

(Automated translation and preliminary version - final report will be at www.ncuc.org)

Who owns dot-Amazon? What are top-level geographic domain names and how to participate in these decisions at ICANN

Proponent: Renata Aquino Ribeiro, Claudio Lucena (NCUC / ICANN) and Gustavo Paiva (UFRN)

Moderation: Renata Aquino Ribeiro (NCUC / ICANN), Sandra Friedman (IPRec), Cristiane Jacqueline Felinto (Inst. Previdência PB)

Speakers:

- Benedicto Fonseca (Ministry of Foreign Affairs)
- Flávia Lefevre (Protest)
- Mark Datysgeld (IGV Primer)
- Maurília Gomes (UFAM)
- Milton Mueller - Remote (NCUC / ICANN)

Rapporteur: Viviane Vinagre (UFPB) and Gustavo Paiva (UFRN)

Format: Aquarium (Fish bowl)

Top-level domain names such as www.reserva.amazon or www.watches.swiss have generated much discussion in the field of internet governance. When it comes to the .Amazon domain and all the discussions covered by this topic, there are many other issues brought to the fore such as climate change, technology and sustainability, intellectual property and the future of the internet. There are so many interim concerns that the resolution processes on the future of these domain names have been studied by working groups, by independent reviews and even by the board of ICANN, the organization that oversees the Domain Name System worldwide. workshop will bring contents for discussion from the points of view of all the stakeholders and many of the organizations involved in the definition of these geographical names. Civil society within ICANN that studies issues related to non-commercial domain names is the proponent of this workshop and will thoroughly investigate the commercialization of geographical names in their pros and cons. By means of the specific

case of the .amazon domain, which is being sought and possibly delegated to the company of the same name, this workshop intends to study first-level geographic domain names and their delegation process, which is now part of the same process of delegating Generic Top Level Domains (gTLDs). The participants of this workshop have worked on themes of technology and sustainability and will act as moderators inviting the participants of the event to bring their opinion. Through the aquarium format, where participants can jump in and out of the discussion, various views of this theme will be collected in order to formulate a coherent proposal of Brazilian governance stakeholders for the future of this debate.

REPORT: CONSENSUS, DISSENSSES AND POINTS TO BE DEVELOPED

1. **Consensus.** It was pointed out that the use of the .amazon TLD raises a diverse range of concerns to the populations of the Amazon.

1. **Dissent.** An *immaterial* damage can occur, as Marília and Renata Mielli explained, due to the world knowing the Amazon by the English term *Amazon*. Milton, however, argues that the creation of a gTLD does not guarantee possession of the reality of that name - there would therefore be no harm in that regard.

1. **Point to deepen.** The supposed immaterial damage of the .amazon TLD is for the moment abstract, and it is a concept that deserves further study. It was mentioned that the confusion caused could, for example, impact the perception of tourists, and therefore to harm the Amazon populations. The articulation of specific points in a document can be a valuable tool in discussions on .amazon.

2. **Point to deepen.** If there is immaterial loss, is there anything the Amazon company can offer to nullify this loss, prevent it from materializing? If not, what can the company offer as compensation?

2. **Consensus.** There is also the risk of a *practical* loss as the Amazon company would have the power to set rules for the allocation of .amazon domain names.
3. **Point to deepen.** The Amazon company offered the proposal to make the .amazonian domain viable (to some extent a compensation) and the restriction on the .amazon of sensitive domains (the cancellation of a possible loss). These proposals, however, were not satisfactory - neither for the Brazilian government nor for the Amazon populations. Thus, it is relevant to reassess what exactly might be satisfactory, what interests of the Brazilian government and the populations can be met - or if, after all, the most preferable outcome would be the non-use of the .amazon.

1. **Consensus.** At ICANN, governments have only an advisory role. Governmental opinion approved by consensus is not mandatory, it only creates a very strong presumption that it should be accepted - but it can be rejected. Making a decision to ignore the position of governments and to follow in favor of companies at that time would create an environment of questioning the legitimacy of ICANN and its decisions. The .amazon issue, therefore, is likely to have profound implications for ICANN, and its outcome will serve as a model for future similar conflicts.

1. **Point to deepen.** The GAC, due to its advisory nature, in thesis may have its positioning ignored. This possibility leads to government dissatisfaction. It is a point of tension in the present debate, and leads to questioning the roles of governments within ICANN.
2. **Consensus.** Although the .amazon issue primarily affects a roster of 8 Latin American countries, this issue has caught the attention of many other governments in the GAC.
3. **Dissent.** Milton expresses the position that governments do not necessarily belong to the geographical domains in their territories.

