

# GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV, Annex I, and Annex II of the [GAC Beijing Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses must be received no later than 23:59:59 UTC on 10-May-2013.

## Respondent:

Applicant Name	Amazon EU S.à r.l.
Application ID	.AMAZON (1-1315-58086) .APP (1-1315-63009) .AUTHOR (1-1315-99563) .BOOK (1-1315-44051) .CLOUD (1-1315-79670)
Applied for TLD (string)	As displayed above

## Response:

May 10, 2013  
Dr. Steve Crocker, Chairman of the Board  
Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536

Re: Amazon’s Response to the ICANN Board of Directors on the GAC Beijing Communiqué

Dear Dr. Crocker and Members of the ICANN Board of Directors,

Thank you for the opportunity to respond to the Government Advisory Committee’s (“GAC”) Beijing Communiqué (the “Communiqué”). Amazon appreciates the efforts spent by the GAC on the difficult questions in connection with the new gTLDs. We are committed to working with the GAC, ICANN, national governments, and others toward the development of the Domain Name System through the collaborative multi-stakeholder, bottom-up, consensus-driven process. The multi-stakeholder model is only successful, however, if one stakeholder is not given veto power over other voices, and involved and invested parties. We are concerned that, if implemented, the Communiqué will circumvent years of active and transparent Community development by reversing policies and implementing new requirements and definitions on applicants, registries and registrants.

Applicants relied in good faith on the rules and limitations set forth in the Applicant Guide Book (“AGB”), expending significant time, money and resources on preparing and defending their Applications based on this reliance. Changing direction at this time undoubtedly will result in delays for all applicants, and raise legal issues. Retroactive changes, based on guidance that the ICANN Community already has rejected, fundamentally undermine the multi-stakeholder model.

Although likely unintended, the Communiqué, as written, will allow the GAC to create new regulations and overturn the sovereign laws of other countries, undermining the multi-stakeholder process and giving credence to arguments in other forums that national governments should have a controlling role in Internet governance. Accordingly, we urge the Board to reject certain aspects of the Communiqué and adhere to the principles originally agreed to in the AGB by Applicants, ICANN, and the Community.

## Applicants Relied on Rules Set by ICANN

The new gTLD Program has its origins in the “carefully deliberated policy development work of the ICANN Community.” (AGB, preamble.) In 2005, ICANN’s Generic Names Supporting Organization (“GNSO”) began a policy development process to consider the introduction of new gTLDs. In 2008, the ICANN Board adopted 19 specific policy recommendations for implementing new gTLDs. After approving the policy, ICANN undertook an open, inclusive, and transparent implementation process, including comment periods on nine drafts of the AGB, and numerous advisory group recommendations, to address stakeholder concerns such as the protection of intellectual property and Community interests, consumer protection, geographic protections, and DNS stability. This work involved extensive public consultations, review, and input on multiple draft versions of the AGB, including active, fully engaged consultation with the GAC. (<http://newgtlds.icann.org/en/about/program>)

## Applicants relied on the AGB Provisions on Geographic Names

One of the principles originally debated by multiple stakeholders, including the GAC, the ICANN Board, and the ICANN Community, relates to the protection of geographical names. The GAC tried unsuccessfully to define, for the AGB, what constitutes a blocked “geographic string,” and the multi-stakeholder Community thoroughly discussed the issue from 2007 to 2011 in ICANN meetings, public forums, drafts of the AGB, and through numerous constituencies. After four years of discussion, the Board and Community agreed on the use of well-established internationally recognized and agreed-upon geographic designations. “The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. The revised definition . . . continues to be based on the ISO 3166-1 standard and fulfills the Board’s requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs.” ( ICANN Board – GAC Consultation: Geographic Names, 21 February 2011, p. xi (summarizing GAC/Board communications from September 22, 2009).)

As the Board noted in one of its initial responses to the request for a broader definition than the ISO 3166-1 standard, “the capacity for an objection to be filed on Community grounds, where there is substantial opposition to an application from a Community that is targeted by the name also provides an avenue of protection for names of interest to a government which are not

defined in the Applicant Guidebook.” (ICANN Board – GAC Consultation: Geographic Names, 21 February 2011, p. ii.)

