Board to explain in writing whether and why it considers that its decision to proceed with the .AMAZON applications, based on a proposal that the eight Amazon countries considered did not address their concerns, complies with GAC Advice.</p> <p><u>RATIONALE:</u> During the meeting with the ICANN Board, several GAC members expressed their concerns about the recent Board decision to find the Amazon corporation proposal of 17 April 2019 acceptable and directing the ICANN org to continue processing of the .AMAZON applications according to the policies and procedures of the New gTLD Program. Concerns were also expressed with the possibility of the outcome in the .AMAZON case becoming a precedent for similar cases for delegation of sensitive strings that the GAC has stressed as raising public policy concerns in future.</p> <p>Several members referenced the ICANN60 Abu Dhabi Communiqué, where:</p>	<p>The Board understands the GAC wishes for the ICANN Board to explain in writing whether and why the ICANN Board considers that its decision to proceed with the .AMAZON application, based on a proposal that the eight Amazon countries considered did not address their concerns, complies with GAC Advice.</p>	<p>In its 15 May 2019 resolution, the Board directed the ICANN org President and CEO “to continue processing the .AMAZON applications according to the policies and procedures of the New gTLD Program in accordance with Board resolutions 2019.03.10.01-.07 and in recognition of all input received relating to the .AMAZON applications.”</p> <p>In the rationale of this resolution, the Board provided information on the Board’s decision-making process leading up to the resolution. Specifically, the Board stated that it “recognizes the need to balance concerns of all those involved, and to act fairly and transparently at all times. Indeed, the Board has considered the concerns raised regarding the .AMAZON applications at every stage of their processing through the New gTLD Program. However, the Board was also cognizant of the time that lapsed since the .AMAZON applications were submitted in 2012, and since the Amazon corporation prevailed in its Independent Review Process (IRP) against ICANN in July 2017. Since that time, the ICANN Board and org engaged with the Governmental Advisory Committee (GAC), ACTO, and the Amazon corporation in pursuit of a mutually acceptable solution, as evidenced by the numerous meetings, proposals, and letters received on the topic of the .AMAZON applications over the past few years.”</p> <p>Further, the Board noted in the rationale that “[i]n reviewing the proposal from the Amazon corporation, the Board considered whether it had done its due diligence and had the relevant material to make a decision regarding the proposal, whether the Board’s actions followed established processes and were in accordance with ICANN Bylaws, and</p>

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	<p>a) in section “V. Follow-up on Previous Advice”, with regard to the “Application for .amazon and related strings”, “[t]he GAC expressed the need to find a mutually acceptable solution in the case of the .Amazon gTLD applications for the countries affected and for the Amazon corporation”; and</p> <p>b) in section “VII. GAC Consensus Advice to the Board”, with regard to “Applications for .amazon and related strings”, “[t]he GAC recognizes the need to find a mutually acceptable solution for the countries affected and the Amazon corporation to allow for the use of .amazon as a top level domain name”.</p> <p>Several members also referenced the letter the GAC sent to the Board on 15 March 2018 in response to the Board’s request for “new or additional information to provide to the Board regarding the GAC’s advice that the Amazon applications should not proceed”, where it was stated that “the GAC does not have any additional information to provide to</p>		<p>whether the actions taken by the Board are within ICANN's mission. The Board also considered issues of fairness and whether the parties had been given sufficient time to reach a reasonable solution.</p> <p>“Ultimately, the Board determined that it has done its due diligence based on its review of the .AMAZON applications and the concerns raised throughout every stage of the life of the applications.¹⁴ Specifically, the Board took into account how the .AMAZON applications fit into the broader New gTLD Program. The Amazon corporation applied for the .AMAZON applications in 2012, pursuant to the Applicant Guidebook (AGB). The Applicant Guidebook, which either in part or in whole was subject to over 50 comment periods within ICANN, was also developed over three years of intensive community discussion. The GAC raised over 80 discrete issues which were addressed in an intensive face-to-face consultation, and issues such as protections for geographic names, as well as the abilities for individual governments to flag concerns and for the GAC to provide advice to the Board on applications, were added to the AGB. ICANN committed to funding objections raised by governments, if needed.</p> <p>“The .AMAZON applications were first evaluated pursuant to the AGB and determined not to be geographic names set aside for protections or requiring governmental approval. As discussed above, there were "Early Warnings" submitted by individual governments against the .AMAZON applications, and there was an additional challenge raised, a Community Objection brought by the Independent Objector, Alain Pellet. The Independent Objector raised issues it saw as of concern to the inhabitants of the Amazonian region, including human rights related concern. Following the AGB process, an independent expert panelist considered the Independent Objector's arguments, and ultimately</p>

