

1 IN THE MATTER OF INDEPENDENT REVIEW PROCESS
2 BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
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6 AMAZON EU S.A.R.L.,)
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10 Claimant,)
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12)
13 vs.)No. 01-16-0000-7056
14)
15 INTERNET CORPORATION FOR)
16 ASSIGNED NAMES AND NUMBERS,)
17)
18)
19 Respondent.)
20 _____)

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23 TRANSCRIPT OF PROCEEDINGS
24 Los Angeles, California
25 Monday, May 1, 2017
 Volume I

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Claimant,)
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vs.)No. 01-16-0000-7056
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INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS,)
)
Respondent.)
_____)

Transcript of Proceedings, Volume I, taken at
555 South Flower Street, 50th Floor, Los Angeles,
California, beginning at 9:42 a.m. and ending at
4:50 p.m. on Monday, May 1, 2017, before Melissa M.
Villagran, RPR, CLR, Certified Shorthand Reporter
No. 12543.

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5 Former United States District Judge

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11 Senior Counsel

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8 Casandra Furey

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12 Dana Northcott

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1 Los Angeles, California, Monday, May 1, 2017

2 9:42 a.m.

3
4 ARBITRATOR BONNER: On the record.

5 We will begin the hearing of the proceeding in
6 the Amazon/ICANN matter. The panel is here. Counsel
7 are present.

8 Let me start with appearances from counsel.
9 Let's start off with the claimant's counsel.

10 Mr. Thorne?

11 MR. THORNE: I am John Thorne, T-h-o-r-n-e. And
12 I'm joined by two of my partners, Mr. Greg Rapawy,
13 R-a-p-a-w-y, and Ms. Rebecca Beynon, B-e-y-n-o-n.

14 And if the panel will indulge us at some point, I
15 may actually ask them to address the panel. But
16 otherwise, I will be doing most of the talking for
17 Amazon.

18 We have four in-house lawyers from Amazon:
19 Mr. Charles Wright, who is an associate general counsel
20 at Amazon; Ms. Kristina Rosette, who is a senior
21 corporate counsel in charge of intellectual property;
22 Mr. Scott Hayden, who is vice president of IP
23 operations; and Ms. Dana Northcott, who is also
24 associate general counsel.

25 And then two very important helpers: Mary Ann

1 Endo and Emily Lewis, who make sure we have crisp
2 handling of documents.

3 That's our team, Your Honor.

4 ARBITRATOR BONNER: Good. Thank you, Mr. Thorne.
5 Mr. LeVee?

6 MR. LeVEE: Thank you, Your Honor.

7 Let me introduce first the person from who you
8 will hear this morning, Mr. Akram Atallah.

9 In the declaration that he submitted, he was at
10 the time the interim chief executive officer of ICANN.
11 He is today the deputy chief executive officer of ICANN.
12 And he previously was the president of ICANN's global
13 domains division and will explain briefly when I
14 introduce him. When he testifies, you will learn what
15 all that means.

16 Sitting to Akram's right is Amy Stathos. Amy is
17 the deputy general counsel of ICANN.

18 Sitting to Akram's left is Casandra Furey. She
19 goes by Cece. That's the only way I know her. I
20 apologize for that and I apologize to you. And Cece is
21 the associate general counsel of ICANN.

22 And sitting next to me is my law partner, Louis
23 Touton, T-o-u-t-o-n, who was ICANN's actual first
24 general counsel for a few years when ICANN started, and
25 he will be assisting me today.

1 Absent today is my colleague Kelly Ozurovich, who
2 actually is the one who knows all the documents. And
3 much to my chagrin, Kelly got stuck in a trial in New
4 York that has not concluded, and so she had two trials
5 today and somehow managed to stay in New York over my
6 objection.

7 Anyway, that's our team.

8 ARBITRATOR BONNER: Thank you.

9 So we have appearances.

10 Just a couple of housekeeping matters I want to
11 take up before we begin with any formal presentations or
12 openings.

13 But the panel had suggested to counsel for both
14 sides sort of an order of proceedings here. And since I
15 didn't expect any feedback on it, but we didn't get any,
16 I'm wondering whether what we proposed, which is up to
17 30-minute openings on each side followed by
18 Mr. Atallah's testimony, his examination, and then
19 followed by what will be, in all probability, a much
20 lengthier argument that will integrate the issues with
21 the facts presented.

22 Whether that's acceptable to counsel for both
23 sides or whether either one of you have a different or
24 alternative proposal --

25 MR. THORNE: Your Honor, as the proponent of

1 doing it a different way, we've come to like this way
2 and we're prepared to go forward with a very brief
3 introduction so we've set forth what the issues are that
4 we want to talk about. And then after hearing from
5 Mr. LeVee, spend as much time with Mr. Atallah as the
6 panel would like.

7 I think that may actually be the best use of the
8 day. And either for the rest of the day with additional
9 answering of questions or presentation and then
10 tomorrow, do whatever seems to make sense. Again, maybe
11 it makes sense at the end of today to revisit what
12 tomorrow's structure should be like.

13 ARBITRATOR BONNER: That sounds reasonable.

14 Although I think you might be thinking about you
15 may be starting your lengthy presentation today sometime
16 after we finish with Mr. Atallah, but we'll just see how
17 that goes.

18 MR. THORNE: We are prepared to do that today.

19 ARBITRATOR BONNER: We will discuss this further
20 when we conclude with Mr. Atallah as to where we are.

21 Mr. LeVee?

22 MR. LeVEE: We are proceeding along the guidance
23 that you provided to us Thursday, and we are happy with
24 that format.

25 ARBITRATOR BONNER: And we'd also asked counsel

1 to confer -- and I -- I realize this is a difficult kind
2 of thing to do, but just to come up with a list of
3 issues that I and my colleague certainly have to decide
4 after everything is presented here. Were you able to
5 make any progress in that regard? And if not, certainly
6 use your opening statements to help us define what the
7 set of issues are that we need to decide.

8 Mr. Thorne?

9 MR. THORNE: Your Honor, I think I will speak for
10 both of us. I think in good faith we attempted to reach
11 an agreed set of issues for the panel to decide, and we
12 didn't quite get there. And so I think both sides are
13 prepared to hand the panel what we think, each
14 individually, are the issues and we're happy to give
15 that to you now or at any point that it is helpful.

16 ARBITRATOR BONNER: If you have those now, why
17 don't you step forward into the very large well area.

18 (Whereupon, a discussion was held off
19 the record.)

20 ARBITRATOR BONNER: I'm wondering -- let me defer
21 to --

22 Should we have these marked as exhibits for the
23 record?

24 ARBITRATOR O'BRIEN: I think so.

25 ARBITRATOR BONNER: Yeah. And if we did, what

1 would be the exhibit number next in order for the
2 proceeding?

3 MR. THORNE: Your Honor, we actually prepared
4 exhibit numbers for use with Mr. Atallah.

5 This wouldn't be an Atallah exhibit.

6 Do we have additional exhibit stickers?

7 ARBITRATOR BONNER: What is the last number CU
8 dash what?

9 MR. THORNE: Depends how far you let us go, Your
10 Honor.

11 ARBITRATOR BONNER: We're hoping that we reach
12 sort of the finite point here.

13 MR. THORNE: If we have blank stickers, why don't
14 we call this Hearing Exhibit No. 1 and Hearing Exhibit
15 No. 2. We'll keep those separate from the Atallah
16 exhibits.

17 ARBITRATOR BONNER: I think that's fine.

18 MR. LeVEE: I do want to explain one thing.

19 Mr. Thorne is accurate that we did attempt over the
20 weekend to reach compromise. We were not able to.

21 The submission that I just handed to you from
22 ICANN was an attempt to identify issues that we thought
23 were common. ICANN does not agree to all the issues
24 that are listed here that are, in fact, issues, but it
25 was our attempt to have them be common.

1 If panel would like, I could give to you tomorrow
2 morning a version that would reflect what ICANN's views
3 are of the issues that ICANN believes are before the
4 panel.

5 ARBITRATOR BONNER: I'll leave it to you right
6 now whether that's helpful as you see the process
7 unfolding.

8 For the moment, we have a document called "Amazon
9 Statement of Issues," which will be Hearing
10 Exhibit No. 1.

11 (Hearing Exhibit 1 marked for
12 identification.)

13 ARBITRATOR BONNER: Then we have a document
14 that's called "Amazon v. ICANN List of Issues" that the
15 panel will have to decide as far as reasoned
16 declaration, which we will mark as Hearing Exhibit
17 No. 2.

18 And I'll ask Mr. Thorne if he'd make sure that
19 the court reporter actually gets these two and
20 appropriately marks them with an exhibit number on each
21 of them.

22 MR. THORNE: We will do that.

23 ARBITRATOR BONNER: All right. So there was a
24 stipulation. The only one I'm aware of is
25 Exhibit C-102. It was a stipulation of the parties,

1 which is in the nature of a factual stipulation.

2 I'm wondering -- first of all, I think the panel
3 would be prepared to accept that stipulation, but it
4 would be helpful, I think, if we had a copy of it. And
5 I don't have a copy of mine here. Exhibit C-102.

6 While we're waiting to get the exhibits, is that
7 the only stipulation between the parties?

8 MR. THORNE: That is, Your Honor.

9 MR. LeVEE: Could I ask one question, if I could
10 approach.

11 ARBITRATOR BONNER: Yes.

12 MR. LeVEE: I may have stapled a document --

13 ARBITRATOR BONNER: You did.

14 MR. LeVEE: Could we just pull off the last two
15 pages.

16 ARBITRATOR BONNER: Let's do that because I was
17 going to ask you about that.

18 MR. LeVEE: I hadn't realized that we were going
19 to submit that this morning.

20 Thank you.

21 ARBITRATOR BONNER: So that means Hearing Exhibit
22 No. 2 is a two-page document.

23 (Hearing Exhibit 2 marked for
24 identification.)

25 ARBITRATOR BONNER: Thank you for providing

1 Exhibit C-102, joint stipulation of Amazon and ICANN.
2 And with the concurrence of my fellow panel members, I'm
3 going to accept this stipulation as being part of the --
4 and will be made part of the record in the case.

5 ARBITRATOR MATZ: Fine.

6 ARBITRATOR BONNER: And admit it if that's
7 necessary.

8 So before beginning openings by counsel here, are
9 there any other preliminary matters that either counsel
10 anticipate? And then I'll ask the same of my
11 co-panelists.

12 Mr. Thorne?

13 MR. THORNE: Your Honor, we had flagged in an
14 e-mail last week that in the process of producing
15 documents, ICANN has identified some documents from its
16 files as highly confidential. And the effect of
17 identifying something as highly confidential rather than
18 confidential is my four colleagues from Amazon have to
19 leave.

20 They can see confidential documents as
21 represented to the party but not highly confidential
22 documents because they are not outside counsel.

23 What I would like to do, rather than take up time
24 now, is wait for the first of those documents to come up
25 and then ask the panel to address what will be my

1 question of whether it is properly designated as highly
2 confidential.

3 But I'd like to defer that until we have a
4 context of a particular document instead of in the
5 abstract.

6 ARBITRATOR BONNER: Just clarifying, so the way
7 this would come up would be -- Mr. Atallah is on the
8 witness stand and you're showing him a document.

9 How will this come up?

10 Or you're referring to it in your closing
11 argument?

12 Just tell me how this is going to come up.

13 MR. THORNE: My plan for the opening argument is
14 to say nothing that would be treated as highly
15 confidential. But at any subsequent point where I am on
16 the verge of using something that I understand is highly
17 confidential or Mr. LeVee sees something he thinks is
18 highly confidential, we will take up the issue then.
19 And either you all will rule that the Amazon folks can
20 stay or they will go to a breakroom for whatever
21 duration.

22 ARBITRATOR BONNER: Understood.

23 Mr. LeVee, it sounds like a reasonable approach.

24 What is your view?

25 MR. LeVEE: That approach is reasonable.

1 I just wanted to explain we have two types of
2 highly confidential documents and explain that ICANN has
3 a different approach. Some of the highly confidential
4 documents are e-mail and other exchanges that were
5 distributed within GAC, Governmental Advisory Committee.

6 ICANN produced GAC documents in this proceeding.
7 It was the first time that ICANN had ever said to the
8 GAC that it wished to produce documents out of the GAC's
9 files, extensive or not.

10 The GAC was not happy. Governments think that
11 their e-mail exchanges are confidential, and so they
12 were very concerned.

13 ICANN said, Well, we maintain your server, and so
14 we may have difficulty arguing that we cannot produce
15 these materials.

16 And the GAC, in weighing how to proceed, said if
17 you would produce those documents such that they would
18 only be seen by outside counsel, then we are okay.

19 As a result, we have not shown those documents to
20 Mr. Atallah or anybody else at ICANN except the lawyers.

21 And we designated those documents as highly
22 confidential and we wish to continue having them be
23 treated as highly confidential.

24 There are other documents that are designated as
25 highly confidential where, for purposes of today and

1 tomorrow, ICANN will not object to allowing everyone to
2 stay in the room. So if it's a GAC document, we would
3 like to exclude all the witnesses, including
4 Mr. Atallah. And if it's not a GAC document, then we
5 are fine. And I'm happy to do that on an ad hoc basis
6 as it would come up, but I wanted you to understand that
7 we do have a different position on the two sets of
8 highly confidential.

9 ARBITRATOR BONNER: I appreciate having that
10 clarification, and I agree with you. Proceed. And when
11 you think, really, Mr. Thorne needs to be sensitive for
12 those highly confidential documents that were generated
13 from GAC that were from e-mails that were exchanged
14 between or among -- I'm not sure who, but the GAC, we'll
15 call them the GAC e-mails.

16 Does that sound reasonable?

17 MR. THORNE: I think so, Your Honor.

18 I want to be very careful. We have a protective
19 order that everyone on our side respects. And I want to
20 be very careful in proceeding. I think I know the
21 difference between documents generated within ICANN, its
22 staff, its leadership versus documents within GAC. I'll
23 proceed with my understanding, but I'm going to ask for
24 Mr. LeVee's help. If you see something that you think
25 is a GAC-produced document, we'll take up the argument

1 at that point.

2 MR. LeVEE: And that's fine.

3 I will say that ICANN will maintain the highly
4 confidential, outside counsel only designation for the
5 documents in terms of the transcript, in terms of future
6 proceedings. But to facilitate today and tomorrow,
7 that's how we propose to proceed.

8 ARBITRATOR BONNER: Understood.

9 MR. LeVEE: I don't want, for example, if Amazon
10 has a highly confidential document that is produced, I
11 wouldn't want my client taking a copy and walking away
12 with it.

13 Likewise, our highly confidential documents that
14 might be exhibited on the screen today, I wouldn't want
15 the Amazon people to be able to walk away with a copy.

16 ARBITRATOR BONNER: Judge Matz.

17 ARBITRATOR MATZ: I just want to encourage or
18 request counsel, especially when you're speaking to us
19 from counsel table as opposed to the lectern, but really
20 in all respects, to keep your voices up. I haven't
21 missed anything but this is a large room and your voices
22 tend to trail a little so it would be welcome if you
23 keep your voices up, please.

24 MR. THORNE: Thank you, Judge. Let us know if we
25 wander low.

1 ARBITRATOR BONNER: All right. Then that sounds
2 like a reasonable approach to me.

3 So let me ask Judge Matz, Judge O'Brien, Mr.
4 O'Brien -- let me ask my co-panelists, any other things
5 we should take up before we start with the openings?

6 ARBITRATOR MATZ: Nothing I can think of.

7 ARBITRATOR O'BRIEN: No.

8 ARBITRATOR BONNER: So, Mr. Thorne, you're on.

9

10 OPENING STATEMENT

11 BY MR. THORNE:

12 Thank you, Judge Bonner. Thank you, Judge Matz,
13 Judge O'Brien. Also, I want to thank Jones Day for
14 hosting us in this room and for the lunch that I'm
15 anticipating.

16 We've introduced everybody behind us.

17 One other preliminary point and I'm just going to
18 rev up and go.

19 I am going to attempt to limit jargon that I use,
20 but there are three things that have now become second
21 nature for me, and maybe they are already second nature
22 to the panel so I will describe these.

23 IRP, Independent Review, that's the process the
24 panel has before it. NGPC, New gTLD Program Committee,
25 that's the committee of the ICANN board that made the

1 decision. And GAC, we talked about that, Governmental
2 Advisory Committee. That's the group of countries that
3 provides advice to ICANN.

4 So if this case follows -- I'm trying to think
5 the easiest way to describe our case. It follows from
6 two prior IRP panel decisions that are precedential, and
7 I think they are decisive here. DCA Trust, which is
8 found in the materials that we provided earlier. It's
9 Document CLA 2.

10 You recall that the CLA was somebody's idea for
11 Claimant Legal Authority 2 DCA Trust. And the second
12 case is Gulf Cooperation Council, GCC. And there are
13 two decisions there, CLA 29 and CLA 31.

14 Both of those cases involved GAC advice at the
15 same time as the -- in the same two GAC meetings, in
16 this case, Beijing and Durban. Both cases involve
17 geographic names. Both cases held that the NGPC may not
18 mechanically defer to the GAC.

19 Whether relying on GAC advice or relying on the
20 lack of consensus GAC advice, the NGPC must identify the
21 relevant core values and produce a -- this is the phrase
22 from GCC, produce a reasoned judgment rather than a
23 phrase from GCC, an arbitrary exercise of discretion.

24 The NGPC cannot produce a reasoned judgment if
25 its decision depends on GAC advice that has no

1 rationale, is based on an incorrect rationale, is based
2 on anti-U.S. bias that is known to the NGPC, or if the
3 NGPC ignores the substantial interests of the applicant
4 and its customers.

5 So briefly, DCA Trust was the applicant that
6 applied for the string .africa.

7 Unlike Amazon, Africa is actually on the list of
8 geographic names identified in the Guidebook that
9 required 60 percent of the local government support. A
10 group of African nations recognizing they got some power
11 over the name decided to issue an RFP to select who was
12 going to win the .africa string.

13 DCA Trust, the applicant did not participate in
14 the RFP and the name was granted in the RFP by this
15 group of African nations to a company called ZACR. I
16 don't actually know what that stands for, but that's the
17 name of the competing applicant that won the IRP.

18 At the Beijing GAC meeting, the African nation
19 pushed for and obtained consensus GAC advice to enforce
20 their RFP to ZACR, the NGPC that accepted the GAC advice
21 and rejected the DCA Trust competing application,
22 meanwhile helping ZACR to accelerate its allocation.
23 That's the basic fact situation there.

24 Mr. LeVee, representing ICANN in that case, made
25 the same argument he's making here. I'm quoting from

1 the DCA Trust opinion (as read):

2 "If the only thing that happened
3 was that the GAC did something wrong,
4 an IRP panel would not be allowed to
5 address that."

6 That's quoted for the panel at paragraph 100,
7 page 42 of the decision.

8 But Mr. LeVee went on to concede that if the
9 ICANN board knew the GAC did something wrong, then we're
10 dealing with board conduct.

11 The panel did not find that line of argument
12 persuasive. The panel in that case did hear testimony
13 from the then GAC chair Heather Dryden, same GAC chair
14 as in .amazon. The panel did not find her persuasive.

15 She, under repeated questioning from all the
16 panel there, disavowed her written testimony and
17 explained, I think truthfully, that GAC is all about
18 politics. So ICANN's own summary of what happened, what
19 the panel held in that case -- this is in a board
20 resolution adopted by ICANN July 16, 2015. I'm quoting
21 from ICANN's own summary (as read):

22 "The panel, DCA Trust panel, cited
23 two main concerns relating to the
24 GAC's advice on DCA's application.
25 Number 1, the panel was concerned that

1 the GAC did not include and that ICANN
2 did not request a rationale on GAC's
3 advice. And second, the panel
4 expressed concern that ICANN took
5 action on the GAC's advice without
6 conducting diligence on the level of
7 transparency and the manner in which
8 the advice was developed from the GAC.

9 "The panel found that ICANN's --
10 not the GAC's conduct -- ICANN's
11 conduct was inconsistent with the
12 articles and bylaws because of certain
13 actions and inactions of the ICANN
14 board."

15 That's Precedent No. 1.

16 Precedent No. 2 -- I'm sorry. Before I go to the
17 next one up, in the briefing there, we had extended
18 briefing. Thank you for allowing that.

19 ICANN has not tried to distinguish DCA Trust.
20 It's a striking absence.

21 Second precedent, GCC, which stands for Gulf
22 Cooperation Council, that's an alliance of six Arab
23 nations. It involved another body of water, the body of
24 water separating the Arabian Peninsula from Iran. Its
25 name is disputed. I'm told that on maps, the wrong name

1 is banned. If you have a publication, if you use the
2 wrong name, it's censored.

3 The contending names are Arabian Gulf and Persian
4 Gulf. Iran favors Persian Gulf. The Arab States favor
5 Arabian Gulf.

6 The same independent objector who objected here
7 to .amazon, Alain Pellet, declined to submit an
8 objection in that proceeding. He considered it, quote,
9 most debatable that the gTLD would, quote, create a
10 likelihood of material detriment.

11 So GCC, the Arab nations, filed a community
12 objection on its own. And Judge Schwebel was assigned
13 as an independent judge to rule on the community
14 objection. Judge Schwebel held that while GCC has
15 standing, there's a defined community of the gTLD
16 Persian .persiangulf targeted community. However, he
17 found no likelihood of material detriment. Quote by
18 Judge Schwebel (as read):

19 "Even the geographic names can have
20 significant impacts on international
21 relations, awarding this string would
22 not, in his words, exacerbate or
23 significantly affect the dispute."

24 He went on to say GCC could apply for the
25 .arabiangulf string if it wanted to. So in that case,

1 the GAC considered .gulf at the Beijing and Durban
2 meetings alongside the .amazon names here, but it did
3 not reach a consensus.

4 The NGPC decided mechanically that if you have no
5 consensus, the application proceeds. So the opposite,
6 no consensus application must go forward.

7 The IRP panel in that case held that what the
8 NGPC had done did not count as a reasoned judgment, and
9 they cited DCA Trust as, quote, the IRP precedent that
10 we find most helpful.

11 So applying those precedents, ICANN's decisions
12 with the NGPC to block the Amazon applications violates
13 the articles, the bylaws, and the Guidebook three ways.
14 First, the NGPC cannot base its decision on the GAC's
15 advice without knowing and evaluating the GAC's reasons
16 for the advice. Here the NGPC in its decision notes, we
17 don't have the benefit of knowing the GAC's rationale.