This fits into ICANN's overall perspective, which has favored the use of the ISO list to guide this debate. On the other hand, governments have a maximalist logic, their preference would be to establish a list of names that could not be used by private companies, and on the other hand, what was not on that list could be pleaded.

1. **Consensus.** Governments, corporations and ICANN have fundamentally different perspectives.

1. **Consensus.** At first, among the panelists, there was agreement on the legitimacy of the parties. Within a corporate logic, the pursuit of its corporate interests as a company is legitimate, and the position of the government, based on the sensitivity of the name, is no less legitimate. They are two legitimate and different approaches. What is being sought now is to find a compromise that is in the best interest of both parties.

1. **Dissent.** The interventions were questioned, however, the legitimacy of the lawsuit of the Amazon company. In the words of Marcos Dantas, "Amazon as a company, despite all its gigantism, is not above governments. But Amazon, by its gigantism, wants to seize a word that belongs concretely and subjectively to many and many other interests. (...) Governmental litigation is legitimate, Amazon litigation is not legitimate. "

2. **Consensus.** There are legitimate reasons why a company should be interested in having a Brand TLD - for example, to combat fraud, as exposed by Mark Datysgeld.
3. **Consensus.** There is a difference of logic and language between companies (from an overly legal and contractual perspective) and governments (from a political and diplomatic perspective). This difference has caused damages to the negotiations, there is no synchrony in the approaches.

1. **Dissent.** It was proposed that the Amazon company should make an effort to communicate from the governmental perspective (instead of governments discussing from a business perspective). At the same time, governments will not cease to be governments, and companies will not cease to be companies. It is not expected that each industry fails to pay attention to its interests.

1. **Consensus.** Amazon followed the instructions of the ICANN Applicant Guidebook in requesting the First Level Domain Name.

1. **Dissent.** Mark Datysgeld states that there are two distinct discourses within the GAC: there are those who propose to block the application and non-availability of .amazon, and there is a proposal to defend the interests of Amazonian peoples. Not necessarily the two lead to the same outcome. Cláudio Lucena, however, says that he did not observe the interest of "blocking for block" an asset, and that there would be interest from governments if there was a way to exploit the TLD that would serve the interests of all.

1. **Point to deepen.** The populations may not be bothered with blocking the ammonium. Even if populations and governments do not want to exploit it now, the name should remain reserved. It will be explored by countries if they want, whenever they want. In the words of Renata Mielli: "Not everything needs to be commercialized from the point of view of domains." So it is not Brazil or communities, Amazon companies have not yet claimed. we do not want the existence of a worldwide .amazon gTLD, and that is legitimate, not wanting this domain to be exploited. "

1. **Consensus.** Since 2013 we have been looking for a consensual solution that meets all interests. If this is not possible, the Board will have to make the decision and it will not be easy.

1. **Consensus.** At ICANN, decisions are made by people who may be oblivious to the realities of local communities. The end user can also be harmed by trying to integrate into domain name discussions because of the high number of acronyms and technical terms.
1. **Point to deepen.** Since a formalized letter was sent representing various peoples and countries in defense of their interests, the question is asked about the impact of this within ICANN's decision-making. If this letter has no meaning in ICANN, the structure of the organization does not reflect social interests. What is the value of the declaration mechanisms of peoples?
1. **Dissent.** There was no consensus on "Who owns the .Amazon?" There was a diversity of responses: that it is a common good and belongs to no one in particular, that belongs to the people, that belongs to the State since it represents organized society, which does not belong to anyone yet because it is in process of delegation.
 1. **Point to deepen.** This demonstrates the diversity of fundamentally different approaches. Some demonstrate commercial and corporate interests, while others protect civil society and government interests.
1. **Consensus.** The government has already ascertained the perspective of the Brazilian people, especially in 2013. A process of consultation of Amazonian populations at this time may be redundant and would be very difficult given the specific difficulties of the region.

SUMMARY OF THE TALKS.

Milton Mueller:

Sympathetic to the .amazon concession to the eponymous company, given the lack of competition.

Amazon was willing to pay for alternative domains such as .amazonia and .amazona.

It is stated that governments do not necessarily belong to the geographical domains in their territories.

The guarantee of a TLD does not guarantee the reality of that name. Its use as a Top Level Domain by a company does not subtract from social reality.

