

## Reconsideration Request Form

### 1. Requestor Information

**Name:** Ambassador Maria Jacqueline Mendoza Ortega, Secretary General of the Amazon Cooperation Treaty Organization, on behalf of the member States Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela.

**Address:** Contact Information Redacted

**Email:** Contact Information Redacted

**Phone Number (optional):**

### 2. Request for Reconsideration of:

Board action/inaction

Staff action/inaction

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

The undersigned, on behalf of the Amazon countries, requests that Board resolution 2018.10.25.18 be cancelled.

Board resolution 2018.10.25.18 *'directs 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.'*

As explained below, Board resolution 2018.10.25.18 was adopted on 25 October 2018 based on inaccurate information, including the assumption that the Amazon countries would have agreed to a path forward for the delegation of the .AMAZON strings.

The resolution is available on <https://www.icann.org/resources/board-material/resolutions-2018-10-25-en#2.d>

### 4. Date of action/inaction:

Board resolution 2018.10.25.18 was adopted and published on 25 October 2018.

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

The 29 October 2018 is the date on which all the eight Amazon countries, on whose behalf the undersigned submits the present reconsideration request, became aware of Board resolution 2018.10.25.18.

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

The Amazon Cooperation Treaty Organization (ACTO) has been constituted by the Republics of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela to further the objectives of the Amazon Cooperation Treaty, including the promotion of the harmonious development of the Amazon region, the equitable distribution of the benefits of this development, and the pursuit of the public interest on behalf of the Amazon peoples.

With respect to the .AMAZON applications, ICANN's Governmental Advisory Committee (GAC) recognized, in its Abu Dhabi Communiqué of 1 November 2017, that the member States of the Amazon Cooperation Treaty Organization, on whose behalf the undersigned brings the present reconsideration request, are the legitimate parties whose consent must be previously obtained if the .AMAZON strings are to move forward.

Board resolution 2018.10.25.18, by removing the "Will Not Proceed" status of the .AMAZON applications and authorizing the continuation of their processing, however, has effectively freed the .AMAZON strings for delegation to the private company Amazon Inc. The processing includes the publication of Public Interest Commitments proposed by the applicant, whose content are not known to the Amazon countries, and which the Amazon countries never agreed would be a sufficient condition for the delegation of the AMAZON strings.

Furthermore, Board resolution 2018.10.25.18 materially and adversely affects:

(1) the right of the Amazon countries' to negotiate fundamental terms and conditions for that delegation; and

(2) the Amazon countries' right to oppose any delegation in case the parties cannot reach a mutually satisfactory agreement.

Finally, Board resolution 2018.10.25.18 authorized the .AMAZON applications to move forward without addressing the public policy concerns of the Amazon countries that continue to justify the status "Will Not Proceed" of the .AMAZON applications, including as detailed in the annexes to the 5 September 2018 letter

sent to the ICANN Board on behalf of ACTO's member States. It thereby materially and adversely affects the Amazon countries' right and responsibility for public policy issues associated with the .AMAZON strings.

While the private company Amazon Inc. has proposed "public interest commitments" to be included in a hypothetical registry agreement with ICANN for the operation of the .AMAZON strings, these "public interest commitments" are not known to the Amazon countries, nor have the Amazon countries agreed to them. In fact, the Amazon countries have not even agreed that their public policy concerns as well as their rights, including to participate in the governance of the ".AMAZON" strings, would be satisfactorily addressed through a delegation to the private company subject to "public interest commitments".

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

For the reasons stated above, Board resolution 2018.10.25.18, if not cancelled, will adversely affect the public interest represented by ACTO's member States, which act for the defense and promotion of the rights and interests of the Amazon region and peoples, including their right to participate in the management and use of the .AMAZON TLDs.

**8. Detail of Board or Staff Action/Inaction – Required Information**

*8.1. The Board adopted resolution 2018.10.25 based on inaccurate and incomplete information, and without consideration of relevant information*

The rationale for Board resolution 2018.10.25.18 states that "*the ICANN org has informed the Board that the parties have identified a path forward*" that would allow the removal of the "Will Not Proceed" status of the .AMAZON applications as well as, consequently, their processing. This information is inaccurate; it is not supported by facts or any material available.

In letters sent on behalf of the Amazon countries to the ICANN President and CEO and to the Chairman of the ICANN Board, on 5 September 2018 and 19 October 2018, it was made clear, respectively, that "[t]he delegation of the .amazon TLD requires the consent of the Amazon countries", and that "the Amazon countries trust ... the requirement of consent of the Amazon countries for the delegation of the .AMAZON strings will be duly acknowledged".