The Communiqué now backs away from more than four years of multi-stakeholder work on the geographic name issue by its new attempt to isolate strings that raise geographical issues. This action is disruptive (not only for us and our applications) because the effect is not dissimilar to that of consensus Communiqué advice but without the essential component of consensus. It is disruptive to the multi-stakeholder process as a whole – it acts as an effective veto on Community-driven policies (with the potential for far-reaching effects outside of ICANN’s realm).

## The Communiqué Chips Away at the Multi-Stakeholder Model

We ask the Board to focus on several recommendations in the Communiqué that chip away at the ICANN multi-stakeholder model and, in some cases, may give individual national governments veto power over any applied-for string as well as regulatory power over private entities that governments might not have under their own laws. Specifically, the Board (1) should not delay specific applications for further considerations, (2) should not allow changes to an applied-for string and (3) should adopt implementable and reasoned Safeguard Guidance.

### 1. The Board should not delay specific applications for further GAC Consideration

The AGB allows the GAC to provide Communiqué advice on specific applied-for strings and safeguards for Board deliberation, stating that for a particular application not to proceed, there needs to be consensus of the GAC. (AGB 1.1.2.7.) Indeed, “to be considered by the Board during the evaluation process, the GAC Communiqué on New gTLDs must be submitted by the close of the objection filing period.” (Id.) With the exception of two strings (.africa and .gcc), however, the GAC has not provided consensus advice against any other particular strings for Board deliberation.

Although specific countries raised national sensitivities with our applications for .amazon and our Chinese and Japanese parallel applications (.アマゾン and .亚马逊), the GAC did not reach consensus advice to block any of these three applications. Instead, it asked the Board to prevent these applications from proceeding based on a need for “further consideration.” Such a request has nearly the same effect as consensus Communiqué advice. To allow “further consideration,” a new action in the process neither contemplated by the AGB nor previously debated by the Community, sets a precedent that could perpetually delay an application to the applicant’s detriment, allow for a government’s effective veto power over a particular application and/or string, and permit the uneven discrimination against vetted, established principles and process.

If the Communiqué guidance were implemented, it could require Amazon and other applicants to either abandon an application for a string that reflects its globally protected trade name and trademarks or, in the alternative, adopt a gTLD with corporate indications that do not represent the company’s brand globally (and in some cases violate local laws covering the type of corporate entity one can hold itself out as). This “hold” acts as a de facto block to strings otherwise permitted for registration by the AGB; it gives the countries the same result as if

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consensus Communiqué advice was achieved (when it was not), but without the core ingredient of actual consensus. Further, it does not foster productive negotiation between affected parties.

The GAC's attempt to hold an application because of a government's potential conflict destroys the premise of consensus entirely, which in turn significantly dilutes surety and stability in the new gTLD process. Additionally, it allows a government to supersede the trademark and free-expression rights granted by other governments and obtain global rights over applicants that the government would not otherwise possess. Thus, we request that the Board reject the GAC Communiqué on geographic names and allow the .amazon applications to proceed.

The effect of the GAC's request for "further consideration" could lead to perpetual negotiations where one party has no standing or recourse.

We have deep respect for the people, culture, and heritage of the Amazonas region, and recognize the governments' desire to protect the region internally against third parties that may cause harm in some way. Our company and the region have coexisted amicably, both regionally and globally, with no interference on regional matters or consumer confusion or harm for more than seventeen years, and we are pleased to serve countless customers in the region with our vast offerings of goods and services.