Ambassador Benedicto Fonseca:

Milton represents a liberal, libertarian side of the discussion, grounded in a commercial interest. It is legitimate, within the interests of the company, within the corporate logic.

However, the assignment of .amazon to the company will guarantee a monopoly. Even if others can use it, the company can establish the filters and rules for the use of .amazon.

The government follows another logic, a "maximalist."

Governments' preference would be to establish a list of names that could not be used by private companies, and on the other hand, what was not on that list could be contested. Initially it was requested by Brazil, later by the countries of South America, then the countries of Latin America and after the world showing an international pressure by the domain name Amazon. He speaks in ICANN's differentiated and multisectoral format, saying that ICANN is not an encapsulated system in the world.

There is a clash between positions that reflect corporate and government interests.

Cláudio Lucena:

He begins to talk about his work in the Fellowship with Milton and says that this way he puts it is not very clear. Two things are important: the path that will take the path of multistakeholders, and also speaks of state intervention. What would be the role of governments in decision-making within ICANN? Even when governments reach a consensus, they find problems in ICANN to have their positions heard, having to take into account the sensitivity of this governmental participation. Mention of large players whether geopolitical or corporate.

Counselor Flávia Lefevre:

Speaking based on the positioning of the CGI with which PROTESTE agrees, it begins by offering contextualization.

In 2012, ICANN decided to expand the gTLDs. Can not be shared, for exclusive use. ICANN decided to use the ISO list to guide this debate.

There was a consensus at the time not to distribute and allocate a name when countries presented opposition.

Amazon is not on the ISO list and the company has paid for using that name. ICANN has shown a willingness to authorize.

Both Brazil and Peru were against and got support within the GAC. They advanced the proposal that even geographical names not listed in the ISO should be countersigned by the countries, causing the GAC to deny the company's request.

In both 2014 and 2017 the Amazon company tried to appeal within ICANN, this time with a certain favoritism in relation to authorizing and deferring the company's request, causing concern in the area of multisectorialism. The CGI released a public note (in a unanimous decision) asking ICANN not to review its decision. It discusses the importance and legitimacy of the GAC as an advisory and non-directive body. Speaking about the Brazilian interests in relation to the name and considering the role of the CGI, it understands that the CGI must conduct public research on the subject to strengthen the position of the Brazilian government before the GAC.

Maurília Gomes:

This debate influences everyone in the region. Perspective of who is from the Amazon. Even though it is not on the ISO List, the Amazon region encompasses 9 countries, 7 million square kilometers. There is a vast biodiversity. It bothers me a lot in this debate when they talk about the Amazon as if it were a land with no one, nothing, no production of knowledge.

There are more than 20 million inhabitants in the legal Amazon. In these inhabitants are the traditional populations (riverside, quilombola people, jangadeiros, indigenous, others group.)

The central point of this discussion is not "no one has asked the .amazon so far, so he has the right to be granted his request." We have to discuss whether we are going to hand over this domain to a corporation, private interest, or whether we will see it in the public interest (that goes beyond government, reaches civil society, academia, businesses that exist in the region, nano and micro companies to multinational companies). Domain has never been requested until today, but who guarantees that in the future it will not be necessary for local agents?

Most of who think about who asked first, we have to think that we are dealing with a strategic interest. This decision has to be made sensitively.

Criticizes the speech of Milton, and who says that it is a strategic interest yes and that the decision should be used an extreme sensitivity, and quotes a text from Demi Getschko. Defends Flavia's positioning.

Mark Datysgeld:

I will speak in my capacity as a researcher.

When we talk about geonames, we get the impression that things that are valid on other topics are no longer valid, which is not necessarily correct. Points that are ignored in this debate:

Why Amazon wants a new TLD? There are genuine reasons for companies to have new TLDs. When a company acquires a Brand TLD, it becomes the administrator of that brand, the only one that can issue names in that TLD. A company that suffers from a very high number of frauds like Amazon, by controlling this TLD, can reduce the number of frauds by instructing its users to only consider emails originating from .amazon addresses. There are legitimate reasons for Brand TLDs ..

We can not just deal with corporate interest. New TLDs are interesting.

The proposal of the GAC is not proposed to enable the debate that Marília and Flávia want. The GAC wants to stop the debate. It will not benefit the populations.

The proposal of Amazon: to make feasible .amazonia domains, and to restrict that in .amazon sensitive domains are used. It looks like a more robust solution. We can not just go by this immediate logic. So far the only valid intervention, in Mark's perspective, was at bestbits, a letter about it. The path as it stands now does not contemplate any of the points,

neither Amazon or populations, it just blocks the debate, without offering a significant counterpart.