By the 5 September 2018 letter, the Amazon countries further indicated that they

shall participate in the governance of the “.AMAZON” top-level domains. However, they have not agreed that their participation in the governance of the “.AMAZON” top-level domains would be satisfactorily guaranteed through delegation to the private company – as opposed to delegation to the Amazon countries, or to a joint-delegation –, or that it would be so guaranteed through “public interest commitments”. These “public interest commitments” would have been proposed to ICANN by the private company Amazon Inc. at some later stage. They are not known to the Amazon countries. The Amazon countries have not agreed to them. Again, the Amazon countries have reiterated that the delegation of the “.AMAZON” top-level domain, in any case, requires their consent.

Subsequently, by the 19 October 2018 letter, the Amazon countries formally invited the ICANN President and CEO to meet with their representatives in Brasilia so that they could participate in the “further work that **could** result in a solution” (as per the language of the 16 September 2018 Board resolution on the subject) for the delegation of the .AMAZON strings. They further reiterated that any solution must be “**acceptable to the Amazon countries**” if this is to result in the delegation of the “.AMAZON” strings.

The 19 October 2018 invitation was a clear indication of the willingness of the Amazon countries to engage in a constructive dialogue with the ICANN President and CEO that could result in the delegation of the “.AMAZON” strings. It indicated very clearly, also, that formal discussions between the ICANN President and CEO and the Amazon countries, as well as the acceptance by the Amazon countries of any proposed solution, were steps that should necessarily precede any further action that could result in the delegation of the .AMAZON strings.

The invitation was officially communicated to the ICANN President and CEO and to the Chairman of the ICANN Board a week ahead of the public meeting that resulted in the adoption of Board resolution 2018.10.25. It is noteworthy that this letter does not appear in the materials referenced in the 25 October 2018 Board resolution as “Items considered by the Board”.

Finally, the Amazon countries have not been informed of any proposal for the delegation of the “.AMAZON” strings subsequently to their decision to decline the private company’s latest proposal. They have not been informed of any proposed solution developed by the ICANN President and CEO, nor have they been informed of the proposal made by the private company Amazon Inc. regarding “public interest commitments”.

However, apparently having considered that the Amazon countries had been informed of a proposal for the delegation of the “.AMAZON”, and that they would have agreed to that delegation pending only final discussions on a limited number of elements (including on the specifics of “public interest commitments”), the Board adopted resolution 2018.10.25 authorizing the removal of the “Will Not Proceed” status of the “.AMAZON” applications and clearing the way for

delegation to the private company Amazon Inc. Therefore, the action of the Board was taken as a result of the Board's reliance on inaccurate relevant information, and without consideration of material information that was available.

*8.2. The Board adopted resolution 2018.10.25 contrary to ICANN's commitments and core values, which recognize that 'governments and public authorities are responsible for public policy' and that ICANN must duly take into account the public policy advice of governments and public authorities*

The rationale for Board resolution 2018.10.25.18 states that *'the Board considers that the GAC's consensus advice of the Abu Dhabi Communiqué which advises the ICANN Board to "continue facilitating negotiations between the [ACTO] member states and the Amazon corporation" to supersede previous GAC advice provided in the Durban Communiqué that the applications should "not proceed beyond Initial Evaluation"'*. However, GAC Advice from Abu Dhabi on the .AMAZON applications could not have superseded GAC Advice from Durban on the matter.

Firstly, GAC Advice from Abu Dhabi called for the "continuation" of a process that had been effectively in place under the terms and authority of the GAC Advice from Durban on the ".AMAZON" applications. The GAC effectively welcomed and encouraged the continuation of that process, entirely compatible with GAC Advice from Durban, without calling into question the validity of that advice. Furthermore, the ICANN Board itself expressly recognized that "the decision [to adopt GAC Advice from Durban on the .AMAZON applications] is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues" (See Board resolution 2014.05.14.NG03). Hence, the call made by the GAC in Abu Dhabi for the continuation of dialogue between the parties cannot be said to be incompatible with, or supersede, the GAC Advice from Durban.

Secondly, the rationale of GAC Advice from Abu Dhabi on the ".AMAZON" applications expressly explain that the "GAC recognizes the need to find a mutually acceptable solution for the affected countries" for the delegation of the related strings. It does not state, nor even suggest, that the Advice for the Board to continue facilitating the dialogue between the parties supersede previous GAC Advice on the matter. Again, GAC Advice from Abu Dhabi called for the continuation of a process that was been carried out in accordance with GAC Advice from Durban – i.e. a process that was in fact prompted by GAC Advice from Durban. Hence, unless the GAC had otherwise indicated, GAC Advice from Abu Dhabi cannot be said to overrule the GAC Advice from Durban,

In any case, Board resolution 2018.10.25.18 overlooked GAC's follow-up on previous advice about the .AMAZON applications, which the GAC adopted on 24 October 2018. Indeed, the GAC reiterated that the "possibility of delegation of

the .AMAZON applications” (as per the 16 September 2018 Board resolution on the subject) should take into account the public policy issues raised through GAC advice on these applications, particularly the need to find a mutually acceptable solution for the parties.