18 Second, the NGPC could not accept the GAC's
19 advice based on the reasons given by Brazil and Peru.
20 Those reasons were not adopted by the GAC, but also,
21 those reasons are tainted by legal and factual errors
22 and by improper bias against U.S. companies.

23 Third, the NGPC totally failed to give
24 consideration to the legitimate interests of Amazon and
25 its customers and, instead, it dismissed them as

1 irrelevant. So those are basic. Basically GAC had no
2 rationale for the NGPC to consider the rationales
3 ascribed from Brazil and Peru were wrong or biased, and
4 there was no balance of the applicant and its customers'
5 interests.

6 To elaborate just a little bit, DCA Trust held
7 squarely the GAC has to give reasons and the NGPC has to
8 know and be able to evaluate.

9 On a going-forward basis, ICANN now agrees that
10 the GAC must give reasons for its decision. That's not
11 part of the 2016 bylaws, Section 12.3. The codification
12 and approval by the Internet community of the principals
13 shows that you need a rationale for it to count as
14 advice and be useable. That demonstrates it's feasible
15 and appropriate.

16 We view that as a codification of holding a DCA
17 Trust as opposed to something new, and therefore, we
18 don't need to control 2016 bylaws (verbatim).

19 Now, what the NGPC actually does in its decision
20 saying, first, well, we don't have the benefit or
21 rationale of the GAC. We do know what Brazil and Peru
22 were thinking. Those are not bases that can be relied
23 upon. I'll tick through them very quickly. Maybe with
24 Mr. Atallah's help we can go through them more
25 carefully.

1 Peru argued that the string Amazon was a
2 geographic name under the Guidebook, meaning on the
3 lists. Now, ICANN admits that they wrote this in their
4 October brief to the panel, and it's one of the factual
5 stipulations. ICANN admits Amazon is not a geographic
6 name within the meaning of the Guidebook. It's not on
7 the lists.

8 But when the GAC met in Durban and the different
9 GAC members were pitching each other to go along with
10 it, Peru argued repeatedly in the transcript that we
11 have that it is on the list. Amazon's a listed name;
12 therefore, it's blocked unless we approve it.

13 Amazon wasn't allowed to be at the GAC meeting in
14 Durban. We weren't allowed to be there to correct the
15 error.

16 Second point, Brazil has wrongly argued that
17 governments have sovereign power over these names.
18 Brazil refers to it as principle of protection of
19 geographic names. There is no such principle.

20 The NGPC here hired an expert in international
21 law -- that's the one thing -- one additional step the
22 NGPC took, hired Jerome Passa to look at the
23 international law question. He came back and said,
24 Well, no, there's no sovereign right to this name. No
25 reason you can't give it to Amazon. Heather Forrest,

1 the expert whose report Amazon has submitted and the
2 panel confirms, we have two expert opinions. There's no
3 sovereign right of Brazil to that name.

4 Both Brazil and Peru argued that Amazon's use of
5 the name would harm the people of the Amazonas region.
6 The same contention was looked at and rejected by an
7 ICC-appointed expert as implausible and unsupported.

8 And the reasons he gave -- he gave a lot of
9 reasons for rejecting the one independent objection
10 -- the reasons he gave on this point were as follows:
11 The Guidebook says your exclusive use of the name isn't
12 a harm that counts. It's not a material detriment under
13 the Guidebook, under the process called community
14 objection, which is another process the governments
15 could have followed.

16 The Guidebook recognizes if you assign a name, it
17 can't be assigned to somebody else ordinarily. And
18 that's not a material harm. Somebody is going to get
19 it.

20 Second, there's no evidence that Amazon's
21 existing longstanding use of the Amazon name had caused
22 any harm. And the expert also noticed there are other
23 names available Amazonas, Amazonia, Amazonica.

24 And unusual in this situation but undercutting
25 this concern further is Amazon offered to share. Amazon

1 offered settlements over a long period of attempted
2 negotiation both before and after the NGP decision,
3 trying to settle this with some sort of a sharing
4 arrangement.

5 So even with all these other alternatives, Amazon
6 would have shared in some form.

7 So the final error here is the NGPC represents a
8 community, includes governments. But it's rooted in the
9 private sector. It's a community of actual companies
10 that are building a -- built and are building an
11 Internet. And in representing the community, as the
12 precedents hold, the NGPC had to take everybody's
13 relevant stakes into account.

14 So Amazon and its customers' interests mattered
15 too. We'll talk more later about Amazon's interests,
16 but the key point is when you look at the NGP's (sic)
17 rationale, it does not mention Amazon's interests.

18 It talks about the GAC. The importance of GAC
19 advice. It talks about Amazon's negotiation with GAC
20 members. It talks about Amazon's arguments against the
21 GAC advice. It does not mention any positive reason for
22 granting the application.

23 So if you compare this, for example, to GCC
24 decision you can't have a reasoned decision that
25 balances the factors when you ignore some of them.

1 So ICANN has -- very briefly, ICANN has several
2 counterarguments to the basic pitch. They say we are
3 challenging the Guidebook. Well, we are out of time.
4 We should have done that sooner. If we want to
5 challenge the Guidebook. We actually think the
6 Guidebook supports this. We're not challenging the
7 Guidebook. We will talk about that more later.

8 But in any event, in the hierarchy, the articles
9 and the bylaws were control.

10 They say that the panel can't review what the GAC
11 did, only what the NGPC did. To be clear, we are
12 challenging the NGPC's decision to accept the GAC
13 advice. GAC violations are relevant to whether that was
14 a good decision, but we are challenging the NGPC's
15 decision. As I mentioned, the same arguments were made
16 by Mr. LeVee and DCA Trust and similar arguments were
17 made in GCC and not accepted.

18 Mr. LeVee argues his side, that the Guidebook
19 talk about a strong presumption of following consensus
20 GAC advice.

21 There's no dispute here that it's a strong
22 presumption, but strong doesn't make it conclusive. And
23 if this advice has to be presumed correct, where there's
24 no reason -- the only ascribed reasons, as we'll get to,
25 there's an evidence known to the NGPC of anti-U.S. bias.

1 If the presumption isn't overcome here, it's never
2 overcome.

3 ARBITRATOR BONNER: Known to the NPCG (sic) and I
4 missed the --

5 MR. THORNE: Anti-U.S. company bias.

6 So a new argument that came up in the April 5
7 brief of ICANN is that GAC members or anybody can come
8 up with new geographic names ad hoc. We have lists, and
9 that was clear and easy. But if the GAC wants to add
10 new names, it may.

11 We'll talk about that in great length. As we
12 briefed, that's inconsistent with the taxing structure
13 of the Guidebook. In particular, it's inconsistent with
14 a clause in the Guidebook that says all of the
15 supporting documents to this process are found here.
16 It's an entire contract clause.

17 The document that Mr. LeVee is pointing to now
18 isn't in that collection. It's outside of that
19 collection. The document he points to now is giving the
20 GAC greater powers of defining geographic names was not
21 put up for public comment.

22 Now, we're not arguing that it should have been
23 put up for public comment. That would have been some
24 time ago. But we're arguing that the fact that it
25 wasn't put up for public comment means, as bylaws

1 provide, it can't have a material effect on third-party
2 rights because everything that has an effect on
3 third-party rights is supposed to go up for public
4 comment. This didn't go up for public comment and that
5 helps you interpret it as something that doesn't change
6 the rights that exist under the bylaws --

7 ARBITRATOR BONNER: What is the "this" there? I
8 just want to make sure I understand. That's --

9 MR. THORNE: Geographic names are defined in the
10 Guidebook on two lists. There's the first list --

11 ARBITRATOR BONNER: The ISO list, right?

12 MR. THORNE: Correct. First list, the names you
13 can't have. And a second list includes things like
14 Africa that you can have, but you need support of
15 60 percent of the nearby governments.

16 Amazon is not on the list. Peru thought it was;
17 it's not. And ICANN agrees, now, Amazon is not on those
18 lists.

19 And the clarity of that process and the text that
20 says if it's not on the list, the application shall
21 proceed is -- I think that trumps anything that isn't
22 part of the Guidebook.

23 ARBITRATOR BONNER: By the way, I don't want to
24 lose your train of thought here, but I'm just kind of
25 curious. Maybe Mr. LeVee can answer this too, but it

1 just seems a little bit odd that Amazon isn't on the
2 geographic name list of the list of ISO names. And I
3 haven't actually seen that list. I'm not even sure it's
4 an exhibit here. But, I mean, are rivers typically on
5 the geographic name list, are they not? Or is it some
6 are, some aren't?

7 MR. THORNE: They are not. So if there's another
8 river -- the Ipiranga, it flows through Brazil. It's in
9 the Brazilian National Anthem.

10 The Brazilian oil companies --

11 ARBITRATOR BONNER: But it's not on the list
12 either --

13 MR. THORNE: Not on the list.

14 ARBITRATOR BONNER: -- on the guidebook's --

15 MR. THORNE: Mississippi River's not on the list.

16 ARBITRATOR BONNER: The Rappahannock apparently
17 is not on the list.

18 MR. THORNE: Actually, Mississippi might be on
19 the list because it's a state name, but not as a river
20 name. So all geographic formations are not on the list.

21 And it was a choice, a hotly debated choice with
22 a bias toward let's be clear and make this an
23 administrable process. Some names you can't have. Some
24 names you need local support. Other things, go apply.

25 So there was a panel in the initial version of

1 the geographic names panel. All the documents we may
2 introduce to Mr. Atallah is the results of the
3 geographic names panel evaluation of each of these
4 applications.

5 They said we passed.

6 ARBITRATOR BONNER: How does language fit into
7 this, by the way, if I were looking at the ISO both on
8 names -- geographic names that could be used and so
9 forth?

10 I mean, is it -- in any language, is it in the
11 dominant language that people in the region refer to,
12 the geographical political subdivision that by orders of
13 the English, is it the Spanish, is it Portuguese?

14 I'm just trying to get a sense of how you would
15 do that, and I don't understand it.

16 MR. THORNE: The two lists are treated
17 differently. The first list, the names that are
18 verboten, you can't have any language --

19 ARBITRATOR BONNER: This would be .unitedstates,
20 .brazil --

21 MR. THORNE: Right.

22 ARBITRATOR BONNER: -- countries or known
23 political subdivisions.

24 And the rationale is it would be misleading.
25 Anybody that would have that name other than the

1 governmental entity, it would be potentially misleading
2 to the public using the Internet, wouldn't it?

3 MR. THORNE: That's correct.

4 ARBITRATOR BONNER: Isn't that the rationale for
5 it?

6 MR. THORNE: That's correct.

7 ARBITRATOR BONNER: Okay. So now there's a
8 second list of names --

9 MR. THORNE: Second list where you need local
10 support requires an exact match. So Amazonas is on the
11 list, I'm told, but Amazon is not. And to have an exact
12 match, you would need an exact match. And so Amazonas,
13 for example, is available to --

14 ARBITRATOR BONNER: Still available, right?

15 MR. THORNE: And Amazonica, which we will get to
16 a document that shows there's an organization, the OTCA,
17 which in Portuguese means some association of Amazonica.
18 But they use the phrase "Amazonica." And Amazonas,
19 Amazonia are all other names that are available and
20 actually used by peoples in that region.

21 ARBITRATOR BONNER: Well, it's just background,
22 maybe a little bit off point.

23 Judge Matz?

24 ARBITRATOR MATZ: I want to go back to what you
25 were referring to before your most recent colloquy with

1 Judge Bonner, and that's some document that was pointed
2 to in the April 5th brief of ICANN to which you
3 responded in your reply and you say it wasn't put out
4 for public comment. I'm referring to what you were
5 telling us a few minutes ago.

6 What is the exhibit number for that document?

7 MR. THORNE: It's called "The Launch Rationales"
8 and I'll get you the exhibit.

9 ARBITRATOR MATZ: Okay. And I would invite or
10 encourage all counsel, if you are telling us about a
11 particular document that's now part of the record that
12 has been assigned an exhibit number, please in your
13 comments give us the exhibit number.

14 MR. THORNE: Will do. Thank you for that
15 suggestion. We'll do that, and I will get you the
16 document number for the -- it's called "The Launch
17 Rationales" in the briefs. I believe it has an R
18 number.

19 I have one more point, and then I'm done. I hope
20 I haven't run over my half-hour.

21 ARBITRATOR BONNER: You are good.

22 MR. THORNE: We are asking the panel to exercise
23 your power to issue a binding order on ICANN to give
24 Amazon the names it applied for. And ICANN's adoption
25 of the ICDR rules gives you -- you have power under ICDR

1 rules which are adopted here.

2 DCA Trust says you have that power. Vistaprint's
3 to the contrary. Vistaprint's another new precedent
4 cited by ICANN says it didn't think it did. But the
5 bylaws in 2016 -- again, we don't need to rely on this.
6 If I cite DCA Trust in the existing ICDR rules, I think
7 I have got the power.

8 But the 2016 bylaws now make it clear for all
9 panels going forward that we may issue binding remedy.
10 And even ICANN has in it in the course of its briefing
11 with (inaudible) initially that said their power was
12 limited to declaring consistency with the articles and
13 the bylaws. Now they agree we can recommend an action.

14 But our basic pitch whether you issue a binding
15 order or a recommended action is there ought to be a
16 time limit on it. Amazon tried for three years to
17 negotiate with the countries of the region and was
18 unsuccessful; offered various sharing options. ICANN
19 was involved in trying to facilitate a negotiated
20 settlement. It hasn't worked.

21 So sending something back without a time limit is
22 likely to lead to endless additional discussions, and so
23 I -- we would urge you, whether it's mandatory or
24 recommended, put a time limit on it.

25 ARBITRATOR MATZ: I don't think this would be the

1 time that would be optimal, but there is an obvious
2 difference between an order and a recommendation. And
3 when you return to this at some point later on in this
4 hearing, please be prepared to answer this question.

5 What, if anything, would you be looking to this
6 panel to do if all we do is issue some recommendation
7 and that recommendation is not adopted?

8 Don't answer it now, but I would like to know
9 what your view is about that.

10 MR. THORNE: We will come back to it. And I
11 think that's probably best addressed after the witness
12 testifies.

13 The Launch Rationales document that I referred to
14 is Document R 76.

15 ARBITRATOR MATZ: All right. Thank you.

16 ARBITRATOR BONNER: I have one other question
17 before you leave the lectern. And again, it's just sort
18 of background and it may be inappropriate and may be
19 irrelevant to the proceeding, but it's just things you
20 think about when you read the briefs.

21 And that is, the top-level domain names that I'm
22 familiar with and the only ones I'm really still
23 familiar with are .com, .edu, .gov, .org. So what do
24 you do with a .amazon? Why is that even -- why is it
25 even important to Amazon as a company?

1 I don't understand how you would use a top-level
2 domain name. And it may be that this is sensitive
3 proprietary information, so don't disclose it if it is
4 because I really don't need to know the answer. It's
5 probably not relevant, but I can't help asking it
6 because I haven't the slightest idea.

7 MR. THORNE: I will give you a layperson's
8 non-insider answer, and this is based on Mr. Hayden's
9 written testimony before the panel.

10 I think the three -- three different reasons
11 companies want the top-level domain and not just a ride
12 on .com or .edu -- one is competitive. Everybody else
13 is doing it. Google is doing it. Facebook is doing it.

14 But it's a little deeper than that, the reason --
15 we'll go with Facebook and Walmart and Target and Amazon
16 want to do this is because they see significant
17 operational benefits.

18 So there are some innovations planned by Amazon
19 that I don't completely know and probably shouldn't
20 disclose. But let me describe something that Fadi
21 Chehadé, who at the time of the Amazon application, was
22 the CEO and president of ICANN and effectively
23 Mr. Atallah's boss.

24 He was asked a question by a reporter at -- this
25 is, I think, the ICANN 50 news conference at the end of

1 their big meetings. But what's the difference? And he
2 said, well, cartier.com is very -- Cartier, they are a
3 watch and jewelry maker -- very concerned about
4 knockoffs, people faking Cartier stuff. They have such
5 important value in their unique brand that they want to
6 make sure no knockoffs get through.

7 They think it's critical to have .cartier because
8 the customer and the internal operational gizmos, which
9 I can't completely describe, are able to secure .cartier
10 to a greater degree than cartier.com.

11 So there's a phase shift in improvement of --
12 Amazon's already -- probably the most secure --

13 ARBITRATOR BONNER: Protection of your trade name
14 or your trademark.

15 MR. THORNE: Protection of the name, but also
16 protection against the hackers that -- and something
17 called "spoofing." And you're getting a layperson's
18 understanding.

19 It's possible to come up with letters and other
20 alphabets that look deceptively similar to English or
21 Latin letters and to have a name, for example, Cyrillic
22 character that looks to the eye like maybe that's an N
23 with a tail on it, but on the computer it looks like you
24 might be reading the real thing and you're deceived to
25 go into a place and disclosing valuable information.

1 And shutting down those spoofs is, I'm told, much
2 easier operationally if you control the top-level
3 domain. So it makes transactions more secure.

4 ARBITRATOR BONNER: That's helpful. And again,
5 it's probably not particularly pertinent to anything we
6 have to decide here, but I was just -- I wanted it to be
7 edified and I think that's enough.

8 MR. THORNE: And I would suggest that when
9 Mr. Atallah has a chance to testify, that since his
10 business is selling top-level domain names to companies,
11 he will have better answers than I do.

12 ARBITRATOR BONNER: Okay.

13 MR. THORNE: Thank you.

14 ARBITRATOR BONNER: Thank you, Mr. Thorne.

15 Mr. LeVee?

16 MR. LeVEE: I'm going to have about 60 seconds of
17 setup.

18

19 OPENING STATEMENT

20 BY MR. LEVEE:

21 Thank you. And on behalf of the Internet
22 Cooperation for Assigned Names and Numbers, which we
23 will always refer to today as ICANN, but it actually has
24 a whole name, I do want to thank you for your
25 participation already, because there's been an active

1 amount of dialogue between the panel and the parties,
2 and for your participation today and tomorrow as you
3 render an opinion. ICANN very much appreciates the
4 diligence that you have already put in and the amount of
5 activity that has gone into today.

6 I have an opening statement that consists of 17
7 slides. And I thought it would be helpful for you to
8 keep copies so you could either follow the slides while
9 I'm doing it or you can watch on the screen, your
10 choice. And that way you will have them with you.

11 I have most of the exhibit numbers, since the
12 judge asked this question, in my opening statement, but
13 there are a couple that I need to add.

14 So let me summarize what ICANN's arguments are
15 here.

16 Obviously, our immediate position is that the
17 NGPC, the acronym you will hear many, many times
18 throughout the balance of two days, did not violate the
19 articles, bylaws, or Guidebook in accepting the GAC
20 consensus advice against .amazon. That is the issue
21 before the panel, whether the NGPC acted consistent with
22 the articles, bylaws, or Guidebook. And that is the
23 only issue that an IRP panel is to address.

24 We will demonstrate and have already demonstrated
25 to you that the evidence shows that the GAC insisted on

1 and then received the right to give advice on the
2 geographic nature of a string without a formal
3 rationale, much less a consensus rationale. And we will
4 show you exhibits that demonstrate that.

5 So Mr. Thorne said that the GAC didn't have the
6 right to give what amounts to geographic advice. The
7 drafting of the Guidebook makes it clear that that is
8 incorrect.

9 Second, we will demonstrate to you that the ICC's
10 dismissal of the community objection did not nullify the
11 GAC advice, which predated the dismissal. So the GAC
12 advice was given first. And I'm going to take you
13 through a chronology this morning. The GAC advice was
14 issued first, and there are some reasons that it was.

15 And then the ICC's decision occurred six months
16 later, and I want to talk about some of the
17 ramifications of that.

18 The GAC did issue consensus advice, and it was
19 supported by numerous countries across the world, at
20 least 20, as we will demonstrate to you later.

21 And then what's most important in the briefing
22 and again this morning, the NGPC is accused of rubber-
23 stamping the GAC advice, and I'm going to provide to you
24 throughout the course of today and tomorrow extensive
25 evidence exactly to the contrary. It starts with the

1 fact that the NGPC's investigation actually occurs over
2 a ten-month period, and the topic of .amazon is
3 considered at seven different NGPC meetings.

4 I will demonstrate to you that the NGPC exercised
5 independent judgment, and I will demonstrate to you that
6 the NGPC did not discriminate against Amazon.

7 So briefly, let's talk about the three Amazon
8 applications. As a reminder, Amazon submitted more than
9 70; most of those sailed through. They didn't have any
10 problem.

11 But there were three that were received in
12 November of 2012, the GAC early warning notices. That
13 the GAC specifically bargained for the ability to issue
14 early warning notices and they did so with respect to
15 any name; not simply a name that was on the ISO list,
16 any name.

17 And I'll explain to you why the GAC was so
18 insistent on that, because the GAC was very worried that
19 if it was limited to names on a string, given the
20 unbounded nature of this new program, what wound up
21 being 1900 applications, the GAC was facing the unknown,
22 and so it wanted the ability to reject.

23 March of 2013, ICANN's independent objector does
24 file a community objection that's based on the grounds
25 of the early warnings.

1 In April of 2013, GAC takes up the Brazil and
2 Peru oppositions to the Amazon applications, but at that
3 meeting, no final determination was made.

4 Over the spring and the summer of 2013, Amazon
5 lobbies several countries to try to block the consensus
6 advice, and no country agrees.

7 This becomes very important because, as you will
8 hear today and tomorrow, the definition of consensus
9 advice that the GAC had adopted was that no country
10 spoke up in opposition. Not that the GAC had a single
11 rationale, but that no country spoke up in opposition
12 when a question was put.

13 Do you agree or disagree with the issuance of the
14 following advice: Amazon lobbied the United States,
15 United Kingdom, Australia, and others and ultimately was
16 not able to persuade a single country of the roughly 130
17 or 150 countries that were then members of the GAC to
18 raise its hand and say, I object, because then they
19 would not have had consensus advice.

20 Instead, in July of 2013, the United States
21 issues a statement on geographic names, and this is one
22 of the exhibit numbers I handed you earlier.