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	<p>the Board on this matter, beyond referring to the GAC Abu Dhabi Communique.” Some members did not necessarily agree with the basis of these concerns as articulated above nor with the interpretation of GAC advice on this subject.</p> <p>On another note, some GAC members during the discussion with the ICANN Board, urged all parties to exhaust all means consistent with applicable procedures to facilitate a mutually acceptable solution.</p> <p>This request for a written response from the Board should be considered a follow-up to the GAC-Board discussion during ICANN65 and should not be construed as new GAC Advice on this matter.</p>		<p>dismissed the objection based on a detailed decision issued in January 2014 wherein the human rights and other arguments were considered. Both the Independent Objector and the expert panelist are noted for their scholarship in this area.</p> <p>“The GAC, in its July 2013 Durban Communiqué, advised the Board on a consensus basis that the .AMAZON applications should not proceed. The Board followed that advice and, ultimately, the IRP discussed at length above was filed. Based on the IRP Final Declaration, the Board re-engaged with the GAC and sought additional advice and clarification. The resulting GAC advice from Abu Dhabi is now the operable GAC advice on this issue, wherein the GAC advised the Board to “[c]ontinue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name.” The Board accepted that advice and has been acting in accordance with the advice in every subsequent decision on the .AMAZON applications—from the October 2018 decision to allow the .AMAZON applications to proceed through the AGB process, through the January 2019 decision on ACTO's Reconsideration Request, and in the March 2019 decision to allow another four weeks of discussions between the parties in addition to the year of facilitation that has passed since the Board's acceptance of the Abu Dhabi advice.</p> <p>“The Board has therefore met the GAC advice from Abu Dhabi, in that the ICANN org President and CEO facilitated discussions between the two parties for over a year. Likewise, the Board has received sufficient input and had the necessary materials to make this decision, as listed below. Even when the Board received a letter from Drs. van Ho and Doyle of the Schools of Law at the Universities of Essex and Middlesex,</p>

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			<p>respectively, setting out potential additional human rights concerns in moving forward with the .AMAZON applications, the Board considered this new input in light of the required AGB process and the substantial human rights-related briefings raised earlier in the application evaluation process, and identified that there were no new issues raised that hadn't already been considered across the long and intensive path that the .AMAZON applications have followed.”</p> <p>The Board understands that some GAC members have concerns regarding this resolution but hopes that the above provides additional insight into the reasons why the Board has taken the action that it has.</p> <p>Finally, the Board notes the Reconsideration Request from the Government of Colombia regarding the Board’s 15 May 2019 resolution. The BAMC issued a recommendation to deny the request on 14 August 2019 which the Board adopted on 8 September 2019.</p>
<p>2. Two-Character Country Codes as Second Level Domain Names</p>	<p>The GAC remains concerned that GAC advice on the procedure for the release of country codes at the second level under new gTLDs was not taken into consideration as intended, and advises that meaningful steps be taken to ensure this does not happen in the future. Moreover, the GAC notes the provision of a search tool by ICANN. GAC Members have highlighted that the effectiveness of the tool is still being evaluated.</p>	<p>The Board understands that the GAC remains concerned that GAC advice on the procedure for the release of country codes at the second level under new gTLDs was not taken into consideration as intended. The Board notes the GAC’s request that meaningful steps be taken to ensure this does not happen in the future. The Board also notes that GAC members are evaluating the effectiveness of the search tool developed by ICANN org.</p>	<p>The Board is aware of the ongoing concerns among some GAC members regarding the consideration of GAC advice on the procedure for the release of two-character country codes at the second level under new gTLDs. The ICANN org has provided detailed explanations of its process and the Board’s consideration of relevant GAC Advice in a memo to the GAC dated 22 January 2019 as well as in a Historical Overview of the process. The Board also notes that during the BGIG meeting at ICANN65 in Marrakech it was discussed that the BGIG meeting at ICANN66 in Montreal could be used to discuss the two-character search tool. Between now and ICANN66, the Board recommends that GAC members use the tool to gain experience and to note any concerns, where appropriate.</p>

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	The GAC urges ICANN to continue to engage with concerned GAC members in order to address their concerns.	The Board understands the GAC urges the ICANN org to continue to engage with concerned GAC members in order to address their concerns.	
3. WHOIS and Data Protection	The GAC recalls its GAC Kobe Communiqué Advice and welcomes the actions being taken on the 2 nd phase of the EPDP.	The Board understands the GAC reaffirms its GAC Kobe Communiqué advice on WHOIS and Data Protection Legislation and notes the GAC welcomes the actions being taken on the 2 nd phase of the EPDP.	The Board appreciates the GAC’s follow-up on the Kobe advice. The Board recalls its response to the Kobe Communiqué, in which the Board noted that “while it cannot guarantee the end result, because the EPDP is a community procedure that determines its own processes...[t]he Board shall convey the request[s] via its Liaisons to the EPDP and via its communications with the GNSO Council.” Additionally, as noted in the Board’s response to the Kobe Communiqué, the Board continues to understand that “the GAC is requesting the ICANN Board to do all that it can, within its authority and remit and subject to budgetary constraints, to facilitate the work of the EPDP.”