Despite our long-standing presence throughout the region, representatives from Brazil and Peru, however, issued an early warning against our .amazon gTLD application. The GAC representatives indicated initially that the only remedy for us was to abandon the application, and later stated that they would consider allowing Amazon to change our application to ".amazonincorporated" or ".amazoninc" or ".amazoncompany." At the Beijing meeting, it is our understanding that representatives from Brazil and Peru sought GAC Communiqué advice objecting to our .amazon application (and the IDN variants Amazon including .アマゾン and .亚马逊), but were unable to achieve GAC consensus. Despite their inability to achieve consensus and block the applications outright, we understand that representatives from Brazil and Peru requested (via the GAC) to implement a new and unusual remedy not previously contemplated by the AGB, asking the Board to delay our .amazon applications so the GAC could "further consider" the strings at the Durban meeting.

In the interim, none of the representatives from Brazil or Peru have implemented any of the variety of protections previously agreed through the multi-stakeholder process. For example, neither representative filed a Community objection although both countries were well aware of this option (each has been an active member of the GAC dating to 2008). Instead, a third party filed a Community objection on behalf of the region. (For completeness, we note that this same third party, acting as "Independent Objector," currently represents the Government of Peru in an ongoing case at the International Court of Justice, arguing on its behalf as recently as December 2012.)

As we stated in our gTLD applications, Amazon's mission is to be the world's most customer centric company, where people can discover anything they might want to buy online. Investing in a new gTLD for "AMAZON," our house trademark, trading name, and cornerstone of our global brand since 1995, is an essential part of this strategy. When considering the benefits of new gTLD applications in terms of communication, security, and stability, especially for an online

company like ours, we place paramount importance on protecting one of our most valuable assets – our trademark “AMAZON” – just as other leading companies protect their registered company and brand names to serve their customers. In fact, our name AMAZON is a trademark registered, along with AMAZON-formative marks such as AMAZON.COM and AMAZON and Design (collectively “AMAZON Marks”), more than 1300 times in over 149 countries world-wide. This includes registrations for AMAZON Marks in the trademark offices and in the ccTLDs of the very regions that now claim Amazon should not be allowed to use our global mark as a gTLD. (As of the date of submittal of the gTLD Applications, Reveal Day, and the deadlines for Early Objections, Objections, and GAC Communiqué, neither “Amazon,” “Amazonas,” “Amazonia,” “Amazonica,” nor any translation or short-form of any of these terms, were included in the ISO 3166-1 standard, designated on the “Separable Country Names List”, or were names by which a country is commonly known in violation of 2.2.1.4.1 of the AGB. In addition, none of these terms or translations appears as a string listed as a UNESCO region or appears on the United Nation’s “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list, and therefore does not violate 2.2.1.4.2 of the AGB. Finally, there are no known national laws that protect these terms from use or registration by third parties as of the date of this filing.)

We have attempted, and will continue to attempt, to negotiate toward a mutually beneficial solution. For instance, we corresponded with the GAC representatives from Brazil and Peru, participated in a video conference and traveled to Brasilia for direct negotiations with the Organização do Tratado de Cooperação Amazônica (“OTCA”) prior to the Beijing ICANN meeting. All of our proposed alternatives for resolution have been rejected by the GAC representatives. (We are happy to discuss in a confidential submission to the Board the proposed alternatives we have put forth.) Despite our willingness to reach a mutually agreeable solution, we should not be forced to negotiate under continual GAC “consideration,” holding up our applications to the detriment of business because the GAC was not able to reach consensus.

#### .YUN application

.YUN means “cloud,” in Pinyun, which is the reason we applied for the string. Representatives from the Government of the People’s Republic of China, however, note that the Yunnan Province is sometimes shortened to “Yun.” Amazon wrote to representatives from China as soon as we received the Early Warning, but due to communication issues, those representatives were unable to respond until the Beijing meeting. We welcome discussions with representatives from the Yunnan Province government and already have offered to implement safeguards to ensure that the string is not used in a manner that may cause confusion. Although we are hopeful this matter will be resolved to both parties’ satisfaction in coming months, for the same reasons discussed above for the .amazon applications, there is no basis for a GAC “hold” until resolution. We ask this Board to reject this portion of the Communiqué.