23 The United States said, We are willing to abstain
24 and remain neutral, thereby allowing the GAC to present
25 consensus advice if no other government objects. The

1 United States understood that if no government objects
2 and it did not object, the GAC would issue consensus
3 advice. And the fact of the consensus advice is what
4 created the strong presumption that's in the Guidebook
5 and becomes very important.

6 So in July of 2013, the GAC debates the Amazon
7 applications in open session.

8 Mr. Thorne referred repeatedly in his opening
9 statement to the DCA situation, and I will be doing so
10 in my closing. But this is one issue where the DCA
11 situation and the Amazon situation diverge.

12 DCA involved a GAC decision that was made in
13 closed session. And so no one was able to find out what
14 actually happened at the GAC.

15 In this scenario -- in this situation with
16 .amazon, not only was it an open session, but we have a
17 transcript, Exhibit C 4, and we will show you and walk
18 you through portions of the transcript tomorrow,
19 assuming tomorrow we won't finish today.

20 And the transcript shows that more than 20
21 countries, including, by the way, many countries not in
22 South America, Russia, China, South Africa, supported
23 the GAC objection and spoke up in favor of it.

24 At that point the GAC chair, Ms. Dryden,
25 literally culls the question and she says, Is there any

1 country opposed to this advice?

2 And no country offered. Nobody raised their
3 hand. So this is the classic definition of consensus
4 advice. And chair declares that the GAC had reached
5 consensus, and that consensus was communicated to the
6 ICANN board.

7 Six months later the ICC expert ruled against the
8 independent objector. But he does so based in large
9 part on the fact that Amazon never told the expert,
10 Judge Schwebel, that several countries were opposing the
11 Amazon applications and that the GAC had actually issued
12 consensus advice.

13 So when you read Judge Schwebel's decision, he
14 says, Well, it looks as if the governments don't care,
15 and that's an important factor for me in evaluating
16 whether there is harm. In fact, Peru and Brazil were
17 not parties to the proceeding.

18 The only party who could have corrected the
19 independent objector's -- and the statements that it
20 made in that proceeding was Amazon, and Amazon sat
21 quietly while the decision was reached, relying on the
22 absence of government opposition which had already
23 occurred.

24 Now, at that point, the NGPC begins its
25 investigation. The GAC issues consensus advice. And

1 Amazon is specifically invited to respond, which is part
2 of the procedures under the Guidebook. And Amazon's
3 response, which you have, is Exhibit C 43, makes three
4 arguments which have carried through all the way until
5 today.

6 First, that the GAC advice is contrary to
7 international law.

8 Second, that there's discrimination between
9 .amazon and .ipiranga.

10 And the third argument that Amazon makes is that
11 it followed the rules and thus its application should be
12 approved.

13 At that point the NGPC is fully engaged, and the
14 first thing that it does is to retain Jerome Passa,
15 French law specialist, to analyze certain of the
16 international law issues.

17 The next slide, Slide 6, shows you the various
18 things that happened in the first six months of 2013.

19 The NGPC receives additional submissions from
20 Amazon and then Brazil and Peru.

21 And then in March of 2014, Professor Passa comes
22 forth with his analysis. And he says, International law
23 does not guarantee Brazil the right to object, nor does
24 it guarantee Amazon the right to the name.

25 So, in essence, Professor Passa's decision

1 doesn't really help either side.

2 But the NGPC invites everyone to respond to that
3 decision. In April of 2014, those responses are
4 submitted to the NGPC.

5 29 April 2014 is a very important meeting of the
6 NGPC. It meets to analyze the materials that it
7 received and has an extensive discussion regarding the
8 next steps.

9 Tomorrow I will give you a copy of Exhibit R 31,
10 not even provided to you by the claimant, and walk you
11 through the extent to which the members of the board
12 were considering issues. These are the actual board
13 minutes. I will demonstrate to you that what the NGPC
14 did was the exact opposite of a rubber stamp. It was a
15 thorough and thoughtful discussion.

16 The NGPC couldn't make up its mind, couldn't
17 finish the discussion that was posed. And on May 14th,
18 a couple weeks later, it met again. Again, has a
19 deliberative conversation. But I will show to you
20 tomorrow Exhibit R 72, which is the board resolution
21 that was adopted after considerable thought that explain
22 all of the things that the board, the NGPC took into
23 account in deciding to accept the GAC advice.

24 You cannot come away from Exhibits R 31 and R 72
25 with any thought other than the board did a thorough

1 job. It did exactly what it was supposed to do. It
2 conducted independent and thorough investigation.

3 And by the way, to contrast that to what happened
4 in the DCA situation, with DCA there was consensus
5 advice issued in a closed GAC meeting. The board then
6 considered that advice, adopted it. At the next board
7 meeting there was -- the evidence in the IRP showed a
8 relatively brief amount of time devoted to the subject,
9 and then the board adopted the consensus advice. That
10 is in contrast to this ten-month period, seven board
11 meetings, and the discussions that I will show you
12 tomorrow on these two issues.

13 So now the question is, can the GAC provide
14 advice on unlisted strings?

15 Mr. Thorne's argument essentially is no. You
16 can't do it. We have a process under Module 2 of the
17 Guidebook and that's how you deal with it. The GAC
18 can't treat those issues.

19 And that was the case in the first five drafts of
20 the Guidebook. A GNSO working group recommended a
21 string-by-string rather than list approach -- I'm sorry.
22 The GNSO, which is the body at ICANN that develops
23 policy on these kinds of things, had said, We think
24 everyone ought to take this one by one, string by
25 string. We're not sure we are comfortable with the

1 list.

2 But it was not clear how that was going to work.
3 And so in the first five versions of the Guidebook,
4 ICANN said, You know what? We are going to stick with
5 the list. You are either on the list, in which case
6 there can be an objection, or you're not on the list, in
7 which case there can be no objection.

8 But in early 2011, the GAC objected because the
9 list did not include strings that had at least
10 potentially troublesome connotations. And it wasn't
11 simply Brazil saying, Hey, we are a little worried about
12 Amazon. It was the entire GAC that said, We can't
13 anticipate what all of the strings might look like. And
14 if a string is close to a geographic string but not on
15 an ISO list, we want the ability to express our concern.

16 So what did the board do? Sixth version of the
17 Guidebook, April 2011, introduced GAC advice as a
18 mechanism to identify applications for unlisted strings
19 that had a troublesome geographic connotation. There
20 shouldn't be any doubt here that .amazon at least has
21 the potential of being a troublesome string for the
22 people of that region.

23 We'll talk more about what the actual objections
24 were.

25 But GAC was given the opportunity to identify

1 strings that were not on an ISO list.

2 And so the operative Guidebook, Exhibit C 15 --
3 and this, by the way, is the Guidebook version of
4 January 11, 2012, that was in place at the time Amazon
5 submitted its application. There were a couple very
6 modest changes to the Guidebook after, but they didn't
7 adjust the language that's pertinent.

8 The operative Guidebook allowed the GAC to object
9 to any application on any grounds. And by the way, this
10 is not just based on the so-called launch rationale that
11 ICANN subsequently issued. This is the words of the
12 Guidebook, and we will study those words together
13 tomorrow.

14 ARBITRATOR MATZ: Mr. LeVee, could you provide a
15 little primer on how to distinguish an unlisted string
16 from an unlisted name.

17 MR. LeVEE: Same. I'm not sure I understand your
18 question. A name and a string are the same.

19 ARBITRATOR MATZ: String is a technical term that
20 deals with X's and O's. But what we are talking about
21 is there was a list of prohibited names --

22 MR. LeVEE: Words.

23 ARBITRATOR MATZ: -- words, places --

24 MR. LeVEE: Yes.

25 ARBITRATOR MATZ: -- let's say, or countries or

1 whatever. And when you refer to unlisted string or
2 something that's not on that list, you're just talking
3 about a name?

4 MR. LeVEE: I am.

5 ARBITRATOR MATZ: Okay.

6 MR. LeVEE: And string may be a lot of years with
7 ICANN, but --

8 ARBITRATOR MATZ: Okay. That's what I thought.

9 MR. LeVEE: People refer to these names as
10 strings.

11 ARBITRATOR BONNER: It's a name or word that
12 follows the dot.

13 MR. LeVEE: Correct.

14 ARBITRATOR BONNER: Let me ask a question to
15 again -- really, just for my own edification, but I
16 would assume that nation states and the GAC would have
17 potential concerns for public policy reasons with names
18 that go beyond geographic names.

19 MR. LeVEE: Yes.

20 ARBITRATOR BONNER: I mean, .childporn, I mean,
21 other kinds of things where there's a legitimate public
22 policy interest in not having that out there, basically.

23 So it wasn't all about geographic names, was it?

24 MR. LeVEE: Not at all. In fact, you're hitting
25 on an issue Mr. Atallah will be testifying to.

1 So there are four different bases in Module 2 of
2 the Guidebook to object and invoke a proceeding that
3 will be administered by the ICDR or the ICC of different
4 vendors. One of them was morality, in essence. And
5 strings could be objected to that they constituted words
6 that shouldn't really be Internet top-level domains.

7 You are absolutely right. The GAC wanted the
8 ability to object on all of these grounds, not simply
9 with respect to geographic names.

10 It was a related issue which I had planned on
11 exploring a little bit more tomorrow, which is that in
12 order to assert these objections, you had to pay money.
13 So if someone had actually applied for .amazon in
14 addition to the Amazon company, there would have been a
15 dispute and parties would have had to pay money to the
16 ICDR or the ICC to adjudicate that dispute.

17 The governments in the GAC were concerned about
18 being able to have the resources authorized by their
19 individual congresses to have money to do this. So
20 ICANN wound up giving each country, in essence, one free
21 objection. But the GAC wanted to make sure that it
22 would be able to issue GAC advice.

23 The objections would go through the objection
24 process much like Judge Schwebel here adjudicated an
25 objection as to whether .amazon is a geographic name.

1 So the governments had the ability to go that route.
2 And if there was a string proposed, ihateturkey, the
3 Turkish government could have gone through the Module 2
4 process and said on morality grounds, that name
5 shouldn't be legitimate. Or the government of Turkey
6 could say to the GAC, I don't like this name. I wish
7 for you to issue consensus advice.

8 Parallel tracks. And that's the distinction that
9 Amazon doesn't draw, that the panel before us doesn't
10 draw. Amazon's position is once you win or lose a
11 Module 2 outcome, the GAC is barred from doing anything
12 else.

13 And ICANN's position is quite clearly parallel
14 rights of pursuit.

15 ARBITRATOR O'BRIEN: Mr. LeVee, you mention the
16 distinction between the closed session and the open
17 session of the GAC. What is the importance of the open
18 and closed session?

19 MR. LeVEE: The importance is that with the DCA
20 matter for .africa, there was nothing that the board had
21 at the time back in 2013 to be able to understand what
22 the debate was about at the GAC. There was no
23 transcript. It was a closed session.

24 Here the board has the transcript from the actual
25 discussion, and the board can see what everyone was

1 talking about, what they were advocating. There's an
2 allegation that Peru referenced a listing. Peru did
3 reference a particular name, Amazon being on the list
4 that was wrong, but it was one thing that Peru said out
5 of many. And the board could see the full extent of the
6 debate and the number of countries that supported the
7 South American countries that raised the issue in the
8 first instance.

9 ARBITRATOR O'BRIEN: And with respect to that
10 open session, that's not a session that Amazon was
11 allowed to participate in, correct?

12 MR. LeVEE: I don't think Amazon would have been
13 invited. I don't know that. I probably should check.
14 But Amazon was present at the meeting that occurred. So
15 GAC meetings occur in conjunction with ICANN -- what we
16 call ICANN board week. It's a week -- I should say more
17 like 10 or 12 days that everyone descends on a
18 particular country or city and they meet over and over.

19 Amazon was at the meeting, and the reason we know
20 that is that there was a public session of the board a
21 couple of days later during which Amazon spoke about --
22 against the GAC advice. Amazon knew what the results
23 were, and they spoke during that session.

24 ARBITRATOR O'BRIEN: Going back to the GAC -- and
25 cut me off here, Mr. Chairman, for asking questions.

1 You had mentioned that Amazon had lobbied a
2 number of countries to either intervene or speak on its
3 behalf --

4 MR. LeVEE: Yes.

5 ARBITRATOR O'BRIEN: -- or object on its behalf.
6 So it's a political process. If they didn't get a
7 country to adopt their claims, so to speak, and become
8 their proponent, they really didn't have a role in that
9 GAC process. It wasn't any sort of a judicial
10 proceeding. That was just a political proceeding. And
11 if they couldn't encourage a political actor to take up
12 their case, then they weren't allowed to participate in
13 that GAC meeting itself, correct?

14 MR. LeVEE: So I've been corrected that the
15 public was invited to attend the meeting, but was not
16 able to speak unless you were a designated person from
17 the government.

18 I think what you said is accurate in the sense
19 that Amazon was not entitled to some formal role in the
20 decision by the GAC to debate the issue. It received
21 the substance of what the GAC advice was. And under the
22 Guidebook, it was automatically entitled to respond,
23 which it did. But there's not a specific -- GAC does
24 not automatically invite the interested party and then
25 say, what do you have to say at this time?

1 ARBITRATOR O'BRIEN: Would it be fair to
2 characterize it as a debate if there was no government
3 proponent of Amazon's position in that meeting, or is it
4 just more of a political meeting where the governments
5 that wanted to speak up, could. But there wasn't really
6 a debate because there was no government that was a
7 proponent of Amazon's position there, so --

8 MR. LeVEE: I think when you read the
9 transcript -- and I'm going to literally walk you
10 through a big chunk of it tomorrow -- I think you will
11 look at it as a debate.

12 There were countries that supported consensus
13 advice because they thought it was important for the GAC
14 to be able to do what it was proposing to do. There
15 were not countries that took Amazon's position.

16 So if you -- if a debate requires someone to take
17 Amazon's position in that meeting, there was no debate
18 using that definition.

19 But Amazon, of course, knew, because there had
20 been an interim GAC meeting where they hadn't been able
21 to reach a decision. And there was a second GAC
22 meeting, and it was during that interim process,
23 three-month process that Amazon tried to find a country
24 that will stand up during the meeting and say, We do not
25 accept the GAC advice.

1 Does that answer your question?

2 ARBITRATOR O'BRIEN: It does. So in other words,
3 the failure of Amazon to be able to find a country to be
4 its proponent, that kind of ended their ability to
5 influence the GAC, correct?

6 MR. LeVEE: Only to the extent that Amazon's
7 influence would have been necessary for some country to
8 stand up and say that they disagree. There certainly
9 were many situations where the GAC couldn't reach
10 consensus advice because they couldn't. There were
11 countries that just simply disagreed. The Persian Gulf
12 situation was one of them where not all the countries
13 agreed on the way to advance the ball.

14 So I don't want to leave the impression that
15 Amazon had some sort of obligation to go try to find the
16 government to support it. My only point is that it did
17 try and it failed, including with the United States and
18 Luxembourg, where it's officially headquartered.

19 ARBITRATOR BONNER: Judge Matz has a question,
20 and then we will probably move on.

21 ARBITRATOR MATZ: What will the evidence show as
22 to whether or not Amazon was present through some
23 representative, even though it could not be heard or
24 vote, at the meeting where the consensus was declared
25 by Dryden?

1 MR. LeVEE: I do not know. I don't think that
2 there is a list of all attendees.

3 I will look at it, of course, now that you've
4 asked the question. But I do not know -- the person who
5 likely would have attended is in this room, and he could
6 inform us, Mr. Hayden.

7 But beyond that, I don't think there was a
8 specific list or piece of evidence that says who was
9 there.

10 ARBITRATOR BONNER: Okay. I think you can
11 proceed. I guess you are on page 8 of the PowerPoint.

12 MR. LeVEE: I am, and I will speed up a bit.

13 So Amazon has argued in papers, although not so
14 much this morning, that the GAC did not actually issue
15 consensus advice. But the GAC's Operating Principle 47,
16 which was adopted in 2011, makes it clear consensus
17 advice is understood to mean the practice of adopting
18 decisions by general agreement in absence of any formal
19 objection.

20 So also, this is really not a situation where
21 there's one country or two countries that advocated for
22 the advice, as you will see from the transcript. There
23 are roughly 20 countries that supported Brazil and Peru.

24 Now, Mr. Thorne very specifically said this
25 morning that the GAC was required to give a reason for

1 its advice in the DCA decision so far. I will discuss
2 the DCA decision tomorrow, but I want to be clear that
3 early drafts of the Guidebook did propose that the GAC
4 be required to give a reason, and that language was
5 specifically removed at the GAC's request.

6 So we'll show you the draft in history and make
7 it clear that GAC did not want to have to give a reason
8 because the GAC felt that being required to do so is
9 inappropriate.

10 Now, it is the case that the new bylaws that
11 don't apply to this proceeding have gone into effect in
12 October of 2016 and lots of things have changed,
13 including the whole procedure for independent review but
14 we are dealing with what happened at the time and bylaws
15 that were in effect 2013 and 2014.

16 ARBITRATOR BONNER: Nonetheless, it would be, I
17 think, helpful for the panel to look at the new bylaws,
18 2016. And I'm not sure we have a copy of it, so --

19 MR. LeVEE: We have not submitted them. They are
20 this high (indicating). But we're happy to --

21 ARBITRATOR BONNER: Well, maybe just the part --
22 the two bylaws that refers to whether or not there's a
23 rationale needed by the GAC in terms of its advice.

24 MR. LeVEE: Yes. Now, one of the things that I
25 worry about in giving you the new bylaws is that you

1 could easily argue the relevance of the change.

2 Amazon could say, for example, on the question of
3 whether IRP declarations are binding, hotly debated
4 issue in multiple IRP decisions. Some panels said yes.
5 Some panels said no. The new bylaws say yes, so you
6 could, on the one hand, argue the change to be the
7 codification of the DCA decision, which is how
8 Mr. Thorne argued it.

9 I can tell you that it is to confirm the change
10 from what was previously existing; not in codification
11 of a rule, but different panels have reached different
12 results, and so the community had to debate. And
13 ultimately the community said they are going to be
14 binding, which ICANN views as change previous.

15 So we were hesitant to give you the new bylaws
16 and have you read into the legislative history of those
17 bylaws which, by the way, is -- fill up probably many
18 boxes. Happy to give it to you.

19 ARBITRATOR BONNER: No. I can understand that --
20 the concern, and I assume ICANN is taking the position
21 or the bylaws -- the new bylaws expressly state they are
22 not retroactive to proceedings --

23 MR. LeVEE: Correct.

24 ARBITRATOR BONNER: -- before the date, so
25 there's a clause.

1 MR. LeVEE: Yes.

2 ARBITRATOR BONNER: But at some point -- and
3 again, I think this could come later. Let's just put a
4 marker down.

5 MR. LeVEE: Sure.

6 ARBITRATOR BONNER: You should address the
7 argument that Amazon is making that, in essence, that at
8 least some of these new bylaws and particularly this one
9 are a codification of prior IRP panel precedent. And
10 if, in fact, we were to conclude that, then this might
11 be pertinent to actually understand what the language of
12 the new bylaw is in that respect.

13 MR. LeVEE: That's fine. The parties have
14 certainly argued in their briefs the meaning of
15 different decisions of previous IRP panels starting with
16 the ICM decision back in 2008 or '9 which found that its
17 declaration was not binding.

18 And I would say that the issue was litigated in
19 maybe half of the IRPs, and it's split; couple of them
20 say binding; some people say not. The -- many of them
21 tried to distinguish -- Vistaprint does this, try to
22 distinguish between issuing a binding recommendation as
23 opposed to saying to the board, we order you to do X.

24 So what several panels have said is we recommend
25 that the board -- we recommend that the board put the

1 DCA application back into the process.

2 And we view our recommendation as binding. The
3 board then adopted that recommendation, and then the
4 application was returned to process.

5 ARBITRATOR BONNER: We're complaining, though --
6 I don't mean to interrupt you --

7 MR. LeVEE: Yes.

8 ARBITRATOR BONNER: -- about two different things
9 here. One is the bindingness-ness of the panel,
10 whatever the panel ultimately concludes and holds here,
11 whether it's a binding recommendation or it's a
12 nonbinding recommendation.

13 But leave that aside. I'm actually focusing on
14 this issue of whether or not the IRP -- whether there's
15 precedent that the IRP -- strike that.

16 Whether there's precedent from prior IRP panels.
17 And if there's conflicting precedent, we will have to
18 examine that and decide which one you think is
19 appropriate, better reasoned, I guess. And then -- but
20 if that -- if DCA Trust actually holds that there needs
21 to be a rationale stated by GAC for its advice,
22 that's -- let me just put it this way, puts a serious
23 dent into ICANN's position here, right?

24 So that's why it's an important issue. And
25 perhaps it doesn't even turn on whether or not it was

1 codified or not. I don't know. Maybe we will just look
2 at the relevant case precedent here.

3 That's not even a question to you, so --

4 MR. LeVEE: I understand.

5 ARBITRATOR BONNER: But pack it away. And at the
6 appropriate time, it's probably something I'd like to
7 hear a bit more about.

8 MR. LeVEE: I actually already have slides
9 prepared for tomorrow that address the DCA issue. And I
10 will certainly include the reputation of the statement
11 made today that the panel holds that the GAC must issue
12 some specific rationale.

13 ARBITRATOR BONNER: Okay. Proceed, Mr. LeVee.

14 MR. LeVEE: Thank you.

15 So really, what I wanted to summarize, and then
16 I'll quickly go through a couple other things.

17 The NGPC, as I said, is a ten-month
18 investigation. It did all these things, and it received
19 a lot of information both from Amazon and from Brazil,
20 Peru, but also from many others. And we'll show you in
21 some detail tomorrow what the board actually considered
22 according to its resolution.

23 And we believe that the NGPC made a difficult
24 decision, taking into account all of these things,
25 including, most importantly, Amazon's views, which, of

1 course, were entitled to consideration and weight, and
2 made the decision that it believed to be both faithful
3 to the Guidebook and in ICANN's best interest.

4 So the IRP test done to bylaws requires due
5 diligence and care, having reasonable amount of facts.
6 What we know is this much: We have a strong presumption
7 that the GAC advice would be followed unless there was
8 evidence sufficiently strong to convince the NGPC that
9 the underlying public policy concerns were unfounded.

10 But I think you will see when you look more
11 closely at the exhibits tomorrow, that the concerns that
12 the GAC had were very plausible.

