

To: gns0-newgtld-wg@icann.org, gns0-newgtld-wg-wt5@icann.org

From: cw@christopherwilkinson.eu

Subject : ICANN Board consideration of .amazon application. 15 May 2019, (published preliminary report 26 May 2019.)

<https://www.icann.org/resources/board-material/prelim-report-2019-05-15-en>

The .amazon point is addressed in pages 35-55 ; the relevant Resolution was adopted by 13 Board members with two abstentions.

In my view, the unresolved impasse between Amazon Inc. and ACTO derives in large measure from the failure in the 2012 AGB to adequately regulate applications for geographical names.

In short, as widely reported already elsewhere, the ICANN Board has over-ridden the objections of the countries concerned (the ACTO members) to proceed with the processing of the .amazon application from Amazon Inc., in spite of the reported failure to reach agreement between Amazon Inc. and ACTO.

The purpose of this note is primarily to draw the attention of the new gTLD PDP and to WT5, that these issues will have to be addressed before the new gTLD programme can be successfully launched. For future reference, it is absolutely essential that the current PDP and WT5 agree on specific and globally applicable rules for applications for, and eventual delegations of, geographical names. Otherwise, issues arising over the <.amazon> application could very well be repeated across a wide range of future applications, world-wide.

In the case in point, the Board and several recent comments (CircleID, The Register, Internet Governance Project) have attached weight to the outcome, in July 2017, of an Independent Review Process which supported Amazon Inc.'s application. However, this IRP's proceedings and report were quite questionable in several respects, as I pointed out to the Co-Leads of the PDP and WT5 at the time.

I attach my note of November 2017 to that effect.

In conclusion, I must maintain most firmly that whatever conclusions are reached in the .amazon case, with or - apparently without - agreement between Amazon Inc. and ACTO, this sad story can in no way be taken as a precedent for future applications for geographical names which are presently considered by GNSO to be unprotected and thus eligible for open applications for new gTLDs.

It is quite essential for the success of the new gTLD programme that the currently very restrictive policy for prior authorisation or non-objection to geographical names be extended to all such applications.

Regards,

Christopher Wilkinson
Jávea, 2 June 2019

Attachment: Note to PDP and WT5 Co-Leads of 7 November 2017.

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From: cw@christopherwilkinson.eu [mailto:cw@christopherwilkinson.eu]
Sent: Tuesday, November 7, 2017 2:40 PM
To: Martin Sutton <martin@brandregistrygroup.org>; Annebeth B. Lange <annebeth.lange@norid.no >; Olga Cavalli <olgacavalli@gmail.com>; Christopher Wilkinson <cw@christopherwilkinson.eu>
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Subject: .amazon IRP

Good evening:

<https://www.icann.org/en/system/files/files/irp-amazon-final-declaration-11jul17-en.pdf>

Having returned from Abu Dhabi, I have had the opportunity to read the Independent Review Panel Declaration on <dot.amazon> (pp 67).

This turns out to have been a significant benchmark with respect to several aspects of our forthcoming work of WT5. For instance:

- it is noticeable that the whole IRP procedure does not recognise, or even refer to, the fact that the Amazon name has been in the public domain for decades, if not centuries, and in any case long before ICANN or Trademark law existed. WT5 should recognise that geographical names are generally already in the public domain and are used to represent the places that people use them for. The very widespread sensitivities about the DNS and most geographical terms arise from the risks, some would say the threats, arising from the commercial monopolization of such names in the DNS.
- the composition and location of the Panel in this case invites comment. It is hardly plausible for the ICDR and ICANN to accept that an issue, primarily beyond US jurisdiction, should be arbitrated by three US lawyers, based on hearings in Los Angeles. Whatever the principles and rules devised by the PDP and WT5, I doubt that they would enjoy widespread acceptance if eventual future disputes would be subject to such an IRP.
- the IRP addresses, in exhaustive detail, the internal procure the ICANN Board and its NGPC. But it completely ignores the social, cultural and political dimensions of the issue. Outside the "ICANN bubble" this will appear rather curious, to the point of de-legitimising the underlying ADR policy.
- The costs of this IRP have been exorbitant, amounting to some \$480,000, not including attorneys fees. In the case in point, Amazon (Luxembourg) and ICANN could no doubt afford it, but more generally, if dispute resolution in the policy that PDP and WT5 intend to create is beyond the reach of most geographical communities, then I wonder what we are doing here?

For most communities, the issue is not <.amazon>, *per se*, but the precedent.

The DNS cannot override the historical interests of the general public in names that have been in the public domain, as long as most people can remember, without a clear mechanism whereby their acquired rights will be respected.

Just a few thoughts, that WT5 should be able to deal with in the months to come.
Regards Christopher.