#### 2. The Board Should Not Allow Changes to an Applicant’s String.

This issue of whether an Applicant can change its applied-for string already has been covered by the GAC, the Board, and the Community during the negotiations leading up to the final Applicant Guidebook. “It was decided early in the process development that applicants should not be able to amend applications or applied for strings in order to prevent abuse.” (ICANN Board - GAC Consultation: Geographic Names, February 21, 2011, p. 3.)

As a result, Amazon respectfully requests that the Board reject the re-opening of this already resolved debate. To do so in connection with one application would require, for purposes of fairness, re-opening any and all applications facing potential objections. Doing so would lead to additional evaluations of applications that already have been cleared, and delay the entire program.

### 3. The Board Should Adopt Implementable and Reasoned Safeguard Guidance for New gTLDs.

Amazon agrees that all registry operators should abide by relevant applicable laws, including those relating to consumer protection and competition, and that registry operators require in their acceptable-use policies that registrants comply with all applicable laws, particularly in relation to privacy, data collection, and child and consumer protection. We applaud the GAC for reinforcing the need to include such provisions in the Registry Agreement.

The Communiqué, however, appears to go one step beyond and requires registries and, by association, registrars and users of the Internet (through their registration agreements and use of second level domain names in the new gTLDs), to institute policies and procedures not required by law and, in some instances, which may be interpreted as being in direct opposition to national laws (for example, circumventing national laws that may grant safe harbors to neutral platforms). This process would act as a material change to the AGB and, as such, requires a full vetting by the entire ICANN Community. We also request that the Board reject this section of the Communiqué.

Additionally, the Communiqué has used a very broad brush to label a variety of strings as “sensitive strings” under a variety of subclasses. These strings, listed as non-exhaustive, could, in fact, cover all applicants. We are concerned that labeling strings as “sensitive” could subject registry operators to heightened, unintended legal standards in various jurisdictions. In addition, the “categorization” of strings appears to be arbitrary. For example, the category “intellectual property” includes the strings “.FREE,” “.FANS,” “.DISCOUNT,” and “.ONLINE”. Indeed, based on these examples, any string that represents a generic term could be identified as “intellectual property.”

Finally, the Communiqué goes further to caution that certain strings – though not specifically identifying them – should be subject to validation and verification of second-level applicants’ licenses and credentials. In addition, the Communiqué proposes that registries should obtain input from relevant regulatory bodies and/or by “industry self-regulatory bodies,” in connection with safeguards to protect those industries and their consumers. Hence, the Communiqué would give de facto “regulatory” rights to non-governmental “industry self-regulatory” bodies. Such a policy might force private entities – registries and businesses operating at the second-level –to obtain government approval over their business models. Again, this principle is not required under most national laws.

The Communiqué Guidance on Public Interest Goals isn’t Implementable.

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The Communiqué recommends that exclusive registry access for strings “representing generic terms” should serve a “public interest goal.” (GAC Communiqué, Annex I, Category 2.2) The Communiqué does not define either “public interest” or “generic terms.” Applicants and the Board have no way to comply with or implement this Communiqué; thus, the Board should not adopt this safeguard, however well-intentioned.

That said, if the Board chooses to adopt this safeguard, we note there are other “public interest goals,” including consumer protection, mitigation of abusive activities (such as through heightened security measures and checks), a process for handling complaints, and appropriate documentation on security threats. The GAC has already noted this in another part of its Communiqué on safeguards. (Annex I, Safeguards Applicable to all new gTLDs.) Indeed, these public interest goals can be met more efficiently and with greater accuracy in a space that is not operated solely for the sake of selling domain names (previously and perhaps inaccurately mislabeled as “closed” or “open-restricted”). (We direct the Board to the public comment that Amazon filed in connection with the debate on “open” v. “closed” registry models. <http://forum.icann.org/lists/comments-closed-generic-05feb13/msg00199.html>) As a result, we request that our applications be allowed to proceed without change.

## Conclusion

We are happy to address any follow-up questions or concerns from the Board.

Respectfully submitted,  
Stacey King  
Sr. Corporate Counsel – Amazon