13 gTLDs with geographic connotations can raise
14 concerns such as the potential for private interests of
15 territories -- public interests of territories to be
16 privately appropriated, often warranting covenant
17 protection.

18 And so the GAC's consensus advice reflects the
19 general agreement of governments throughout the world,
20 and it's these governments that are broadly responsible
21 for safeguarding the public interest. Mr. Atallah will
22 address that during his testimony, no doubt.

23 But the NGPC believed that Brazil, Peru, and
24 other governments gave substantial reasons why
25 commercial appropriation threatened harm to the people

1 of the region. And, of course, Amazon disagreed with
2 respect to that. Amazon has private commercial
3 interests. I'm not going to tell you that they are not
4 important, but they are unique to Amazon.

5 And the Guidebook reflects a public policy where
6 geographic terms are involved, the public interest is
7 paramount.

8 And most importantly, the last bullet here, that
9 Amazon's argument that it essentially followed the rules
10 is basically based on its interpretation that the GAC
11 has no role if the geographic names panel passes an
12 application. That is the opinion of Heather Forrest
13 that was provided to you, that once the Module 2 process
14 of geographic names panel concludes that the GAC is out,
15 not allowed to comment, and that's just not consistent
16 with the terms of the GAC.

17 I'm going to skip some of this because I'm taking
18 too much time.

19 We do have a comparison that Amazon argues that
20 Amazon is different than .ipiranga. And Amazon says,
21 Look, .amazon got rejected and .ipiranga went forward,
22 and so there's active discrimination by the NGPC.

23 An important point, we briefed this extensively
24 in our papers, is that the vast majority -- there were
25 1930 applications, and the vast majority received no

1 objection.

2 Over a thousand applications were submitted with
3 literally no objection occurred, and those applications
4 sailed forward.

5 So according to the Guidebook, there was no
6 particular reason that the board would even look at that
7 application. And I will tell you and Mr. Atallah will
8 tell you the board certainly didn't consider 1930
9 applications, monitoring each of them.

10 So if the board doesn't even treat the .ipiranga
11 application, there's -- no objections were asserted,
12 there was no controversy, and then decides to treat the
13 Amazon application because it's the topic of consensus
14 data points, that's not discrimination. It's the board
15 doing what it's supposed to do.

16 And so we clearly reject the notion that there
17 was discrimination.

18 Let me conclude.

19 ARBITRATOR O'BRIEN: Is it ICANN's belief that
20 that's Amazon's position, that the board was
21 discriminating with the .ipiranga or is it Brazil was
22 discriminating against .amazon?

23 MR. LeVEE: Oh, I think ICANN -- Amazon's
24 position is that the board discriminated. That's clear
25 in these papers.

1 Let me summarize so that I can finish.

2 All geographic strings, whether or not on a list,
3 are the proper subject for GAC advice.

4 The GAC issued consensus advice. And once it
5 issued that consensus advice legitimately, it was a
6 strong presumption that that string would not proceed.

7 The ICC did have a separate community objection,
8 but that objection which was litigated -- adjudicated
9 after the GAC advice was issued didn't nullify or
10 require the NGPC to reject previously issued GAC advice.

11 The NGPC took care to gather pertinent facts. It
12 exercised independent judgment, which is what the bylaws
13 required it to do, and it did not discriminate against
14 Amazon applications.

15 So when you take it all together, I think you
16 will find a board that had a very complicated situation
17 with an important application from Amazon and important
18 GAC advice for countries, South America and around the
19 world.

20 The board had to balance all of that in the face
21 of the strong presumption that the GAC advice was
22 entitled to. On that basis, the board did what it did,
23 and I will urge you today and tomorrow, again, to issue
24 a determination that the board did not violate the
25 Guidebook and bylaws.

1 ARBITRATOR BONNER: Thank you.

2 I'm thinking that we might want to take a short
3 recess before we call Mr. Atallah.

4 MR. LeVEE: I think that makes sense.

5 We would like a very short recess.

6 ARBITRATOR BONNER: We will at least do ten
7 minutes. I've got about 11:10 right now, so why don't
8 we resume in ten minutes.

9 Is that okay?

10 ARBITRATOR MATZ: Yes.

11 ARBITRATOR BONNER: We'll resume at 11:20.

12 MR. LeVEE: They will be setting up the lunch.
13 You'll hear them in case you hear some plates. But
14 we're setting it up outside.

15 Whenever the panel wishes to break for lunch we
16 will do so. Everyone should take lunch and then go to
17 their -- the rooms they will decide.

18 JUDGE MATZ: Thank you.

19 ARBITRATOR BONNER: That will be fine.

20 And I'll just say, too, that I think we can get
21 started and perhaps well into Mr. Atallah's examination.

22 MR. LeVEE: Absolutely.

23 ARBITRATOR BONNER: But at some point -- at a
24 convenient point we'll take our luncheon break, probably
25 around 12:30 or so, depending on where you are in the

1 testimony.

2 MR. THORNE: That's fine, Your Honor.

3 ARBITRATOR BONNER: Thank you.

4 In recess.

5 (Recess.)

6 MR. LeVEE: With the panel's permission, I will
7 call Akram Atallah to the stand.

8 ARBITRATOR BONNER: That would be fine.

9 Mr. Atallah -- is it Dr. Atallah or Mr. Atallah?

10 THE WITNESS: I wish.

11 ARBITRATOR BONNER: We are going to find out very
12 soon. I will just say Mr. Atallah for the moment. If
13 you would take a seat there.

14 I'm wondering, by the way, this is a very large
15 room, and I'm wondering whether you might bring that a
16 little bit closer. I don't mean a lot.

17 Yeah, that sounds better to me, like better
18 positioning. And I think maybe the court reporter will
19 be better able to hear.

20 (Whereupon, a discussion was held off
21 the record.)

22 ARBITRATOR BONNER: Are we putting the witness
23 under oath, or is that not needed?

24 MR. LeVEE: It is your call.

25 MR. THORNE: I think it might be appropriate.

1 ARBITRATOR BONNER: I can't think of any other
2 kind of an arbitration where I wouldn't have the witness
3 under oath, but the IRP proceedings, they are kind of a
4 unique thing. So I think if there is no objection,
5 could we have him placed under oath?

6 MR. LeVEE: I do not object.

7 ARBITRATOR BONNER: Mr. Atallah, do you swear to
8 tell the truth, the whole truth, and nothing but the
9 truth, so help you God?

10 THE WITNESS: I do.

11 ARBITRATOR BONNER: Proceed, Mr. LeVee.

12 MR. LeVEE: Thank you, Your Honor.

13

14

15 AKRAM ATALLAH,
16 called as a witness, was administered the oath and
17 testified as follows:

18

19

20 DIRECT EXAMINATION
21 BY MR. LeVEE:

22

23

24

25

Q Mr. Atallah, I'm just going to ask you to
introduce yourself to the people in the room and, most
importantly, the members of the panel.

 Could you tell us where you were born and raised.

A I was born in Beirut, Lebanon, and I got my high
school through there and came to college here.

1 Q So when did you arrive in the United States?

2 A In 1981.

3 Q And what college were you attending?

4 A University of Colorado.

5 Q In Boulder?

6 A Both Denver and Boulder. Three degrees from
7 university.

8 Q What degrees did you get from the University of
9 Colorado?

10 A I have a bachelor degree in electrical
11 engineering and computer science. I have a master's
12 degree in electrical engineering, and I have an M.B.A.
13 from university --

14 ARBITRATOR BONNER: The M.B.A. is also from
15 University of Colorado?

16 THE WITNESS: Yes.

17 BY MR. LeVEE:

18 Q At some point either in the middle of getting all
19 those degrees or at the end -- I think it was in the
20 middle, did you go out into the business world?

21 A Yes. So after I finished my master's in
22 electrical engineering, I started working in disk
23 drives, hard disk drives.

24 Q And that was the area you were in for several
25 years?

1 A Yes, for about ten years.

2 Q All with the same company or different companies?

3 A Three different companies.

4 Q What landed you in California?

5 A After I finished my M.B.A., I was looking to
6 change my career from the engineering area to the
7 business area, and I got -- I had an opportunity to join
8 Rockwell Semiconductor Systems in their product
9 management --

10 ARBITRATOR BONNER: What was the name of that
11 company again?

12 THE WITNESS: Rockwell.

13 ARBITRATOR BONNER: Rockwell. Rockwell
14 Management Systems?

15 THE WITNESS: Semiconductor.

16 ARBITRATOR BONNER: Semiconductor Systems.

17 BY MR. LeVEE:

18 Q And which office of Rockwell were you located at?

19 A Newport Beach, California.

20 Q And how many years did you work for Rockwell?

21 A About eight years in Newport Beach and about four
22 years -- about eight years in Newport Beach and about
23 three years in New Jersey -- four years in New Jersey.

24 Q When did you join ICANN?

25 A In 2010, September.

1 Q What was the position that you joined ICANN with
2 in 2010?

3 A Chief operating officer.

4 Q As chief operating officer, were you involved at
5 all in the development of the Guidebook?

6 A I was more involved in implementing the
7 Guidebook. So I was aware of what's going on with the
8 Guidebook, but I wasn't responsible for developing it.

9 Q At what point did you change titles from chief
10 operating officer?

11 A I think it was in 2013.

12 Q And what was the title that you assumed in 2013?

13 A President of the global domains division.

14 Q Tell the panel what it means to be president of
15 the global domains division.

16 What do you do on a day to day basis?

17 A So my responsibilities include the contracted
18 parties, which means basically the applicants to the new
19 gTLD program, the (unintelligible) registries and their
20 contracted parties. So supporting them and providing
21 them with contracts and helping them comply with the
22 contracts as well as the registrars, which are the
23 parties that are contracted with ICANN that face users
24 or the buyers of domain -- of the domain names for
25 themselves.

1 Q So let's distinguish between registries and
2 registrars.

3 A Yes.

4 Q What are registries?

5 A So registries. If you want, you can look at them
6 as the wholesalers. So they own the domain that's on
7 the right of the dot. So .org, for example, is owned
8 by -- or contracted by a registry.

9 And if you are a -- just a Internet user and you
10 want to register in that domain, then you go to what we
11 call equivalent to retailers, which are the registrars,
12 and you register in .org.

13 So you can register a domain name in .org, .com,
14 any of the new gTLDs through a registrar that connects
15 to the registry and provides you that domain.

16 Q And if Amazon ultimately were -- well, for the
17 names that Amazon has been approved, is Amazon a
18 registry of those names?

19 A Yes. And there are, you know, two types of
20 registries. One type is actually used internally. So,
21 for example, that Amazon could decide that .amazon is a
22 registry only for its employees and its internal use and
23 doesn't sell to the world. Or it could be a domain that
24 is sold to the world that users can register domains in.
25 So there are two types of those.

1 And Amazon would be considered a registry. They
2 applied for over 70 domain names, top-level domain
3 names.

4 Q Okay. Since 2013, have you served in any stints
5 as the interim chief executive officer of ICANN?

6 A Yes. During two transition periods when Rod
7 Beckstrom left the CEO position and before Fadi Chehadé
8 started the CEO position, I was the interim CEO. And
9 then after Fadi Chehadé left his position and before
10 Göran Marby started his CEO tenure, I was the CEO,
11 interim CEO.

12 Q And what is your title today?

13 A I'm deputy chief executive officer and president
14 of the global domains division.

15 Q Two titles.

16 A Yes.

17 MR. LeVEE: With that, I will turn it over to
18 Mr. Thorne. Unless the panel has any other background
19 questions.

20 ARBITRATOR BONNER: No, I think that's fine.

21 MR. LeVEE: Thank you.

22 ARBITRATOR BONNER: Mr. Thorne?

23 MR. THORNE: Thank you.

24

25 ///

1 CROSS-EXAMINATION

2 BY MR. THORNE:

3 Q Good morning, Mr. Atallah. We met the first time
4 this morning. Thank you for being here.

5 With the panel's approval, I'm going to use a
6 series of documents. I think the documents would be
7 useful to get Mr. Atallah's information out and the
8 especially useful for the panel to hear from
9 Mr. Atallah.

10 But the purpose is to walk through several topics
11 where Mr. Atallah has either given us testimony in his
12 written statement or otherwise would be knowledgeable on
13 the topics.

14 And my partner, Rebecca Beynon, is going to be in
15 charge of distributing those, if that's an okay way to
16 proceed.

17 ARBITRATOR BONNER: That sounds fine to me.

18 It might be helpful, if it's going to be referred
19 to, if we had the declaration of Mr. Atallah. I know I
20 read it at some point in the past, but I will leave that
21 up to counsel. But if you're going to ask him questions
22 about the declaration, his declaration --

23 MR. THORNE: I would like to start by marking
24 Mr. Atallah's written testimony as Atallah Exhibit 1 and
25 we will hand that to the panel.

1 ARBITRATOR BONNER: All right. That would be
2 fine.

3 (Atallah Exhibit 1 marked for
4 identification.)

5 BY MR. THORNE:

6 Q Mr. Atallah, in front of you -- I'll probably
7 lose track of exhibits, but that's Exhibit 1.

8 And that's your written statement, correct?

9 A Yes.

10 Q You recognize that.

11 In your written testimony you describe the new
12 gTLD program committee with the NGPC.

13 That was a committee of the ICANN board at the
14 time of the Amazon application was being considered,
15 correct?

16 A Yes, that's correct.

17 Q Now, for the panel's benefit, this is Judge
18 Bonner's question earlier. I'm going to ask you a
19 couple questions about why companies want top-level
20 domains.

21 It's true, isn't it, that companies apply for
22 top-level domains for multiple reasons?

23 A Yes, it is true.

24 Q It's not just duplicative of what they already
25 have as second-level domain owners, correct?

1 A Correct. It depends on the company, but yes,
2 correct.

3 Q But there are benefits to having the top-level
4 domain?

5 A Yes, absolutely.

6 Q Could you describe -- and I want to be
7 responsive -- describe the security or operational
8 benefits as you understand to having control over the
9 top-level domain?

10 A Sure. Sure.

11 So, Your Honor, the difference is really having
12 control of your own destiny. So if you are a registry
13 and you have a top-level domain that's in .com or .net
14 or .org or any of these top-level domains, you end up
15 using -- these companies would provide you the service
16 for when people look you up.

17 Instead, when you have your own top-level domain,
18 you actually manage your own zone file. And when people
19 are looking you up, they come to you directly.

20 Now, there are some security advantages,
21 basically DNSSEC, but most of the top-level domains that
22 today you can register in to have already signed up to
23 DNSSEC. So having your own top-level domain won't give
24 you a differentiation there, but it will allow you to
25 implement DNSSEC, and that will secure so that people

1 who are getting access to you know that the information
2 is coming directly from you.

3 So that's one of the advantages. But the biggest
4 advantage of having a top-level domain is really having
5 the ability to create and differentiate yourself and
6 your digital identity online. So that's the biggest
7 differentiation.

8 And we're seeing some of the top-level domain
9 brands actually take advantage of that and differentiate
10 themselves. But it's still in its very early stages.

11 Q So there are opportunities to innovate if you
12 have the top-level domain?

13 A Yes.

14 Q And there are, as you describe, opportunities to
15 improve security if you have control of the top-level
16 domain?

17 A Yes, that is correct.

18 ARBITRATOR BONNER: And you said, if I could --
19 you said something about -- under the first point was
20 that you had the ability to implement NSA or something
21 like that.

22 THE WITNESS: DNSSEC.

23 ARBITRATOR BONNER: What is NSA?

24 THE WITNESS: DNSSEC, DNS Security. Basically,
25 you sign your zone, and then when you receive traffic as

1 a user from that zone, it is signed. And therefore, you
2 are sure that it is coming from that source. But .com
3 and .net and .org are all signed already.

4 BY MR. THORNE:

5 Q The court reporter is signaling.

6 Could you spell the DNSSEC?

7 A Yes. It's D-N-S-S-E-C, sec for securities.

8 Q And then SEC is short for security?

9 A Yes.

10 Q So you would agree that you can improve security
11 if you control the top-level domain?

12 A So what I said is that if you have today a
13 top-level domain -- if you have your domain name in one
14 of the top-level domains that has already signed the
15 zone and you sign your own zone, then that isn't
16 security identifications improvements if you have your
17 own top-level domain. But if you're in a zone that's
18 not signed and you have your own top-level domain, you
19 can sign it and, therefore, you can execute it.

20 Q So Mr. Chehadé was at the ICANN 50 press
21 conference, and you were at the same table. And since
22 he was answering -- he talked about the difference
23 between cartier.com and .cartier. Was he talking about
24 some other issue besides DNSSEC?

25 A Yes. So basically that's authenticity.

1 Q Authenticity, could you explain that?

2 A So if you have a dot top-level domain in your
3 brand and everybody that uses or connects with you goes
4 through that -- sees that last three or that last name
5 in the domain name, they are guaranteed that they are
6 talking to the right source.

7 So that's basically a way to put all of your
8 digital assets under one umbrella with a top-level
9 domain. And that provides authenticity, but you have to
10 do work to get everybody to know that your top-level
11 domain is your authentic or headquarters online.

12 Q And then that's an issue because of bad actors
13 doing things like script spoofing?

14 A Not really, but -- not to get into a security
15 session here, but authenticity is about awareness. So
16 if everybody knows that -- if you go under anything
17 that's .amazon, it's basically coming from Amazon.
18 There is some authenticity or some belief of security
19 that is provided versus if -- let's say that Amazon had
20 kindle.com, Amazon.com, multiple names under different
21 TLDs. Then there's a lot more room for confusion.
22 Versus if they put it all under one umbrella, there is a
23 sense of authenticity where you can go and say anything
24 under that umbrella is coming from the right source. So
25 that's authenticity question.

1 Q So Mr. Hayden in this proceeding, like you did,
2 also put in written testimony where he said there was a
3 security opportunity to control the top-level domain.

4 You don't disagree with that?

5 A No, absolutely not.

6 Q And you don't disagree that there are
7 opportunities for innovation if you control the
8 top-level domain?

9 A No, I don't disagree.

10 Q And you -- you agree that there are competitive
11 reasons companies might want to control their own
12 top-level domain like what Google has done?

13 A Yes, I do.

14 Q Back to the written testimony in front of you.
15 If you turn to page 18, paragraphs 41 and 42, you will
16 see a list of meetings in which the NGPC discussed the
17 Amazon application.

18 Do you see that?

19 A Uh-huh. Yes, I see it.

20 Q Do you recall that you attended each of the seven
21 meetings of the NGPC where the .amazon applications were
22 discussed?

23 A Yes. I did not miss any NGPC meetings, so I'm
24 sure I attended all of them.

25 Q Now, I've prepared -- I take that back. The head

1 of our research group, Ms. Mary Ann Endo, prepared a
2 demonstrative exhibit to make life easier that I would
3 like to use. And I'm going to, with the panel's
4 permission, show that to you and then tell you where it
5 came from and ask if it looks correct.

6 And I'm going to use that demonstrative exhibit
7 to avoid going through a lot of individual meeting
8 minutes of the NGPC.

9 ARBITRATOR BONNER: Proceed.

10 MR. THORNE: So this will be Atallah Witness
11 Exhibit Number 2. It's a demonstrative exhibit created
12 by us.

13 ARBITRATOR BONNER: We're going to call this
14 demonstrative exhibit C, D, 1 or something --

15 MR. THORNE: I think we're going to call it with
16 the prestamped sticker sets if that's all right.

17 ARBITRATOR BONNER: That would be good. I didn't
18 know it was prestamped.

19 MR. THORNE: What this is, is taking each of the
20 exhibits identified in Mr. Atallah's witness statement.
21 So these are R 26, R 27, R 28, R 29, R 30, R 31. And
22 then we actually had the same exhibit twice, both
23 claimant and respondent. It's either R 83 or C 55.

24 Taking each of those exhibits and extracting a
25 small amount of information to make it easy to see -- to

1 see who was at the meetings.

2 ARBITRATOR BONNER: That's fine. But we should
3 give this an exhibit number and I don't see anything
4 stamped on it that -- just for the record --

5 MS. BEYNON: Your Honor, I gave the witness the
6 marked --

7 ARBITRATOR BONNER: Maybe you could read the
8 exhibit number in the lower left-hand --

9 MR. THORNE: This is Atallah Exhibit 2.

10 (Atallah Exhibit 2 marked for
11 identification.)

12 BY MR. THORNE:

13 Q Mr. Atallah, could you look at this briefly.

14 I don't want -- I probably am going to avoid
15 going over meeting minutes to show we got it right.

16 But does this look right to you?

17 A Yes.

18 Q And if your counsel finds an error, I'm sure
19 he'll bring that to our attention.

20 A Thank you.

21 Q So this shows, as you said, that you were present
22 at all of these seven meetings?

23 A Yes.

24 Q Do you agree that the NGPC would have allowed the
25 Amazon applications to proceed if the GAC had not issued

1 consensus advice against the application?

2 A Barring anything else coming up, yes, I agree.

3 Q You're not aware of anything else?

4 A No, but I just don't want to give a blank
5 statement for something that I'm not aware of.

6 Q But you're aware, for example, that there was no
7 problem with the initial evaluation of the Amazon
8 application?

9 A Yes.

10 Q You're aware that the Amazon application received
11 a perfect score on each initial evaluation, 41 or 41
12 possible points?

13 A Yes.

14 Q The NGPC would not even have reviewed the Amazon
15 applications except for the GAC advice?

16 A That is correct.

17 Q And that's why, for example, the NGPC did not
18 review the .ipiranga application, because no objections
19 were raised to the .ipiranga application?

20 A I want to be careful about what I'm saying.

21 In the Amazon case, there was an objection, and
22 so the NGPC would have seen that there was an objection
23 on that application, even if there wasn't GAC advice.
24 We provided reports to the board on a weekly basis on
25 the progress of all of the applications, and that

1 included any application that has any objection and the
2 progress of all of these objections.

3 Q You were here this morning when your counsel
4 explained that the reason .ipiranga application sailed
5 through was there was no objection?

6 A Yes.

7 Q And so that's why the NGPC didn't review the
8 .ipiranga application, because there was no objection?

9 A Yes.

10 Q So the Brazilian government treated the two
11 applications differently. The Amazon application drew
12 an objection, and .ipiranga did not draw an objection?

13 A I'm not aware whether they brought up anything in
14 the GAC other than -- but from what we saw outside of
15 the GAC, we got the GAC advice that said that the GAC
16 objected to the .amazon.