Ambassador Benedicto Fonseca:

Factual issues: The final decision in this case rests with the ICANN Board. Governments have only an advisory role. Governmental opinion approved by consensus is not mandatory, it only creates a very strong presumption that it should be accepted.

Amazon has asked a panel to have the Board review the 2013 decision, arguing that the Board has been duped by governments. At the last meeting in Abu Dhabi Amazon repeated the point, and governments reacted very poorly.

Role of ICANN Governments: Finding out what public interest is worthy of being brought forward. There have been cases in this sense (.patagonia,. Africa).

There is no international standard today that says that name is protected, that only governments can, but there is no rule that says Amazon deserves to register. What kind of geographical names should be protected relative to domain names?

On the Board it is of great interest that this does not come to a confrontation. This will create a break in the system. Decision in favor of the company would create a very strong spin-off, which ICANN is biased in favor of business interests.

Protected name does not need to be exploited. Protected will not be exploited.

Mark Datysgeld:

Debate with Marília: The way the region wants to project: .amazon or, would it not make sense, the .amazonia? From my limited point of view, it seems to me that it would make more sense to .amazonia.

Ambassador Benedicto Fonseca:

Of the 8 countries in the organization we have countries that speak several languages. In domain delegation there is a rule that confusion should be avoided. There is confusion, even in the delegation of Amazon's English name.

Maurília Gomes:

Outside the Amazon is not known as "Amazon," it is known by the English name "Amazon."

Aquarium:

1- Bruna Santos (LAPIN) / ALAC Representative at NCUC:

A delicate issue in the ICANN field, it is a debate that is not finalized, in fact it is beginning to debate geonames, being very multistakeholder within the organization itself. What Amazon did is in accordance with the protocols that ICANN requested in the AGB booklet, and the company was not mistaken. It will not give an opinion.

2 - Luan Fergus (NCUC / Youth Observatory)

Parallel between STF da Vaquejada (no Northeasterner) and .Amazon (no Brazilian or Amazonian member within the GAC). Complication of the end user and even the members of the government to enter the debate because of the complicated acronyms, there being no integration of these communities within ICANN to debate.

3- Carolina Israek (USP) :

Binary issues: private interests or a population that claims, a problem in ICANN's organizational structure.

4 - Marcos Dantas (CGI.br):

Does the government represent the interest above the rest? Yes, the government represents organized societies and the government representing a democratic society is yes above, and geonames do not belong to anyone but are free names, and they should not be blocked anymore, with Amazon being the English name of a geographic region and of a giant company of the same name. He talks about how the government should be representing those interests, disagreeing with Ambassador Benedict, the governments' lawsuit is legitimate but not Amazon's.

5 - Thiago Novais (Secretary General of ABDJD):

Refers to Marcos Dantas and state theory. It talks about legitimate interests in the Amazon, and about the collective and social, and how they are being subjugated by commercial interests, and also speaks of the lack of internet connection and general connection, making state intervention necessary, and speaks up about the protection of lands and indigenous rights, talking about this role of states and governments.

6 - Thiago Tavares (Safernet):

It talks about non-commercial users (from the NCUC constitution). In his second clarification, he talks about compliance with the rules of Amazon and the GAC. Third, it talks about international interest because this case will be used as a precedent for all other cases of geonames, with many other countries showing interest in supporting the Amazonian countries. Fourth, talks about the first level mentioned by Mark, talks about the great market place of Amazon, and the company can also expand to the second level. And he cites his case about Bahia responding to the Luã about Feira de Santana and the CGI consultation.

7 - Tamara (CGI.br):

When talking about these names one speaks about the region and not the company itself, being the question why Amazon is so concerned about having .Amazon that is the name of a region, and these regions can behave any way they want. If it is lawful for the company to plead, it is even more lawful for the government to defend its regions. Internationally it has already been decided, while in Brazil it is still being discussed who this TLD belongs to. The discussion should follow according to what the CGI decided.

Final considerations:

Mark Datysgeld:

Responding to Carol, talks about what is being done in the GAC, whether it is to block or defend the interests of the Amazon peoples.

Ambassador Benedicto Fonseca:

It talks about the financial power of the Amazon company, generating this process and buzz and comparing with the case of Patagonia, etc. To withdraw from governments the possibility of objectifying.