However, Board resolution 2018.10.25 authorized the removal of the “Will Not Proceed” status of the “.AMAZON” applications and cleared the way for delegation to the private company Amazon Inc., without the parties’ having reached a mutually acceptable solution, as seen before.

Therefore, the action of the Board contradicted ICANN’s Commitments and Core Values, which should have governed and guided the Board’s actions, and which recognize that ‘governments and public authorities are responsible for public policy’ and that ICANN must duly take into account the public policy advice of governments and public authorities.

**9. What are you asking ICANN to do now?**

In view of the facts stated above, the undersigned, on behalf of the Republics of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, considers that Board resolution 2018.10.25.18 is premature and that it prejudices the outcome of negotiations yet to be concluded. Therefore, it is requested that Board resolution 2018.10.25.18 be cancelled and that the “Will Not Proceed” status of the .AMAZON applications be restored.

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

ICANN’s Governmental Advisory Committee (GAC) recognized, in its Abu Dhabi Communiqué of 1 November 2017, that the member States of the Amazon Cooperation Treaty Organization, on whose behalf as ACTO’s Secretary-General the undersigned brings the present reconsideration request, are the legitimate parties of a possible mutually acceptable solution that is necessary for the .AMAZON applications to move forward.

The Amazon Cooperation Treaty Organization (ACTO) has been constituted by the Republics of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela to further the objectives of the Amazon Cooperation Treaty, including the promotion of the harmonious development of the Amazon region, the equitable distribution of the benefits of this development, and the pursuit of the public interest on behalf of the Amazon peoples.

Board resolution 2018.10.25.18, if not cancelled, will adversely affect the process recommended under GAC Advice, which could result in such a mutually acceptable solution that is necessary for delegation of the “.AMAZON” strings. Further, Board resolution 2018.10.25.18, if not cancelled, will adversely affect the public interest represented by ACTO's member States, which act for the defense and promotion of the rights and interests of the Amazon region and peoples, including their right to participate in the management and use of the .AMAZON TLDs, as detailed in the 5 September 2018 letter and its annexes sent to the ICANN Board on behalf of the Amazon countries.

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

Yes

No

**11a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.**

The undersigned represents the Amazon Cooperation Treaty Organization and in the present instance is acting on behalf of that organization and its member States, the Republics of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, in defense of the public policy interests recognized by previous Board resolutions and GAC Advice regarding the ".AMAZON" strings.

**12. Are you bringing this Reconsideration Request on an urgent basis pursuant to Article 4, Section 4.2(s) of the Bylaws?**

Yes

No

**12a. If yes, please explain why the matter is urgent for reconsideration.**

**13. Do you have any documents you want to provide to ICANN?**

5 September 2018 letter from ACTO's Secretary General to Göran Marby and Cherine Chalaby, available on

<https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-05sep18-en.pdf>

19 October 2018 letter from ACTO's Secretary General to Göran Marby and Cherine Chalaby, available on

<https://www.icann.org/en/system/files/correspondence/mendoza-to-chalaby-marby-19oct18-en.pdf>

19 October 2018 letter from Göran Marby to ACTO's Secretary General, enclosed herewith.

November 05, 2018 letter from ACTO's Secretary General to the ICANN Board, enclosed herewith.



## **Terms and Conditions for Submission of Reconsideration Requests**

Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

The BAMC shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The BAMC may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The BAMC's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>.

Hearings are not required in the Reconsideration Process; however, Requestors may ask for the opportunity to be heard. The BAMC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing. The BAMC's decision on any such request is final.

For all Reconsideration Requests that are not summarily dismissed, except where the Ombudsman is required to recuse himself or herself and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request. The BAMC shall make a final recommendation to the Board with respect to a Reconsideration Request following its receipt of the Ombudsman's evaluation (or following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable).

The final recommendation of the BAMC shall be documented and promptly (i.e., as soon as practicable) posted on the Reconsideration Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en> and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the BAMC's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the ICANN Reconsideration Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the BAMC's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

The ICANN Board shall not be bound to follow the recommendations of the BAMC. The ICANN Board's decision on the BAMC's recommendation is final and not subject to a Reconsideration Request.

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN [Privacy Policy](#), and agree to abide by the website [Terms of Service](#).

  
Signature

05 November 2018  
Date

**Maria Jacqueline Mendoza Ortega**