17 Q And not to .ipiranga?

18 A Yes. And then was also the early warning that we
19 received and we were aware of that as well.

20 Q And similarly, there was no GAC advice on -- I
21 hope I pronounce this right -- .yamaxun? That's spelled
22 dot y-a-m-a-x-u-n?

23 A Yes, there was no objection.

24 ARBITRATOR BONNER: Do you know, Mr. Atallah,
25 whether there was any early warning with respect to

1 .ipiranga or not?

2 THE WITNESS: No -- yes, I would be aware of
3 that. There was no early warning.

4 BY MR. THORNE:

5 Q You understand that the NGPC was supposed to take
6 into account Amazon's and Amazon's customers' interests
7 in proceeding?

8 A Yes. I mean, they concern -- they are taking
9 concern of every applicant, of course.

10 Q Just to make sure that I have got your answer on
11 this.

12 You understand the NGPC was supposed to take into
13 account Amazon's and its customers' interests?

14 A That's a difficult question. The NGPC took into
15 account the process, if you want, the applicant process
16 took into account everybody's application to make sure
17 that the applicant and the application should be
18 awarded. So that's the process of actually looking
19 through the whole application. And the Amazon
20 application was fine, and it actually should have
21 proceeded forward if it wasn't for the GAC advice.

22 Q But if the NGPC were going to not permit the
23 application to go forward, it was nonetheless supposed
24 to consider Amazon's and Amazon's customers' interests?

25 A So the process itself, like I said, takes into

1 account all of these things. So the NGPC was
2 considering whether to accept the GAC advice or not.
3 And in order for it not to accept the GAC advice, it had
4 to have sufficient reasons that -- justification for not
5 accepting it.

6 And when they study those -- when they look at
7 this sufficient reasons, they would consider, basically,
8 harm and everything around the application itself. So
9 that would be the way it would manifest itself, yeah.

10 Q They would consider -- are you talking about the
11 NGPC or someone else?

12 A The NGPC.

13 Q The NGPC would consider Amazon's interests and
14 Amazon's customers' --

15 A They would balance everything, yes.

16 Q They would balance everything.

17 I'd like to have Exhibit C 54. This is an
18 exhibit that has already been provided in this
19 proceeding.

20 ARBITRATOR BONNER: As the witness is being
21 handed the exhibit, it might save time, Mr. Thorne, if
22 all the witnesses -- all the exhibits you're going to
23 refer to with the witness are in front of him, if that
24 could be done, just so we don't spend time handing out
25 exhibits to the witness and to --

1 MR. THORNE: I will do that, Your Honor. We just
2 skipped quite a few thanks to the demonstrative exhibit.

3 So in some cases, we're not going to be able
4 to -- not going to need to use --

5 ARBITRATOR BONNER: Well, to the extent you can.

6 ARBITRATOR MATZ: So this is Atallah Exhibit 3?

7 ARBITRATOR BONNER: This is Atallah Exhibit --

8 (Whereupon, a discussion was held off
9 the record.)

10 MR. THORNE: It's the same as C 54 and it's
11 Atallah Exhibit 3.

12 (Atallah Exhibit 3 marked for
13 identification.)

14 BY MR. THORNE:

15 Q Mr. Atallah, this is the NGPC's resolution that
16 starts on page 6, resolving the GAC advice on the Amazon
17 applications, correct?

18 A If you give me a minute.

19 Q Sure.

20 A Yes.

21 Q This is the rationale the NGPC provided on the
22 Amazon applications, correct?

23 A Yes, correct.

24 Q The NGPC's rationale does not mention Amazon's
25 interests at any point?

1 A That is correct.

2 Q The NGPC's rationale does not mention any
3 positive reason for granting the application?

4 A I'm sorry. Granting the application?

5 Q Well, sometimes in a proceeding you have reasons
6 for, reasons against.

7 This describes the GAC advice. This does not
8 describe at any point any positive reason for granting
9 the applications, allowing it to proceed?

10 A That is correct. But it's inferred that the
11 application process, the rules of who can apply and why
12 they can apply actually reflect the benefits --

13 Q If you want -- I don't mean to cut you off. If
14 you want to see what the NGPC wrote in its rationale, it
15 does not mention any positive reason for granting the
16 application; that's correct?

17 A Yeah, I believe it's correct.

18 Q So you agree that ICANN is rooted in the private
19 sector?

20 A Yes.

21 Q That ICANN takes advice from but is not supposed
22 to be controlled by governments?

23 A That is correct. ICANN is a bottom up,
24 multistakeholder organization that is not controlled by
25 any particular interests.

1 Q ICANN, in fact, has worked very hard to resist
2 being controlled by governments?

3 A Like I said, yes. We try very hard not to be
4 controlled by any individual party.

5 Q So the GAC, an advisory committee of governments,
6 is a constituent body of ICANN?

7 A That is correct.

8 Q And the GAC chair during the time of the Amazon
9 applications was Heather Dryden?

10 A Yes, that's correct.

11 Q Ms. Dryden was an observer at the meetings of the
12 NGPC?

13 A Yes.

14 Q And she attended six of the seven NGPC meetings
15 where the .amazon applications were discussed?

16 A Yes, I just referred to it before, and that's
17 correct.

18 Q So if Ms. Dryden was invited to provide a written
19 statement to the panel in this case and she declined --
20 you probably heard of that -- she was the GAC chair when
21 the GAC provided advice against the .africa gTLD?

22 A That is correct.

23 Q And the GAC gave advice on .africa at the Beijing
24 meeting?

25 A That is correct.

1 Q The GAC gave advice on .amazon at the following
2 meeting in Durban?

3 A Yes.

4 Q In this case, .amazon, the NGPC did not have the
5 benefit of the GAC's rationale; is that correct?

6 A In the case of Amazon? I'm sorry?

7 Q Correct.

8 ARBITRATOR MATZ: I didn't hear the answer.

9 THE WITNESS: I didn't understand the question.

10 BY MR. THORNE:

11 Q The question is: You agree the NGPC didn't -- in
12 this case, Amazon, did not have the benefit of the GAC's
13 rationale?

14 A That is correct. There was no rationale provided
15 by the GAC on this particular case. But the GAC did not
16 have to provide the rationale.

17 Q Your counsel may ask you some follow-up question,
18 but it will stick to mine, we will move faster. If you
19 turn to -- I think it's page 10 of this exhibit. On the
20 top right, it says (as read):

21 "The NGPC considered several
22 significant factors."

23 And then it goes on to list significant factors
24 the NGPC considered.

25 The very first of the factors below says (as

1 read):

2 "The NGPC does not have the benefit
3 of the rationale relied upon by the
4 GAC."

5 Do you see that?

6 A Yes.

7 Q And that's correct?

8 A Yes.

9 Q NGPC was correct when it said that?

10 A Yes.

11 Q The significant factors that constitute the
12 rationale go on -- they don't stop there, they go on,
13 and they refer to a reason/rationale provided in the GAC
14 early warning submitted on behalf of the governments of
15 Brazil and Peru, correct?

16 A Yes.

17 Q And that's correct, that one of the rationales
18 that the NGPC credited was in the GAC early warning from
19 Brazil and Peru?

20 A Yes.

21 Q Your written testimony, the first exhibit,
22 likewise -- this is paragraphs 26 and 27 -- describe
23 those same rationales from the early warning of Brazil
24 and Peru, correct?

25 A Yes, correct.

1 Q Paragraphs 26 and 27 of your written testimony
2 follow a heading that says "How the GAC fulfilled its
3 obligations with respect to .amazon."

4 Do you see that?

5 A Yes.

6 Q You agree that the GAC had obligations with
7 respect to the application; is that correct?

8 A Yes, having consensus advice -- getting to the
9 consensus advice is their obligation.

10 ARBITRATOR BONNER: I'm just not quite sure I --
11 and maybe I just missed it. But I'm not quite sure what
12 you just answered there. Referring to --

13 THE WITNESS: So, Your Honor, the process is set
14 up in a way that the board itself does not substitute
15 its judgment for every organization or supporting
16 organization or advisory committee that forms ICANN
17 structure.

18 What the board does, it accepts most of these if
19 there is agreement between the community that this is
20 the right thing to do.

21 And then only the board gets involved when there
22 is contention between different parties within the
23 ecosystem. That's when the board really gets involved.

24 When the Guidebook was written, the community
25 agreed that the bond (verbatim) for the GAC advice to be

1 presumptively approved by the board or agreed upon by
2 the board is consensus advice, because it is not that
3 easy to get 130-plus countries to agree on an advice to
4 the board.

5 And the board does not feel it's remit to
6 substitute its decision to the governments of the world,
7 especially on public interest issues, because the board
8 is not the expert on public interest issues.

9 So when the government advisory committee and all
10 of the countries agree on something, especially when
11 it's actually specific to public interest, it's very
12 hard for the board to substitute its judgment on
13 those -- to those country's judgment.

14 ARBITRATOR BONNER: So that's another way of
15 saying the board, or in this case, the SGPC would defer
16 to the consensus advice of GAC on, let's say, whether an
17 application should proceed or not?

18 ARBITRATOR MATZ: The NGPC.

19 ARBITRATOR BONNER: The NGPC.

20 THE WITNESS: Yes. So the NGPC looks at the
21 advice coming from the GAC. And if there is no
22 objection from other SO's and supporting organizations
23 and advisory committees within the structure, then it
24 takes that advice and looks at is it consensus advice?
25 If it's consensus advice the bar is very high for the

1 NGPC to say no to it.

2 And also, the way the GAC works is like the
3 United Nations in that a no objection is consensus. And
4 when it comes to a particular issue that's specific to a
5 single country, it's very difficult for other countries
6 to provide objections to that country's opinion, because
7 every government is responsible for its own people's
8 public interest.

9 So another country saying to one country that
10 feels public interest is wrong, that it's misplaced is
11 very difficult.

12 So when the consensus comes together, the bar is
13 very high for the board to ignore it.

14 ARBITRATOR BONNER: I understand that.

15 By the way, when I use the term "board," the way
16 I'm understanding it here, the NGPC is the functional
17 equivalent of the board for purposes of this
18 application.

19 THE WITNESS: That's absolutely right.

20 ARBITRATOR BONNER: So when I use board, I'm
21 including NGPC.

22 So ordinarily, then, I think what you are saying
23 is that the board, or the NGPC, where it had consensus
24 advice from all the nations of the GAC, it would
25 ordinarily defer to the advice of the GAC?

1 THE WITNESS: That's the presumptive -- yes, it's
2 a strong presumption of acceptance, yes.

3 ARBITRATOR BONNER: Well, there's a little
4 difference between -- there's a gap between saying that
5 there's a strong presumption and deferring to the GAC
6 advice. So I'm trying to clarify which one it is.

7 THE WITNESS: Yes. The board has -- I mean, if
8 the board has evidence that there was not consensus
9 advice or that -- to give an example, if only five
10 countries were in the meeting when they said consensus
11 advice was that, the board would be concerned about that
12 and, therefore, wouldn't actually accept the advice,
13 probably.

14 So it depends on the situation. But when
15 everything goes according to the processes, then the bar
16 is too high for the board to say no, but it's not
17 deferred. The board still looks at the advice, listens
18 to the community, and if there is no issue from the
19 community or from other parties, then it's -- the
20 presumption is that they were accepted.

21 ARBITRATOR BONNER: So when you have consensus
22 advice from the GAC, does the board still have a duty to
23 determine whether or not there is a public interest
24 reason for that advice, a legitimate public interest
25 reason? Does the board have that obligation to make

1 that inquiry?

2 THE WITNESS: On the public interest perspective,
3 I think the board does not question a government's
4 jurisdiction over the public interest of its own people.

5 So the board does not try to be more expert than
6 the government itself on public interest.

7 ARBITRATOR BONNER: Well, that sounds to me like
8 the board, then, is deferring to consensus GAC advice as
9 to what the -- that there is a legitimate public policy
10 interest underlying the GAC advice, even though the GAC
11 has not given any rationale for its advice.

12 THE WITNESS: That's how the process actually
13 does work, yes.

14 ARBITRATOR BONNER: So was there an inquiry of
15 the -- I guess this would be the SP- -- NGPC -- I've got
16 to get these acronyms right.

17 So did the NGPC, did it make any independent
18 inquiry as to whether or not there was a valid public
19 interest rationale for the GAC advice in this matter?

20 THE WITNESS: No, it did not.

21 ARBITRATOR MATZ: May I ask a couple questions?

22 ARBITRATOR BONNER: Yes.

23 ARBITRATOR MATZ: Let me, if I may, try to
24 establish some fundamentals.

25 The NGPC, the C stands for committee. It's a

1 committee of a full board, right?

2 THE WITNESS: Yes, sir.

3 ARBITRATOR MATZ: And the NGPC committee, in
4 dealing with the Amazon application on this Exhibit 2
5 that was shown to you, the individuals who were shown to
6 have attended meetings or in the category of where it
7 says "Directors in Attendance," those were members of
8 the full board of directors, right?

9 THE WITNESS: Yes.

10 ARBITRATOR MATZ: But not all of the members of
11 the board of directors were on the NGPC; is that
12 correct?

13 THE WITNESS: That is correct.

14 ARBITRATOR MATZ: All right. Now, when the NGPC
15 is evaluating whether -- let me back up.

16 Does the full board, either officially or in
17 terms of how it operates, delegate to the NGPC the final
18 decision as to what will be a board determination if
19 it's before the NGPC?

20 THE WITNESS: Yes. The NGPC was formed because
21 of -- there were some conflicts of interest among the
22 board members. And instead of actually, every time,
23 talking about a new gTLD issue, asking people to step
24 out of the room and then come back into the room, there
25 were a few of the board members that were conflicted,

1 that were not included in the NGPC. And that's, really,
2 the only makeup -- the only reason for the NGPC is to
3 allow for the business of the board to be conducted
4 smoothly.

5 So the members that were conflicted were out.
6 And when that situation was no longer valid, the NGPC
7 was dissolved, and the board is now actually acting on
8 all of these issues.

9 ARBITRATOR MATZ: So in terms of an application
10 for a new GLT (sic), the NGPC was the final decider,
11 right?

12 THE WITNESS: Yes.

13 ARBITRATOR MATZ: Now, does the full board have
14 other procedures or processes to review decisions of a
15 affiliated entity other than GAC? Are there ever any
16 matters that come to the full board's attention for
17 decision as to whether to approve the determination of a
18 different affiliate within ICANN, not GAC?

19 THE WITNESS: Yes. So the -- all the supporting
20 organizations develop policies. And these policies come
21 to the board for extrication (sic).

22 ARBITRATOR MATZ: Are some of the other policies
23 of the other affiliated organizations, are they
24 determined according to a procedure known as consensus?

25 THE WITNESS: Yes, but a different kind of

1 consensus. Like I said, the ICANN organization is
2 formed on bottom up multistakeholder values and
3 processes.

4 So the way the policies come up is through a lot
5 of volunteers coming together in working groups and
6 actually developing the policies. And during those --
7 during developing the policies, there could be a time
8 when a policy can be developed, because there are
9 competing factions that are not finding a middle ground
10 to agree on.

11 So a no policy or no outcome is one of the
12 possibilities that can come out of these working groups.
13 And if they can't find a middle ground and agree on a
14 consensus solution, that solution goes to the supporting
15 organization council, which ratifies it and sends it to
16 the board. And the board typically accepts these
17 policies and moves forward.

18 ARBITRATOR MATZ: Stop there. You just said the
19 board typically accepts the policy. It's made its way
20 up as a result of however the consensus processes worked
21 for that particular supporting organization; correct so
22 far?

23 THE WITNESS: Yes.

24 ARBITRATOR MATZ: Has there ever been a case
25 where the full board rejected a consensus presented to

1 it by one of the supporting organizations.

2 THE WITNESS: Yes. So when a policy --

3 ARBITRATOR MATZ: Not necessarily GAC, but any --

4 THE WITNESS: Yes. When a policy comes up for
5 approval by the board, there are opportunities for other
6 SO's and AC's to object or to send letters to the board
7 or, you know, correspondence to the board to oppose the
8 policy or oppose a particular issue within the policy,
9 and the board takes, also, into consideration.

10 One good example is the new gTLD Guidebook. That
11 was an implementation of the policy. And during the
12 time when the Guidebook came to the board for approval,
13 the GAC objected. And they objected because they wanted
14 to have the rights to provide objections to particular
15 applications, which was not in the Guidebook.

16 So there was -- there is a process for when the
17 GAC -- when the board rejects a GAC advice and that
18 process was to actually go into a consultation session
19 with the GAC and there were things agreed to with the
20 GAC. And one of them is that the GAC can object to any
21 application because the GAC was not sure what kind of
22 applications they are going to get. And to give a
23 blanket agreement to the Guidebook and not be able to
24 object to a harmful top-level domain was something that
25 they wanted to make sure that they can actually act

1 based on knowing what the strengths are before they give
2 up that right.

3 So -- and that process was followed and the
4 Guidebook was changed and it was put for public comment
5 and ratified later on before the opening of the
6 application.

7 ARBITRATOR MATZ: It sounds to me like that is an
8 example of something where a supporting organization
9 presented its position to the full board, and the full
10 board changed its mind and agreed with the supporting
11 organization. Is that a fair way of characterizing what
12 you just described?

13 THE WITNESS: So the supporting organization
14 provided the policy to the board. The board received
15 GAC advice against that policy. And it took that GAC
16 advice and wanted to reject it. Therefore, it followed
17 the process which led to a consultation, that led to an
18 agreement on modifications of the -- of the
19 implementation and, therefore, the new Guidebook.

20 ARBITRATOR MATZ: Okay. Now, in a previous
21 answer, you use the abbreviation SO. What is an SO?

22 THE WITNESS: Supporting organization.

23 ARBITRATOR MATZ: And you use the abbreviation
24 AC. What's that?

25 THE WITNESS: Advisory committee.

1 So the supporting organizations provide policies.
2 They do policy development. That advisory committee
3 advise the board.

4 ARBITRATOR MATZ: Okay.

5 ARBITRATOR BONNER: Has there ever been an
6 instance where the board or the NGPC acting for the
7 board has disagreed with GAC advice on a domain --
8 application for a domain name?

9 THE WITNESS: I don't think so.

10 ARBITRATOR BONNER: Mr. Thorne?

11 BY MR. THORNE:

12 Q So, Mr. Atallah, to go back to -- just to finish
13 this, looking at your testimony, the heading on page 11,
14 "How the GAC fulfills its obligation with respect to
15 .amazon," your answer to how they fulfill their
16 obligation is they took a vote and reached a consensus;
17 is that correct? The GAC took a vote?

18 A No. The GAC does not take votes. The GAC
19 actually asks for any objection. And if no other
20 country objects, that's considered consensus. This is a
21 standard way in the United Nation, and it's a standard
22 procedure of actually doing consensus -- getting
23 consensus.

24 Q So at this point in time if the GAC had obeyed
25 the UN format of no one objects, therefore, they have

1 consensus, that satisfies the GAC's obligations to
2 Amazon as of this time?

3 A Yes.

4 Q Now, you heard this morning that starting with
5 2016 bylaws, which were passed after the Amazon IRP was
6 started, under the 2016 bylaws, the GAC is now required
7 to give a rationale for its advice; that's correct?

8 A Yes, that's correct.

9 Q So it's possible to do. The GAC can give a
10 rationale under the 2016 bylaws?

11 A Yeah. I think that there are two really
12 different matters in front of the GAC normally. One
13 side is like when it's a single-country public interest
14 issue. I think that's going to be very difficult for
15 the GAC to get consensus advice on the public interest
16 of a single country, because a single country is
17 responsible for its own public interest.

18 So the majority of what you are going to see in
19 the rationale is that justification that a country is
20 responsible for -- so I'm actually projecting what is
21 going to happen. But when it's an issue that is a
22 global issue, I think you are going to get some
23 rationale that's a little bit different.

24 Q But as somebody who attended all seven relevant
25 NGPC meetings and is very familiar with this, you

1 understand it would have been a benefit here -- and
2 that's with the NGPC decision, it would have been a
3 benefit if the GAC had provided a rationale with its
4 advice as required in the 2016 bylaws?

5 A As insiders, not really. But for the public
6 outside. Maybe. But as an insider, you know exactly
7 what is going on, so it's different than an outsider
8 looking in.

9 Q So at this point in time, there was no
10 requirement that the GAC have a rationale for its
11 advice?

12 A No, not in the Guidebook and not in the bylaws.

13 Q And so a purely political decision, but the GAC
14 would have been entitled to a strong presumption to
15 follow the advice?

16 A The consensus advice from the GAC, yes.

17 Q A purely political decision by the GAC, just
18 voting or failing to object would be sufficient?

19 A I'm not familiar with the term "political,"
20 but -- I mean, I don't know what the term is,
21 "political."

22 All the governments of the world agreed with --
23 at the minimum, refused to object to the motion put in
24 by Brazil and Peru on the floor and that constituted
25 consensus advice.

1 Q The word "political" actually comes from
2 Ms. Dryden, who was in six of the seven meetings. She
3 told one of prior IRP panels in the .africa DCA Trust
4 case that what the GAC did was purely political.

5 You have no reason to disagree with what she told
6 the prior panel?

7 A That's her own opinion.

8 Q But you have no reason to disagree with her view?
9 She was the GAC chair.

10 A Not particularly, but --

11 Q So it's ICANN's view that consensus GAC advice
12 based on a misreading of the applicant Guidebook would
13 be entitled to a strong presumption because it was
14 reached by consensus?

15 A Can you repeat it?

16 Q If the GAC advice is a consensus advice, no
17 objection, but it's based on a mistake of understanding
18 what the Guidebook provides, that would still be
19 entitled to a strong presumption?

20 A Not if the mistake is -- if everybody is aware of
21 the mistake. I think that should be considered.

22 Q Is that something that the NGPC investigates, or
23 does this just have to have happened to be aware of a
24 mistake?

25 A I mean, that's very hypothetical. If you know

1 something is happening and, you know -- and one of the
2 details is missing that doesn't make it a material issue
3 that you should investigate, then probably not. But if
4 it's a material issue and you are aware that something
5 happened, I presume that it will have to investigate.

6 ARBITRATOR MATZ: Mr. Thorne, I'm not trying to
7 throw you off track, but I want to pick up on something
8 that you inquired into and have since moved on about.

9 May I do so?

10 MR. THORNE: Of course. This is your panel.

11 ARBITRATOR MATZ: Mr. Atallah, I understood you
12 to tell Mr. Thorne in answer to one of his questions
13 that it wouldn't have made a difference to insiders to
14 have actually had a written rationale for the GAC
15 consensus that was reached in the case of the Amazon
16 application.

17 Is that what you are telling us today? It would
18 not have made much of a difference as far as the
19 insiders are concerned.

20 THE WITNESS: Yes.

21 ARBITRATOR MATZ: And that's because, according
22 to what you said, the insiders would have known what was
23 going on anyway?

24 THE WITNESS: So -- yes, because --

25 ARBITRATOR MATZ: How would they have known?

1 THE WITNESS: ICANN has three meetings a year,
2 every year, where everybody gets together to actually
3 develop policies and do the ICANN business. In every
4 meeting, the board actually meets with the GAC. And the
5 issues that the GAC is facing are actually debated -- or
6 maybe not debated. They are actually told to the board,
7 and so the board is aware of the issues that are -- that
8 the GAC members are bringing up and what the GAC is
9 debating on a regular basis.

10 And so from that perspective, if you are
11 attending the meetings, you would be aware of all of the
12 topics that are being brought up. And it's all open
13 transcript. It's open meetings. They are not actually
14 closed meetings. And in several of these meetings, the
15 South Americans countries had voiced their issues with
16 the Amazon applications.

17 ARBITRATOR MATZ: And in those meetings, are you
18 talking about the Amazon application?

19 THE WITNESS: Yes.

20 ARBITRATOR MATZ: And those were public meetings
21 with the full board of ICANN?

22 THE WITNESS: No. These are meetings between the
23 full board of ICANN and the GAC.

24 ARBITRATOR MATZ: And are there minutes of those
25 meetings?

1 THE WITNESS: I believe there is a transcript, if
2 I'm not mistaken.

3 ARBITRATOR MATZ: And is it your understanding
4 that if there are transcripts of those meetings where
5 the South American countries who were members of GAC
6 discussed what was going on within GAC to members of the
7 full board, would that be reflected in the minutes of
8 those meetings -- or the transcripts, I should say?

9 THE WITNESS: Yes. Everything that was discussed
10 in the meetings would be in the transcripts, yes.

11 ARBITRATOR O'BRIEN: Have those transcripts been
12 produced in this case?

13 MR. THORNE: I have not seen those transcripts,
14 Judge O'Brien. We are going to get to some documents
15 probably after lunch that reflect meetings between ICANN
16 leadership and some of its board members and the
17 individual South American countries.

18 ARBITRATOR O'BRIEN: Quick question, if you don't
19 mind me interrupting your cross-examination.

20 MR. THORNE: Sure.

21 ARBITRATOR O'BRIEN: Mr. Atallah, the GAC is a
22 political body. You've referred to it as being like the
23 UN. So it's a political body made up of governments,
24 correct?

25 THE WITNESS: Yes.

1 ARBITRATOR O'BRIEN: And the way they conduct
2 their business, that's not supervised by the board, is
3 it?

4 THE WITNESS: No, sir, it is not.

5 ARBITRATOR O'BRIEN: And the GAC doesn't have any
6 guidelines on how they have to decide a matter, correct?

7 THE WITNESS: No, they do have their guidelines
8 in that they have to reach consensus. And as I
9 mentioned earlier, there has to be no objection for
10 consensus advice.

11 ARBITRATOR O'BRIEN: I understand. But besides
12 the issue of reaching consensus, there's no guidelines
13 as to how they have to take up an issue, how they have
14 to consider an issue. It's normal diplomacy. The
15 delegates, the representatives of various sovereign
16 nations that are members of the GAC, they conduct their
17 own business without being told how to do it by the
18 board, correct?

19 THE WITNESS: That's correct.

20 ARBITRATOR O'BRIEN: And there are no legal
21 guidelines as to how they have to conduct their
22 diplomacy, correct?

23 THE WITNESS: I know that they have a charter and
24 they have some documentation that define how they work
25 and stuff, but I'm not very familiar with them.

1 ARBITRATOR O'BRIEN: But as far as their meetings
2 go, they can -- delegates can talk to each other in the
3 corner. They can go to the delegates lounge and talk to
4 each other. They can talk to each other about the
5 issues in front of the GAC down at the hotel bar,
6 correct?

7 THE WITNESS: Yes.

8 ARBITRATOR O'BRIEN: And it's a fluid political
9 process, correct?

10 THE WITNESS: I would assume so.

11 ARBITRATOR O'BRIEN: And there's nothing that
12 requires the GAC to go through a series of -- a
13 checklist in deciding an application, like some of the
14 things -- when an application goes through ICANN, the
15 GAC doesn't have a series of checklists that they have
16 to go through and reach consensus on the various items,
17 correct?

18 THE WITNESS: Yes, that's correct. They are
19 actually not part of the process. They are a advisory
20 committee on the process.

21 ARBITRATOR O'BRIEN: And it's a very political
22 advisory committee where they -- they kind of come to a
23 political resolution on how they want to advise the
24 board, correct?

25 THE WITNESS: Yes, I assume.

1 ARBITRATOR O'BRIEN: And so, for example, the
2 board members don't know why certain countries vote in a
3 certain way or refrain from making an objection at the
4 GAC, correct?

5 THE WITNESS: That's correct.

6 ARBITRATOR O'BRIEN: In other words, a country
7 might not object at the GAC because they are getting a
8 vote from one of the South American countries in
9 something totally unrelated, like over at the UN or at
10 the World Bank or something of that nature, correct?

11 THE WITNESS: I assume it could be.

12 ARBITRATOR O'BRIEN: That's just how
13 international politics works, right? Countries trade
14 votes. And it may have nothing to do with the merits of
15 the actual application in front of them, correct?

16 THE WITNESS: I'm not in a place to say yes or no
17 because I wasn't privy to any of these things. But I
18 assume it could happen, of course.

19 ARBITRATOR O'BRIEN: But the board wouldn't know
20 if that happened, correct, for the most part?

21 THE WITNESS: Yeah. I would hope not. Yes, they
22 shouldn't be aware of that.

23 ARBITRATOR O'BRIEN: You don't know how the
24 sausage is made over at the GAC, correct?

25 THE WITNESS: That's correct.

1 BY MR. THORNE:

2 Q Mr. Atallah, following up on Judge O'Brien's
3 question.

4 You understand that some of the bylaws that apply
5 to ICANN also apply to the GAC?

6 A I think that's a legal question.

7 Q Fair enough.

8 I asked you if consensus GAC advice based on a
9 mistake in the reading of the applicant Guidebook would
10 still be entitled to a strong presumption and your
11 response -- that's a hypothetical question.

12 I'd like to make it less hypothetical?

13 A Yes.

14 Q This morning you heard your counsel, Mr. LeVee,
15 say that Peru made a mistake. Peru thought that the
16 applicant Guidebook lists included Amazon, correct?

17 A Yes.

18 Q And that was wrong, correct?

19 A That's correct.

20 Q You're aware that Peru in the Durban meeting
21 repeatedly brought up a mistake that Amazon was on the
22 list of countries that required approval, correct?

23 A Yes.

24 Q And if Peru was wrong and if anyone else in the
25 Durban meeting thought they were right and was misled,

1 mistaken, the GAC advice would still be treated with
2 strong presumption when it got up to the NGPC; is that
3 correct?

4 A I think that, you know, having been there,
5 everybody knew that Peru was mistaken. Because in
6 reality, if the -- if Amazon was on the list, then we
7 would not have to go through the GAC advice. So that's
8 actually -- in my view, it was not the main issue.

9 Q In as much detail as you can, please, can you
10 describe the steps the NGPC took -- since it knew that
11 Peru was mistaken, the steps it took to see if the
12 entire GAC advice had been corrupted by Peru's advocacy
13 at Durban?

14 A So I think that the issue wasn't -- wasn't
15 actually substantial or -- how should I say? It was not
16 a valid reason not to provide the GAC advice. You can
17 provide the GAC advice for strings that are not in the
18 geographical lists, and that was the whole reason for
19 why the GAC wanted to have the right to look at every
20 string applied for and have the right to object to it on
21 a separate basis. So I don't think that it would have
22 made a difference whether it was in the list or not.

23 Q I'm sorry. Maybe you didn't understand my
24 question.

25 What steps did the NGPC take to see if Peru's

1 mistake about how the Guidebook worked -- whether Amazon
2 is on the list or not, what steps did the NGPC take to
3 see if that affected the GAC consensus advice?

4 A I don't know that they took any steps, but I do
5 think that everybody knew that this wasn't.

6 MR. THORNE: I'd like to use Exhibit C 40.

7 ARBITRATOR BONNER: While we're getting that, if
8 I could just ask Mr. Atallah.

9 So let's say the NGPC board got GAC advice --
10 this is a hypothetical -- and the only basis for the GAC
11 advice was an erroneous belief by the GAC that the name
12 was a listed geographical name in the Guidebook. Let's
13 assume that hypothetically.

14 Wouldn't the NGPC -- under those circumstances,
15 wouldn't it disregard the presumption and essentially
16 reject the GAC advice? If you can answer it. I don't
17 know. It's a hypothetical.

18 THE WITNESS: But even if the board decided to
19 reject the GAC advice, the board would have to go into
20 consultation with the GAC. And at the consultation
21 point, the reason for the rejection would have been
22 mentioned, and then the GAC would have had the ability
23 to reaffirm its objection or not.

24 ARBITRATOR BONNER: Well, I understand that, but
25 if you could answer -- if that were -- let's assume that

1 the GAC gave a rationale for its advice in this kind of
2 case, this case. And the rationale it gave was that it
3 was essentially the objection of Peru to .amazon and the
4 other two .amazons.

5 And the sole basis was that this was a listed
6 geographic name and it shouldn't be -- it shouldn't be
7 approved, the application shouldn't be approved. If
8 that were the sole basis for it and it was erroneous, it
9 was wrong, would that mean the presumption would go away
10 and essentially the board or the NGPC in that
11 circumstance would then essentially grant the
12 application or let the application proceed? Or would
13 they say, no, it's entitled to a strong presumption, and
14 therefore, based upon that presumption, we're going to
15 deny Amazon's application?

16 It's one of the two, and I'm trying to figure out
17 which one it is.

18 THE WITNESS: So the board cannot say to the GAC,
19 your advice is not valid and move forward. What the
20 board can do is say to the GAC, your advice -- we want
21 to reject your advice. And there is a process that the
22 board has to follow based on that. That process would
23 dictate that the board would need to provide the
24 rationale for why they are rejecting the advice, enter
25 into consultation with the GAC, and based on that, try

1 to find a solution acceptable to both parties.

2 That's why I say if it was the case, then it
3 would have been corrected, and the GAC would have had to
4 make its opinion based on that correction.

5 ARBITRATOR BONNER: That's interesting that the
6 NGPC or the board would have to give a rationale --
7 that's your view, they would have to give a rationale
8 for essentially not following the GAC advice to the GAC,
9 but the GAC does not have to give the board its
10 rationale for its advice.

11 THE WITNESS: Yes, and --

12 ARBITRATOR BONNER: I mean, that's just an irony,
13 I suppose.

14 THE WITNESS: Yes, I agree. And the process is
15 put in a way to -- that governments need to have,
16 really, consensus among all of them. There is like
17 today I think almost 200 governments in the GAC. At the
18 time it was 130 governments. And we can all agree that
19 130 governments agreeing on anything is not that easy.
20 So the bar is already set pretty high for the GAC to
21 come up with a consensus advice to the board.

22 When -- the reason for the board to provide its
23 rationale for rejecting GAC advice is basically that the
24 board is rejecting public interest advice from
25 governments, which is their business to do public

1 interest. So where does the board come up with its
2 justification to reject GAC advice? So that's really
3 how the balance is put together.

4 ARBITRATOR BONNER: Thank you.

5 Mr. Thorne?

6 MR. THORNE: This is document number --

7 MS. BEYNON: This is Exhibit No. 4.

8 MR. THORNE: Exhibit Atallah --

9 MS. BEYNON: And it's Exhibit C 40 from our --

10 MR. THORNE: It's also Exhibit C 40 from the
11 original documents provided.

12 ARBITRATOR BONNER: C 40?

13 MR. THORNE: Correct. This is Atallah 4.

14 (Atallah Exhibit 4 marked for
15 identification.)

16 BY MR. THORNE:

17 Q Mr. Atallah, you recognize this as the transcript
18 of the GAC opening session at Durban; is that correct?

19 A Sure.

20 Q You can see that the meeting opens with Chair
21 Dryden. That's Ms. Heather Dryden, who was the chair at
22 the time?

23 A Yes.

24 Q And you see the format is different countries are
25 allowed to speak and give their views. And so each of

1 the various sections starts with a country name.

2 Do you see that?

3 A Yes.

4 Q So if you turn to pages, for example, 14 and 15,
5 there's a section here where Chair Dryden recognizes
6 Peru.

7 ARBITRATOR BONNER: Which page is that, Counsel?

8 MR. THORNE: 14 and 15.

9 BY MR. THORNE:

10 Q Do you see it, Mr. Atallah?

11 A Yes.

12 Q If you turn to page 15, in the second full
13 paragraph -- you can see this is still Peru speaking --
14 Peru says -- talking about the Amazon name in English
15 (as read):

16 "It has been allotted the three-
17 digit code number, so it is in that
18 3166-2 list. So there is no doubt
19 whatsoever that this is a geographic
20 name."

21 Do you see that?

22 A Okay.

23 Q Second full paragraph on page 15.

24 A Sure.

25 Q Do you see it?

1 A Yes.

2 Q This is the representation by Peru that your
3 counsel this morning said was in error?

4 A Yes.

5 Q And that's made to the full present group of GAC
6 countries that were at the meeting?

7 A Sure.

8 Q And then you turn to page 24.

9 Peru was recognized another time. At the bottom
10 of the first paragraph, the Peru representative says (as
11 read):

12 "There is no ambiguity in this
13 case."

14 Do you see that?

15 A I'm looking for the exact word.

16 Q Bottom of the first paragraph, Peruvians (as
17 read):

18 "There is no ambiguity in this
19 case."

20 A Okay. Yes.

21 Q And then a few lines below, Peru continues (as
22 read):

23 "So in this case, there was no
24 doubt that they were dealing with a
25 geographic name there was also no

1 doubt that it was a codified name
2 because it got the three-digit code."

3 Do you see that?

4 A Yes.

5 Q That's a reference by Peru to the lists the
6 applicant Guidebook uses to define geographic names,
7 correct?

8 A Yes.

9 Q And your testimony is that the NGPC did not
10 investigate whether these statements and other advocacy
11 by Peru based on a mistake in reading the Guidebook had
12 an effect on the GAC consensus advice?

13 A Yes, that's correct.

14 Q So it is also ICANN's view that if consensus GAC
15 advice were based on mistake of international law, that
16 would still be entitled to a presumption, a strong
17 presumption?

18 A So the GAC advice is entitled for some
19 presumption. If the board has concerns about the GAC
20 advice or if the board actually receives information
21 from other parties including its own SO's and AC's that
22 there is something wrong with that, then, actually, the
23 board will investigate.

24 And mainly when Amazon actually wrote the board
25 and when there was a question about the international

1 rights for the GAC to object to the names and for the
2 rights of Amazon to get the name, the board commissioned
3 a report, a study, to understand, really, if there are
4 any such rights.

5 And as you mentioned earlier, the report showed
6 that neither the GAC has -- or the country, Brazil, has
7 a right to object to the name. Neither does Amazon has
8 the right to have the name.

9 And therefore, the board doesn't do its due
10 diligence when it sees something that needs to be --

11 Q Sir, you're getting ahead of me and I appreciate
12 that because it's almost lunchtime, but bear with my
13 question.

14 If the NGPC is -- if NGPC is aware that, for
15 example, Brazil has a mistaken view of international law
16 and it goes out and hires an expert to determine, yes,
17 Brazil was making a mistake there, Brazil has no
18 sovereign rights to the name, the NGPC is still
19 providing a strong presumption to honor the GAC advice
20 that was based on a mistake of international law?

21 A I'm sorry. The way that the board would handle
22 that is that it would say, okay, I got the study. There
23 is a mistake here, so am I going to reject this advice
24 or not? And if the information that it has outweigh the
25 GAC advice presumptive right, acceptance, then the NGPC

1 would have to reject the GAC advice and would have to go
2 through the justification of why it's rejecting it and
3 follow the process of consulting with the GAC on the
4 issue.

5 Q Here the NGPC commissioned an expert to study the
6 question, by Brazil, does it have a sovereign right, and
7 it found no, Brazil does not have a sovereign right.

8 A Yes.

9 Q It found that.

10 What further steps did the NGPC take to see if
11 the GAC advice was infected by a mistake Brazil made on
12 its sovereign rights?

13 A So there were a lot of issues in the -- in the
14 justification for the GAC advice, and namely, it was
15 public interest of the Amazonian region and its
16 population. And the board does not substitute its
17 opinion to the opinion of the countries of that region
18 when it comes to public interest.

19 And if those countries say that there are
20 10 million people that are going to be affected by the
21 name, the board is not going to come and deny them
22 that -- or object to the government's role in public
23 interest. And that's the issue that's at hand.

24 Q So if your direct representative to Brazil had
25 come back to you and Mr. Chehadé and said, I hear

1 there's a sensitivity about letting Amazon have the
2 top-level domain name, but I really don't understand it,
3 it's implausible, that would not affect your decision to
4 go ahead and embrace the GAC advice it's based on
5 implausible factual scenario?

6 A Very hypothetical.

7 But nobody came to me and told me that this is
8 implausible and, you know -- but -- besides, they don't
9 need to come to me. They have to provide the
10 information to the board.

11 So, I mean, you know, the question is full of
12 hypotheticals. But in reality, the 130 other countries
13 did not see in the motion that was put on the floor by
14 the regional countries there that they need to object,
15 which actually has a presumptive acceptance by the board
16 that if the -- all of these governments are agreeing
17 that the remit of these countries to care for their
18 people, that -- and they are not objecting to this, that
19 the board should actually not throw it out the window
20 and say, oh, what do you know. Of course not.

21 Q If the GAC consensus advice was based on a fear
22 of foreign exploitation of the domain name or a plain
23 anti-U.S. company bias, if it was based on that, it
24 would still be your position that you would defer to the
25 GAC advice?

1 A I believe that public interest of the people of
2 the region trumps anything, yes.

3 Q And the public interest could be a fear of
4 foreign exploitation or bias against U.S. companies
5 having a top-level domain?

6 A Again, I've been asked to replace the government
7 of Brazil's decision that this is important to their
8 people with my own estimate. I don't have that -- or
9 I'm not willing to actually replace that. Sorry.

10 MR. THORNE: Judge Bonner, if this is a good time
11 to take a lunch break, this would be a logical time, or
12 I can keep going.

13 ARBITRATOR BONNER: No, I think this would
14 probably be a good time. So why don't we recess. I'm
15 thinking maybe for an hour. It's about a quarter of
16 1:00. Maybe resume at a quarter of 2:00. How does that
17 sound?

18 MR. LeVEE: Sounds good to me.

19 ARBITRATOR BONNER: Is that all right?

20 ARBITRATOR MATZ: Yes.

21 ARBITRATOR BONNER: Okay. All right.

22 So we'll resume in an hour at 1:45.

23 In recess.

24 (At 12:46 p.m. the proceedings were
25 adjourned for noon recess and reconvened

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at 1:53 p.m.)

1 Los Angeles, California, Monday, May 1, 2017

2 1:53 p.m.

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4 ARBITRATOR BONNER: So we're back on the record.
5 Ready to proceed, Mr. Thorne, with the witness?

6 MR. THORNE: Taking your coaching, Judge Bonner,
7 we have a stack of documents. Not everything, but it's
8 a logical unit.

9 BY MR. THORNE:

10 Q Mr. Atallah, you will see the first document in
11 the stack was marked -- it's already an exhibit in the
12 case, C 83. Initially was designated as highly
13 confidential, but it's been downgraded to, apparently,
14 confidential.

15 Mr. Atallah, I'd like you to look at the last
16 page of that document, please.

17 As you know, how e-mails work is earlier e-mails
18 in the chain are later; more recent e-mails are usually
19 toward the front of the document. So if we go to the
20 very bottom of the last page, you can see this chain
21 begins with Everton Lucero, who is identified as an
22 ICANN stakeholder engagement manager-Brazil.

23 Do you see that?

24 A Yes.

25 Q "Brazil" is part of Mr. Lucero's title?

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1 A Yes.

2 Q Now, Everton Lucero is one of the people you
3 follow on Twitter, isn't it?

4 A Yes, probably.

5 Q I provided you, in case you needed to be
6 reminded, a second document. That's a snapshot of some
7 of the people which you follow on Twitter, and Everton
8 Lucero is one of those people.

9 A Okay.

10 Q Everton Lucero worked for the Brazilian
11 government more than 20 years before joining ICANN,
12 correct?

13 A Yes, I believe so.

14 Q He was the GAC vice chair representing Brazil in
15 2008 to 2009?

16 A I wasn't at ICANN at the time, so I'm not sure.
17 But I have no reason to not believe you.

18 Q I've included in the documents -- I'm not sure if
19 it mattered, but I've included as the next one on the
20 list Mr. Lucero's LinkedIn page. At the bottom of that
21 you can see he says on his LinkedIn page he was vice
22 chairman of the Government Advisory Committee, GAC,
23 ICANN, 2008-2009.

24 Do you see that?

25 A Yes.

1 Q Any reason to doubt that that's correct?

2 A No.

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10 Q Mr. Chehadé was ICANN president and CEO from
11 September 2012 until March 2016?

12 A Yes.

13 Q And Mr. Chehadé was a member of the NGPC?

14 A Yes.

15 Q And like you, Mr. Chehadé attended the seven
16 meetings where the NGPC discussed the .amazon
17 applications?

18 A I don't have your chart, but I believe so.

19 Q Do you want to check the chart?

20 A No. I'm fine.

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Q Is it your understanding at this time, Mr. Lucero

Page 136

1 was the ICANN rep in Brazil?

2 A So he's the engagement manager. So we don't
3 sell. So we don't have sales reps, but he's an
4 engagement manager for ICANN in Brazil.

5 Q So representative here -- our rep means
6 representative -- ICANN's representative to Brazil?

7 A No. So we don't have a representative, per se,
8 like representatives in the government speak, it would
9 be somebody that has a seat and provides representation.
10 This is more of an engagement manager because we don't
11 have a relationship. We don't have like -- we don't
12 attend meetings and vote and -- you know. He's just an
13 engagement manager, and he's based in Brazil. He's not
14 only for Brazil, but he's also for other countries as
15 well.

16 Q Thank you. But his title is Brazil?

17 A Yeah. I guess he is Brazilian, but we have -- we
18 don't have one for every country. We have total of
19 about six or seven of these engagement guys, what we
20 call government engagement people. And they actually
21 participate in like multiple countries, not only one
22 country.

23 Q I understand. His beat is bigger than Brazil,
24 but includes Brazil?

25 A Yes.

1 Q And he spent 20 years working for the Brazilian
2 government?

3 A Yes.

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Do you know if these e-mails were shown to the NGPC members other than Mr. Chehadé?

A I don't believe so, but I'm not privy to that information. I'm not going to say yes or no, but I don't -- I'm not aware that they were.

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13 Q But in your seven meetings with the NGPC, you
14 don't know if this was brought up?

15 A I don't -- I don't recall that this was sent to
16 the NGPC. Typically, these kind of e-mails do not --
17 are not sent to the board. But I'm not -- I can't
18 affirm for sure that nobody sent it to them.

19 Q Were we talking about the NGPC rationale before.
20 You said there was background knowledge that NGPC
21 members would bring to the meeting.

22 Is it the kind of background knowledge they would
23 bring, that it's inadmissible to the U.S.-based company,
24 which I have access --

25 A It's not what I mentioned. What I mentioned is

1 that during the meetings, the ICANN board attends
2 meetings and public forums where people voice opinions
3 and provide issues including Amazon standing in the
4 public forum and saying what they feel is going on with
5 their application as well as countries, you know,
6 voicing their opinions.

7 And so the meeting is a forum for sharing
8 these -- what's going on and the information that's
9 there. And so they are aware of things that are
10 happening during those meetings.

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23 Q So if we went back through the exhibit that's in
24 front of you -- I don't want to do that, I don't want to
25 take the time, but if we went back to the exhibit that

1 was entered as C 54 -- and I forget what exhibit number,
2 but that's the NGPC rationale document.

3 If we looked at all the different exhibits that
4 are listed there, you would not be surprised if we did
5 not find this e-mail on the list of things considered?

6 A Probably not.

7 Q It's not there?

8 A I don't know if it's there or not, but if it's
9 not there, I would not be surprised.

10 Q Do you know who Ambassador Benedicto is?

11 A Yes. He's actually right now the GAC rep from
12 Brazil.

13 Q At this time, was he the GAC rep?

14 A I'm not sure. I don't think so.

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12 Q All right. Let's go back to a document that you

13 already have. This is the Durban transcript. The

14 original production is C 40.

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3 ARBITRATOR BONNER: Thank you.

4 All right. Go ahead, Counsel.

5 Now you're on --

6 MR. THORNE: Any other questions for this
7 document?

8 ARBITRATOR BONNER: No.

9 We're back on Exhibit 40?

10 MR. THORNE: Back on the Durban transcript.

11 BY MR. THORNE:

12 Q Mr. Atallah, go to page 13, please. I guess you
13 have to look earlier to page 11, page 12 and 13.
14 Page 11 is where Brazil starts speaking at the Durban
15 meeting.

16 Make sure the date is right here. This meeting
17 is occurring on what date, the Durban meeting?

18 A July 16.

19 Q July 16.

20 And that's --

21 A 2013.

22 Q That's three or four weeks -- three weeks after
23 the Brazilian senate hearing we were just talking about?

24 A Oh. Yeah.

25 Q So Brazil, starting on page 11, and then it

Page 152

1 carries over to page 13.

2 The very top of the page, Brazil says (as read):

3 "And we would like to come here
4 again to ask the GAC members to
5 support a GAC advice to the board in
6 the same -- in the same terms as we
7 have approved last meeting in Beijing
8 about .africa."

9 Do you see that?

10 A Sure, yes.

11 ARBITRATOR BONNER: What page, Counsel?

12 MR. THORNE: Page 13 of the Durban transcript.

13 BY MR. THORNE:

14 Q So, Mr. Atallah, the Brazilian representative of
15 the GAC, spoke at the Durban meeting, did exactly what
16 Mr. Everton recommended: follow the road map of .africa
17 GAC gives consensus advice.

18 That's -- that's the way to deal with your
19 concern, correct?

20 A Yeah. I mean, this is not a secret. Actually, a
21 lot of our participants at ICANN, they knock on every
22 door to get what they want. So it's not unusual for a
23 participant to go through multiple channels to try to
24 get an outcome that they want.

25 Q Is it not unusual for an ICANN staff member with

1 approval of the number one and the number two officer of
2 ICANN to give coaching to countries on how to achieve
3 blockage of an application?

4 A Well, I'm sorry, but he didn't get approval, at
5 least from me, because I wasn't responsible for his --
6 for that department.

7 But for sure, even Amazon comes to us and asks us
8 what is the best way forward to actually deal with this
9 issue. And we worked with them and we tried to explain
10 to them the avenues that they can go through to actually
11 get their case presented and get the gTLD.

12 So we are not actually in a position to say this
13 TLD should go -- you know, this applicant should get
14 this TLD, this applicant shouldn't get this TLD. We
15 actually implement the policies as the Madam Chair
16 brings the policies up. And then ICANN is not a usual
17 organization because it's a bottom upward organization.

18 And a lot of people need guidance, especially
19 newcomers to the processes of ICANN, like Amazon, who
20 came to us multiple times. And we sat with them and
21 explained to them the different avenues to actually --
22 including this IRP when we explained to them that they
23 can file an IRP if our decision had not -- if a decision
24 is not to their favor and they seek remedy that's a
25 remedy for them.

1 So we explain the processes to everybody and what
2 avenues that they can go through.

3 And that's not unusual for us to be very open,
4 very clear, and very transparent, even when people
5 question the decisions that ICANN make.

6 Q As soon as Mr. Lucero's work was done, he went
7 right back to work for the government of Brazil, didn't
8 he?

9 A I'm not aware of that, but I couldn't be -- I
10 don't know.

11 Q The Durban meeting occurred when? You got that
12 in front of you.

13 A On July 16th.

14 Q On July 18, ICANN issued a press release
15 entitled -- this is the next document in your stack
16 there.

17 (As read):

18 "New position for Everton Lucero.
19 During today's GAC session in Durban
20 be announced that Everton Lucero has
21 accepted an offer to work for the
22 Brazilian government and his long-time
23 colleague and former boss, minister of
24 External Relations, Antonio Patroita."
25 As soon as he was done with the Durban meeting he

1 went back to Brazil.

2 That's correct, isn't it?

3 A Yeah.

4 ARBITRATOR MATZ: Mr. Thorne, excuse me. Would
5 you like to have C 101 identified and marked as Atallah
6 Exhibit 6?

7 THE WITNESS: This is marked as Exhibit --

8 MR. THORNE: Thank you, Judge Matz. Let me -- so
9 we have clarity of this, C 83 is Atallah Exhibit 5.

10 ARBITRATOR MATZ: Right. I got that.

11 MR. THORNE: The partial list of the Twitter
12 feeds that Mr. Atallah --

13 ARBITRATOR MATZ: Oh, those are separate numbers?

14 MR. THORNE: That's 6.

15 (Atallah Exhibit 6 marked for
16 identification.)

17 MR. THORNE: Everton Lucero's LinkedIn page is
18 Exhibit 7.

19 (Atallah Exhibit 7 marked for
20 identification.)

21 MR. THORNE: Fadi Chehadé's background is
22 Exhibit 8.

23 (Atallah Exhibit 8 marked for
24 identification.)

25 MR. THORNE: And C 101, the ICANN press release,

1 is Exhibit 9.

2 (Atallah Exhibit 9 marked for
3 identification.)

4 ARBITRATOR MATZ: All right.

5 MR. THORNE: We're batching these. I should have
6 asked --

7 MR. LeVEE: If you can just hold on one minute.
8 I am missing three of those.

9 ARBITRATOR BONNER: Let's take a short recess,
10 about a five-minute recess, convenience recess.

11 (Recess.)

12 ARBITRATOR BONNER: We'll go back on the record.
13 I hope we've got the exhibit numbers straightened
14 out.

15 MR. THORNE: We do. We have another batch of
16 exhibits to give the witness.

17 ARBITRATOR MATZ: While we are waiting for that,
18 may I ask a question of the witness?

19 MR. THORNE: Yes.

20 ARBITRATOR MATZ: I think you used the term
21 "bottoms-up organization" to describe ICANN? Is that
22 the term you used?

23 THE WITNESS: Yes.

24 ARBITRATOR MATZ: Could you explain what you mean
25 when you use that term.

1 THE WITNESS: So there is the ICANN organization,
2 which is the employees and ICANN. This is a
3 traditional organization. The volunteers that
4 participate in actually setting the policies and all of
5 that, they participate in a bottom-up process.

6 So the -- for example, if you take any of the
7 supporting organization or advisory committees, they are
8 not managed top down. They are -- actually, everything
9 happens bottom up, which means a supporting organization
10 volunteers would meet together in a working group. They
11 come up with a policy, and that policy goes up and gets
12 ratified by the council and then goes up to the board.
13 So it's called bottom-up process of developing policies.

14 ARBITRATOR MATZ: And in your answer, sir, did
15 you just use the word "volunteers"?

16 THE WITNESS: Yes.

17 ARBITRATOR MATZ: And by volunteers, to whom were
18 you referring?

19 THE WITNESS: So -- just take Amazon, for
20 example. If they wanted to participate in policy
21 development, they would send people to the policy
22 working groups, and they would work as volunteers,
23 helping develop policies bottom up. And these -- the
24 policies are all developed by such volunteers, not by
25 the ICANN staff, if you will.

1 ARBITRATOR MATZ: Okay. Thank you.

2 MR. THORNE: These are document numbers --

3 MS. BEYNON: Exhibit 10.

4 Do you want me to read these into the record?

5 MR. THORNE: Tell me the numbers. 10 through --
6 10 through 14.

7 BY MR. THORNE:

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14 ARBITRATOR BONNER: Counsel, I think we are just
15 getting one more set of Exhibits 10 through 14.

16 MS. BEYNON: Just so we're all on the same page
17 here, Exhibit No. 10 is ICANN Amazon 10743 to 10751.

18 (Atallah Exhibit 10 marked for
19 identification.)

20 MS. BEYNON: Exhibit No. 11 is marked C 81.

21 (Atallah Exhibit 11 marked for
22 identification.)

23 MS. BEYNON: Exhibit No. 12 is marked ICANN
24 Amazon 21372 to 21379.

25 (Atallah Exhibit 12 marked for

1 identification.)

2 MS. BEYNON: Exhibit No. 13 is marked C 76.

3 (Atallah Exhibit 13 marked for

4 identification.)

5 MS. BEYNON: Exhibit No. 14 is marked C 86.

6 (Atallah Exhibit 14 marked for

7 identification.)

8 MS. BEYNON: And I apologize. I think you may be

9 missing --

10 MR. LeVEE: I'm missing 76.

11 ARBITRATOR MATZ: You want another No. 14, 86? I

12 have two. Is that what you are missing?

13 MR. LeVEE: No. I'm missing 76.

14 ARBITRATOR MATZ: Here's an extra --

15 MS. BEYNON: Hold on.

16 (Whereupon, a discussion was held off

17 the record.)

18 MR. THORNE: Does everyone have a copy of 10743?

19 ARBITRATOR BONNER: Yes.

20 MR. THORNE: I'm going to get to the rest of the

21 documents relatively quickly.

22 BY MR. THORNE:

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11 Q Redacted - Information Designated Confidential In This IRP Tarek Kamal is a
12 senior advisor to the president and senior vice
13 president in charge of the IGO engagement; is that
14 correct?

15 A Yes.

16 Q He's a senior advisor to Fadi Chehadé at this
17 time?

18 A Yes. He was a previous minister of
19 communication.

20 Q Rodrigo de la Parra is the vice president of
21 ICANN?

22 A Yes.

23 Q Mandy Carver is the vice president for government
24 engagement?

25 A I think so now, yes.

1 Q Nigel Hickson is the vice president for Europe?

2 A Yes.

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5 Q The countries of Latin America were an important
6 constituency to ICANN to maintain its independence from
7 the United Nations; is that correct?

8 A Not really. They haven't played a good role with
9 us. So far we are doing fine. I mean, the governments
10 that actually were more in line with the ICANN are
11 basically mostly western countries and the
12 United States.

13 Q There was a proposal at the same time as the
14 Amazon applications to take some of ICANN's functions
15 and move them to the International Telecommunications
16 Union, which is an organization of the United Nations.

17 That's correct, isn't it?

18 A That's a proposal that's been there for many
19 years.

20 Q I'm sorry?

21 A It's been a proposal for many years.

22 Q At the time of the Amazon applications, it was an
23 important concern that ICANN might lose its functions to
24 the IT group, maybe not immediately but over time?

25 A It's a concern. I mean this concern has been

1 there for a long time. There are a lot of countries
2 that prefer to have the United Nations of countries
3 dictate what happens on the Internet and -- but that's
4 been mitigated over many years in different ways, like
5 the Internet Governance Forum was created to actually
6 diffuse that tension, and there were other negotiations
7 all the time happening in countries so that this doesn't
8 happen.

9 Q There's a treaty being debated called the ITR
10 that would potentially have moved some of ICANN's
11 functions to the United Nations, correct?

12 A Potentially, yes, but a lot of these treaties are
13 voted also by consensus, which means you need no
14 opposition. And so it's not as easy as people might
15 think that, you know, they can take over.

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5 A let me explain this in a different way.

6 The Internet is a voluntary system, which means that
7 today I could take my Web site and say, I don't want it
8 to be -- participate on the Internet. I'm going to take
9 it off and go somewhere else.

10 So the governments cannot come in together and
11 say, oh, we're going to take over the Internet, because
12 if half the governments decide we're not participating,
13 then you don't have an Internet anymore. You have two
14 Internets.

15 So you need consensus to move these kind of
16 things forward. So yes, we want everybody to accept
17 ICANN, not just five countries or ten countries --
18 everybody. We want everybody to feel like they are
19 welcome at ICANN, that our systems are transparent.

20 Q Every country counts.

21 A Everybody should feel like their issues are being
22 heard at ICANN, whether it's country, whether it's
23 companies, whether it is civil society, whether it's
24 academia, technical folks. Everybody is welcome at
25 ICANN, and that's the bottom-up process.

1 Q And the United States supported that?

2 A Absolutely.

3 Q And the United States was trying to convince
4 individual countries to stay on board with the consensus
5 multistakeholder approach?

6 A Yes.

7 Q And the United States government talked to many
8 of these Latin America countries because the
9 United States government considered them important
10 constituents; they wanted them to stay on board
11 supporting ICANN?

12 A I'm assuming yes. I'm not in the government, but
13 yes.

14 Q That was your understanding?

15 A Yes. So the GAC was 130 countries. Now it's 200
16 countries. We didn't have many of the big Fortune 500
17 companies in ICANN. Now we have a lot of them
18 participating in ICANN. So yes, we want to be more
19 inclusive and we want everybody to participate because
20 that gives us legitimacy.

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11 MR. LeVEE: Members of the panel, I know this is
12 informal, we're not in court, but Mr. Atallah is not
13 referenced on this document. So to ask him if he can
14 speculate as to who might have been speaking --

15 ARBITRATOR BONNER: I think that's in the form of
16 an objection, but let's see if he can't speculate
17 anyway.

18 MR. LeVEE: Thank you, Your Honor.

19 ARBITRATOR BONNER: I guess that was a --

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19 BY MR. THORNE:

20 Q Mr. Atallah, you're aware of the United States
21 abstention from the GAC vote in Durban?

22 A Yes.

23 Q And if we checked, you could confirm for me that
24 July 3 was the date the United States issued its notice
25 it was going to abstain?

Page 177

1 A I'm sure we can check that.

2 Q And the Durban meeting we talked about was on
3 July 13th?

4 A Yes.

5 ARBITRATOR MATZ: July what?

6 MR. THORNE: July 13, 1-3.

7 BY MR. THORNE:

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14 -- so during that time, I think a lot of people were
15 linking ICANN to the Snowden issue. And a lot of people
16 were interpreting that ICANN has the key to the
17 Internet; therefore, they have, like -- that we have the
18 ability to be listening to people's conversations and
19 looking at their e-mails and things like that.

20 And we've taken a very conscious effort to
21 educate as much as possible that we don't do any of
22 this. We don't even have the ability to do anything
23 like that.

24 Q ICANN does not spy on people?

25 A Well, we don't have that ability. We --

1 Q It doesn't spy on people?

2 A Yeah, and we don't have the ability to allow
3 other people to spy on people, and we don't have the
4 ability to control these kind of things. So although,
5 you know, everything that America was being painted with
6 one brush, we were trying to differentiate ourselves and
7 say, you know, ICANN is not one of -- you know, a
8 government agency or something like that. And we don't
9 have these available.

10 Q If there was a misunderstanding among the world's
11 governments leading up to the meeting in Durban, a
12 misunderstanding that somehow ICANN, controlled by the
13 United States government, is going to be able to
14 eavesdrop, if that affected the GAC decision in .amazon,
15 if that did, that wouldn't have mattered to the NGPC
16 because they reached consensus?

17 A It's a little bit different. So when the people
18 in the GAC -- they understand what ICANN does and what
19 ICANN doesn't do. It's really about the rest of the
20 world -- governments of the world, you know,
21 understanding what we do and our role.

22 So it's totally -- it's totally different between
23 the people who understand ICANN and work with it versus
24 the outside. And that's why we have these engagement
25 folks that engage and educate and explain what ICANN

1 does and invite people to participate in the ICANN
2 process.

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So having attended all seven NGPC meetings, did the NGPC do anything to investigate whether a concern about the Edward Snowden scandal had caused the GAC to issue consensus advice based on false premises?

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A No, I don't think that -- I mean, I don't think that the issue here is about whether the Brazilians lobbied to GAC or not. I think the issue here is did the GAC agree that this application for .amazon should not proceed based on objections from the Brazilian and regional countries that have the public interest of their compilation in mind. I think that was the gist of it.

25

So I still don't think that the NGPC had the

1 obligation to investigate the processes of the GAC. The
2 NGPC looked at every evidence that the Amazon
3 Cooperation presented to them. They looked at all the
4 information that they had.

5 When the -- when the GAC advice came about, the
6 board provided notice to Amazon to actually provide it
7 with information, present their view, their side of the
8 topic, and they presented a large document to the NGPC,
9 which they reviewed and did their due diligence.

10 Q So the answer to my question, did the NGPC take
11 any steps? your answer is no?

12 A No, not to investigate Brazil and other
13 countries. It's not the role of the NGPC to investigate
14 these countries and their processes.

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24 A I'm not aware of what Mr. Chehadé decided to do.

25 But the information that the NGPC went through

1 was comprehensive. They looked at every opinion that
2 the counterparties have and everything that was
3 available to them, and they made their decision based on
4 the process and as well as the issues at hand.

5 So, you know, I think that the NGPC did its role
6 impeccably and actually reviewed so much information, so
7 much data, that the thing took ten month to actually
8 deliberate instead of getting to move quicker based on
9 the GAC advisory.

10 Q Let's move on to the next document, which is C
11 76. And that's Exhibit No. --

12 MR. LeVEE: Members of the panel, could we take a
13 five-minute convenience break?

14 ARBITRATOR BONNER: That motion will be granted.
15 Take five minutes? We'll take a ten-minute break.

16 We'll resume at about 3:25.

17 (Recess.)

18 ARBITRATOR BONNER: We're back on the record with
19 Mr. Atallah.

20 Mr. Thorne, you want to proceed?

21 BY MR. THORNE:

22 Q Mr. Atallah, Judge Bonner asked a question this
23 morning. You were here for it. He asked if there would
24 have been consensus of the GAC on its rationale.

25 Did you answer that question? In the .amazon

1 case, would the GAC have agreed on a rationale for its
2 advice?

3 ARBITRATOR MATZ: I'm sorry, Mr. Thorne, could
4 you repeat your question? I just couldn't hear you.

5 MR. THORNE: Sure. I'm sorry. Thanks, Judge
6 Matz.

7 This morning Judge Bonner asked if there would
8 have been consensus on the rationale of the GAC
9 regarding Amazon. I'm asking Mr. Atallah if he knows
10 would there have been consensus?

11 THE WITNESS: I'm sorry, but I'm not aware that
12 there was a rationale to be -- to have consensus.

13 BY MR. THORNE:

14 Q On a rationale.

15 So if the GAC had been asked, do you have
16 agreement on why these applications should not go
17 forward? would the GAC have produced a consensus answer
18 on why?

19 A I presume the consensus would be on the fact that
20 every country is responsible for its own people.
21 Therefore, the public interest of each country is in the
22 hands of the government, and therefore, no other
23 government can object to that government's view on the
24 internal affairs. And that would be the consensus,
25 because that's the process. So the process would be the

1 consensus.

2 But I believe their rationale would be about the
3 process itself and not really subject matter because
4 that's a subject to each country.

5 Q You understand, don't you, that there would not
6 have been agreement on the subject matter of opposing
7 the application because there wasn't agreement.
8 Different countries did not agree on a rationale --
9 couldn't have agreed. You understand that?

10 A Again, I think that they, the common rationale is
11 that every country has their own remit, and the remit of
12 the countries of the Amazon region, it is their
13 responsibility to actually act in the public interest of
14 that population. And I don't think any other country
15 would actually object to that. And therefore, they
16 would have a rationale based on that.

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15 A I mean, it's like comparing apples and oranges.

16 I'm sorry, but based on their application, the
17 Amazon application, of course, I think that they should
18 proceed and the application had merit and all of that.

19 Nobody is questioning that. But there is the public
20 interest issue here, and we're not here to judge whether
21 the Brazilian government's public interest is actually
22 right or wrong.

23 And if the other governments were asked to agree
24 on that, they would have agreed that basically the
25 public interest remit is in the Brazilian government's

1 hand, and therefore, they would not want to object.

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11 So the United States, if its views had counted on
12 the rationale -- not on the vote, but on the rationale,
13 they'd disagree on every point with Brazil, didn't it?

14 You knew that?

15 A There was no rationale for me to agree or
16 disagree with. But I still think that they are actually
17 two different issues. And I still think that the
18 Brazilian government's objection to the benefit of
19 public interest of its own people is their right to do.
20 So, you know, I don't know what else that --

21 Q Did the United States abstain out of sheer
22 political expediency because the Latin American block is
23 key in the Internet Governance debates? That's correct?

24 A That's up to the U.S. government. They didn't
25 share that with me.

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1 And last question, sir, is can you just very
2 quickly tell the panel what was the Internet Governance
3 debate.

4 THE WITNESS: So the Internet Governance debate
5 is, among other things -- the key one is about whether
6 the Internet should be governed by a U.S.-controlled or
7 U.S. Cooperation that has a contract with the U.S.
8 government or by another venue that's more
9 international. So the ITU or a similar organization to
10 ICANN that is present in international foreign
11 independent organization.

12 That's why we actually went through the process
13 of the last two years of breaking out a contract with
14 U.S. government and make ICANN more of a global
15 organization that is accountable to its stakeholders.

16 ARBITRATOR MATZ: Okay.

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ARBITRATOR MATZ: No further questions.

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Thank you, Mr. Thorne.

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MR. THORNE: Two more documents. And while

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Ms. Beynon is handing out those, I'm going to follow up

8

on Judge Matz's question. I want to follow up on Judge

9

Matz's question on the Internet Governance debate. This

10

doesn't depend on the document.

11

BY MR. THORNE:

12

Q Mr. Chehadé, if ICANN had been -- I'm sorry --

13

A I'm Mr. Atallah.

14

Q If ICANN had been unsuccessful in the Internet

15

Governance debate, some or all of its functions would

16

have been transferred to the ITU; is that correct?

17

A As I explained earlier, it's not a -- it's not a

18

one -- it's not a switch. So you could have had,

19

actually, a fragmentation of the Internet where you'd

20

have two Internets.

21

Q So if there were two Internets, there would be

22

less Internets for ICANN to superintend?

23

A We actually -- there are many different top-level

24

domains and they're all in the root.

25

So if you had a fracture, you have two roots.

1 Therefore, basically you'd have two separate systems to
2 talk to each other. And the Internet basically -- that
3 branch of the Internet being one that everybody can talk
4 to everybody else.

5 So if you fragmented it, then you would have a
6 hard time finding other people in the other Internet, or
7 you would have to switch between two systems every time
8 you'd talk to the other sides.

9 Q If ITU had taken over ICANN's functions, there
10 would be nothing for ICANN to do?

11 A This is why I think it's not black and white like
12 this.

13 It's not in anybody's interest to actually
14 fragment the Internet. So it will be a fight where
15 everybody has to agree one way or the other.

16 So let's say it's not as simple as, you know,
17 50 percent voting one way and, therefore, it's going to
18 happen. Because all of the UN system is actually
19 voluntary system, which means that the majority could
20 vote, but that countries could decide not to comply and,
21 therefore, it will fall on the ground, the motion will
22 fall on the ground.

23 So it's not -- it's not a -- everybody's forced
24 to follow everybody else.

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MR. LeVEE: I just wanted to note for the record

1 as we're getting into the questions, that Atallah
2 Exhibit 15 and 16 are highly confidential, so they
3 should be so designated in the transcript. No one else
4 should be looking at them, but we're not objecting to
5 Amazon being present during the dialogue.

6 ARBITRATOR BONNER: Got it. Okay. So thank you.

7 MR. LeVEE: Sorry to intrude.

8 ARBITRATOR BONNER: No, that's all right.

9 Go ahead, Mr. Thorne.

10 BY MR. THORNE:

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5 Q Because more participation is good for ICANN?

6 A Yes. It's more legitimate.

7 Q It's good for ICANN employees?

8 A It's good for one Internet.

9 ARBITRATOR BONNER: Good for what? Excuse me.

10 THE WITNESS: One Internet.

11 ARBITRATOR BONNER: One Internet.

12 BY MR. THORNE:

13 Q It's good for the employees too. It's good for
14 the employees of ICANN who like -- you wake up every
15 morning. You like your job. You like working at ICANN.
16 You have a good job.

17 A Are you really asking me this?

18 Q I really am asking you this.

19 A You sit here, and you tell me how much I like my
20 job.

21 Q Given the choices, if countries signing the ITRs
22 and diminishing ICANN's power means there's less work
23 for ICANN to do, you would take some effort as has been
24 shown in the prior e-mails, and some effort to resist
25 countries leaving the federation, the multistakeholder

1 model?

2 A Again, I think that the mission of ICANN is to
3 keep the Internet one Internet. And I think that if the
4 Internet is fragmented, it's actually not a benefit to
5 anybody on the globe. And the cause of ICANN is
6 actually very dear to a lot of employees, and they want
7 to make sure that the Internet and what it brings to the
8 world and mostly developing world continues. So --

9 Q I can see you take it personal. That's
10 commendable.

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16 BY MR. THORNE:

17 Q Redacted - Information Designated Confidential In This IRP Let me ask you a
18 question first.

19 The concern that some of the parties had with
20 .amazon is the same concern whether Amazon starts with a
21 dot or ends with a com. It's the same concern.

22 With or without the com, it's the same concern?

23 A I'm not so sure.

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18 my understanding is that Amazon does
19 have amazon.co.br, for example, which means they do have
20 Amazon at the commercial, at the third level same .br,
21 but they don't -- that the fight is at the top level.
22 That's my understanding.

23 THE REPORTER: I'm sorry. Can you repeat that.

24 THE WITNESS: So the .br, which is the Brazilian
25 regional top-level domain, .br, they break the Internet

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1 into co, which is commercial, I think government, and
2 other areas, and Amazon does have amazon.co.br, so they
3 have that right in that TLD.

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3 THE REPORTER: I can't hear you.

4 THE WITNESS: I have the Echo at home and it's a
5 great product.

6 MR. THORNE: On that note, I'm done asking
7 questions.

8 ARBITRATOR BONNER: All right.

9 Mr. LeVee, any questions?

10 MR. LeVEE: I do.

11 Does the panel wish to ask any questions before I
12 do?

13 ARBITRATOR BONNER: We've been asking questions
14 as I've gone along here, so I would think it would be
15 okay just for you to go ahead and jump in.

16 MR. LeVEE: Then I will.

17

18 REDIRECT EXAMINATION

19 BY MR. LeVEE:

20 Q Good afternoon, Mr. Atallah.

21 We have just looked at ten-ish documents, more
22 than half of which you were on not on, so you didn't
23 receive. So let me ask you just to summarize.

24 You attended all seven meetings of the NGPC at
25 which the Amazon application was concerned, yes?

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1 A Yes.

2 Q And at any of those meetings, did the topic of
3 possible repercussions from either Brazil or Peru come
4 up in the event that the NGPC rejected the GAC advice?

5 A No. This issue never came up. And, I mean,
6 there are -- this is not unique. I just want to explain
7 this to everybody. This is not unique. There are a lot
8 of countries who are upset with ICANN. There are a lot
9 of applicants that are upset with ICANN. And ICANN has
10 no win in this -- in these issues.

11 What we try to do is we try to take applicants
12 that apply for certain things, listen to the objections
13 that everybody objects to, and find the solution that
14 works for everybody as much as possible.

15 Most of the time, there are unhappy parties. Or
16 sometimes they are all unhappy or equally unhappy. So
17 it's the nature of the business that you are trying to
18 get everybody what they want, but it's not feasible.

19 Q In this time frame, 2013, were there countries
20 other than Brazil and Peru that were making noises that
21 they had concerns about ICANN and might want to support
22 an ITU solution?

23 A Yes. There were -- one particular was France.
24 They had an issue with .wine and .vin. And I am a
25 French speaker, and I'd never heard words like the

1 French minister said to us at that time.

2 So I'm not going to repeat them here, but -- so
3 there are a lot of issues with applications where
4 governments were not happy or wanted to stop the
5 applications from proceeding.

6 Q And at these NGPC meetings at which the Amazon
7 applications were considered, did any board member say,
8 even one time to your memory, that we need to be careful
9 or concerned if we don't accept the GAC advice, because
10 Brazil, Peru, or some other country could work against
11 us in any way?

12 A No. Never.

13 Q What I want to do is take you back to just a
14 handful of the exhibits that you were shown this morning
15 and ask you some specific questions.

16 Hopefully, all of the exhibits are in front of
17 you; but if not, we will get copies.

18 The first one I want to ask you to look at is
19 Exhibit C 54, which is also Atallah Exhibit 3. It was
20 from before lunch.

21 A Okay.

22 Q Now, you indicated that this is the approved
23 resolution of the NGPC meeting of May 14, 2014?

24 A Yes.

25 Q And that's the day after six previous meetings

1 that the NGPC voted to adopt the consensus advice
2 vis-à-vis the Amazon applications?

3 A Yes.

4 Q Now, there was discussion before when you were
5 asked questions as to whether ICANN considered interests
6 of Amazon and its customers.

7 Let me focus on Amazon. I'm not sure how we can
8 categorize its customers. A lot of people are
9 customers.

10 Did the NGPC have before it information that
11 Amazon had submitted to support its application?

12 A Yes. So as I mentioned earlier, the NGPC, per
13 the Guidebook, once there was a GAC advice, the
14 applicant had 21 days to reply to the GAC advice. And
15 Amazon sent us a brief with the attachment, and that was
16 all present for the NGPC and the NGPC read that and, you
17 know, considered that before their decision.

18 Q Let me ask you to turn to page 11 of 15. You'll
19 see the page numbers on the top right of the document.

20 A Yes.

21 Q So turn to page 11.

22 At the very bottom, do see where it says (as
23 read):

24 "As part of its deliberations, the
25 NGPC will review significant materials

1 included, but is not limited to the
2 following."

3 Do you see that?

4 A Yes.

5 Q And then turn the page.

6 A Yes.

7 Q And right after the Guidebook Module 3 you see
8 "applicant responses to GAC advice"?

9 A Yes.

10 Q So that was the Amazon response to the GAC
11 advice, right?

12 A Yes.

13 Q And then the very next entry is a letter dated
14 March 3, 2013, from Stacey King, the senior corporate
15 counsel at Amazon, so the board had that, right?

16 A Yes.

17 Q And then the very next item is another letter
18 dated July 4, 2013, from Stacey King, also from Amazon,
19 right?

20 A Yes.

21 Q So the NGPC had that.

22 And then if you skip a letter from Brazil, then
23 the next one is a letter dated December 3, 2013, from
24 Stacey King at Amazon, right?

25 A Yes.

1 Q And then skip a letter from Peru, and then the
2 last is a letter dated January 10, 2014, from Stacey
3 King from Amazon, right?

4 A Yes.

5 Q So -- and then if you turn the page, the last of
6 these letters is a letter dated April 14, 2014, from
7 Mr. Scott Hayden, also of Amazon, right?

8 A Yes.

9 Q So Amazon had submitted all of this
10 correspondence.

11 And is accurate to say that the NGPC considered
12 all of that correspondence?

13 A Yes.

14 Q And so to the extent Amazon expressed its views
15 about its position and whatever injury might occur to it
16 and its customers, that would have been taken into
17 account by the NGPC?

18 A Yes, absolutely.

19 Q Okay.

20 Let me then ask you to turn to Exhibit C 40. I
21 apologize that I never wrote down what exhibit number it
22 is.

23 ARBITRATOR BONNER: 4.

24 MR. LeVEE: Exhibit 4. Thank you.

25 BY MR. LeVEE:

1 Q So this is a copy of the transcript from the GAC,
2 correct?

3 A Yes.

4 Q And you were taken through one particular issue
5 with Peru. I want to make sure we turn to the right
6 page.

7 It might be easier to do it this way. Why don't
8 you turn to page 11. That's where the discussion of the
9 GAC advice begins. So it's 11 of 30.

10 Do you see that?

11 A Yes.

12 Q Okay. And I'm not going to have you read this
13 because the members of panel can do so on its own. But
14 in the first two pages, this is Brazil explaining its
15 positions to why GAC advice should be issued to the
16 Amazon applications, correct?

17 A Yes.

18 Q And then if you would turn to page 14. Peru --
19 you were highlighted one portion of this, but I want to
20 take a little bit at a time.

21 Peru says (as read):

22 "With your indulgence, just to
23 highlight three or four points."

24 Do you see that?

25 A Yes.

1 Q And the first one is (as read):

2 "We believe there is enough legal
3 grounds and ICANN bylaws, prior GAC
4 advice, and also the applicant's
5 guide, so our plea is very well
6 grounded in the legal framework of
7 ICANN."

8 Do you see that?

9 A Yes.

10 Q And then the second remark is that Peru does
11 think that this is a geographic name, right? It doesn't
12 say it's on a list. It just says it's a geographic
13 name.

14 And then two paragraphs down, Peru does say it's
15 been allotted a three-digit code number, right? That's
16 what Mr. Thorne referred you to in particular, that it's
17 on the 3166-2 list, right?

18 A Yes.

19 Q And you've already agreed with Mr. Thorne that
20 Peru was inaccurate in that portion of its signature,
21 right?

22 A That's correct.

23 Q And then Peru continues, and it says (as read):

24 "And the third remark is indeed,
25 this is a public interest issue and

1 that is why we are discussing this in
2 the GAC. There are several
3 populations that have been involved in
4 this, and I want to stress the fact
5 that unanimously, all Amazon countries
6 and all Amazon provinces, departments
7 and local governments had expressed in
8 writing their rejection to .amazon."

9 Correct?

10 A Correct.

11 Q So Peru actually had multiple reasons, not simply
12 the list?

13 A Yes.

14 Q Now, if .amazon had been on the list, would the
15 GAC have even been considering this issue?

16 A No. Actually, it -- probably it would have not
17 been applied to --

18 Q Right.

19 A -- in the first place, or it would have been
20 applied to and rejected -- and the panel that looked at
21 the geographical list would have actually rejected the
22 application.

23 Q Okay. So if the name is on the list, everybody
24 knows, if I'm not a country, I can't get the name,
25 right? So you were making the point before that people

1 would have understood --

2 A Can I correct that?

3 Q Please.

4 A There are two lists. One of the lists is you
5 won't apply for it or you won't get it. The other list
6 is you would need consent from the government, local
7 government, if you want to get the application.

8 Q Okay.

9 And you were explaining before during -- when
10 Mr. Thorne was asking you questions that people would
11 have understood that Peru was wrong.

12 Explain to the panel why people would have
13 understood that Peru was wrong as to whether .amazon was
14 on the list?

15 A Like we said earlier, if the -- Amazon was on the
16 list, then the panel would have found it a geographical
17 name, and therefore, it would be already not acceptable
18 as an application. So the only reason it's accepted as
19 an application is because it was not on the list and
20 everybody knew that. Otherwise, it wouldn't be an issue
21 that required GAC advice in the first place.

22 Q And the NGPC knew it was not on the list, right?

23 A Yes.

24 Q So now let's continue. And I just want to point
25 out some of the other countries that were supporting the

1 GAC advice.

2 If you turn to page 16, do you see that South
3 Africa states that they support the advice?

4 A Yes.

5 Q And at the bottom of that page, you see that the
6 country of Gabon supports the advice?

7 A Yes.

8 Q And then the next page, Sri Lanka?

9 A Yes.

10 Q And Trinidad and Tobago?

11 A Yes.

12 Q And then on page 18, Russia and Uruguay support
13 the advice?

14 A Yes.

15 Q And then I want to ask you to turn to page 19
16 with respect to Australia.

17 Now, Australia was not supporting the advice, but
18 what they say on page 20, "The situation" -- I'm
19 reading, I'm sorry, from the paragraph that begins on
20 that page. It's just two sentences on page 20.

21 (As read):

22 "The situation that we face today
23 is that some governments consider
24 geographic names that are not on
25 ICANN's lists or picked up under

1 ICANN's framework in the applicant
2 Guidebook."

3 I think that is why we are here today discussing
4 this, because there is apparent gap in ICANN's processes
5 and policy framework. Is what Australia is saying is
6 it's not on the list, and we need to figure out what to
7 do about it?

8 A Yes.

9 Q And then if you skip to page 27, do you see that
10 China states that they also support the statement of
11 Brazil and Peru and Argentina? Toward the bottom of the
12 page.

13 A Yes.

14 Q So I didn't add it up, but in my slides this
15 morning, I said it was roughly 20.

16 Is that consistent with your understanding now
17 that you have read the transcript?

18 A Yes.

19 Q There was some discussion before lunch as to
20 whether the GAC had obligations, which was a term you
21 used in your written submission.

22 Was the GAC obligated to object?

23 A No.

24 Q If the GAC wanted to express its opinion under
25 the Guidebook, how was it supposed to do that?

1 A It was to provide advice to the board.

2 Q Now, in some situations, that has been consensus,
3 of course, right?

4 A Yes.

5 Q And in other situations, the GAC has not been
6 able to reach consensus and forwarded to the board
7 indication that it could not reach consensus, correct?

8 A That is correct.

9 Q In particular, the Persian Gulf string gTLD
10 application that was the subject of another IRP, in that
11 situation, the GAC could not reach consensus, correct?

12 A That's correct.

13 Q So the GAC -- do you know how many applications
14 the GAC actually gave any form of advice to? I know
15 that's a hard question.

16 A I cannot even guess.

17 Q Okay.

18 There were 1930 applications all together, right?

19 MR. THORNE: I'm going to object; leading. I
20 understand some leading is appropriate here, but to move
21 things along, I'm going to object to this --

22 MR. LeVEE: That's an easy one to fix.

23 ARBITRATOR BONNER: Why don't you just rephrase
24 it.

25 ///

1 BY MR. LeVEE:

2 Q How many applications did ICANN receive?

3 A 1,930 applications.

4 Q And do you know whether there were even 50 GAC
5 objections of one form or another?

6 A To specific countries?

7 Q Yes -- to specific strings.

8 A To specific strings, it was less than that.

9 Q Okay.

10 A It was much less.

11 ARBITRATOR BONNER: Less than 50?

12 THE WITNESS: Yeah, much less than that.

13 BY MR. LeVEE:

14 Q Less than 20?

15 A Probably around there.

16 Q So would it be fair to say that the GAC did not
17 have an obligation to object, but if it wanted to, it
18 knew how to do so?

19 A Yes.

20 Q Okay.

21 ARBITRATOR BONNER: The 20 or so, was that all
22 consensus advice or both consensus advice and --

23 THE WITNESS: No.

24 Actually, there were very few consensus advice.
25 I would say one in five was not consensus advice.

1 Persian Gulf was not consensus advice. Islamic halal
2 was not consensus advice for religious sensitivity.

3 So there were a few --

4 ARBITRATOR BONNER: What is your best estimate as
5 to the number of consensus advices from GAC with respect
6 to the 1,930 top-level domain name applications?

7 THE WITNESS: The reason I don't want to guess on
8 consensus advice because there was categories where they
9 actually had consensus. So they had consensus on the --
10 what they called the strings that applied -- that had
11 some sensitivities on the professional ones, like they
12 wanted doctor to represent only medical doctors. They
13 wanted the accountant to represent only professional
14 accountants, so things like that. They had consensus on
15 that, and they were probably like 20 or 30 strings that
16 would fit under that umbrella.

17 But they didn't have specific advice except on
18 less than -- I would say less than 20 specific strings
19 that they said these are advice on these specific
20 strings. And maybe -- definitely less than ten had
21 consensus advice.

22 But we can provide you these numbers if you --

23 ARBITRATOR BONNER: No. I just wanted your best
24 estimate. Thank you.

25 BY MR. LeVEE:

1 Q Mr. Thorne asked you some questions this morning
2 based on a hypothetical event. What if consensus advice
3 was based upon a complete misreading of the Guidebook?

4 So suppose that the GAC advice in this situation
5 was, in fact, based upon a complete misreading of the
6 Guidebook. The GAC said -- we, the GAC, are entitled to
7 do this, and they were just wrong in the NGPC's view.

8 Once the GAC issued that advice, would Amazon
9 have had the opportunity to comment on the advice?

10 A Yes, absolutely.

11 Q And would -- in that instance, would you think
12 that the NGPC would then go to the GAC and say, hey, we
13 think you might have gotten this wrong. We need to
14 discuss it with you?

15 A So that's the process that is agreed upon on GAC
16 advice, is that if the board -- and I mentioned that
17 earlier. If the board decides to not accept the GAC
18 advice, then they would have to go back to the GAC and
19 reject that advice with the rationale, and then they
20 would have to schedule a consultation with the GAC and
21 go over why their -- they didn't accept the GAC advice.

22 And I presume that if it was based on the wrong
23 assumptions or the wrong reading of the Guidebook, that
24 the GAC would correct their advice and bring new advice
25 to the board.

1 Q And -- but that's not what happened here --

2 A No.

3 Q -- right?

4 And Amazon did criticize the GAC's legal
5 interpretation of what the -- what the legal rights of
6 the countries were vis-à-vis the intellectual property
7 issue. And so what did the NGPC do?

8 A So the NGPC wanted to make sure that we are not
9 missing anything on international law. So we
10 commissioned a study by Pasaro (sic). And he actually
11 came back with, as I mentioned, the fact that neither
12 the governments had the right to the name, to block it,
13 or the applicant had the right to the string --

14 Q Okay.

15 A -- in the DNS.

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19 Q Okay. Now, you said before -- and I want to give
20 you a chance to amplify -- that ICANN wanted all of its
21 constituents to understand how the Guidebook works and
22 what all their options are.

23 So explain to the panel what you meant by that.
24 Was it unique that ICANN was telling Brazil what the
25 Guidebook provides?

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1 A No. So this is basically standard. The reason
2 why we had the government engagement team is to actually
3 engage with government, explain to them how they can
4 participate in the GAC, how they can actually work
5 within the ICANN system, and how they can be heard in
6 the ICANN system.

7 And whenever an issue comes up, you know, they
8 would explain to them all of that, but that doesn't --
9 that's not only toward governments. That's also toward
10 corporations, applicants. Anybody that has a question,
11 we spent all of our time at ICANN trying to be as
12 transparent as possible and make our Web site as
13 accessible as possible so that people can come in there
14 and figure out how they can get their work done as
15 quickly as possible.

16 Although not everybody agrees that the Web site
17 is very accessible, but we try as much as we can, keep
18 updating the information. And almost every document
19 that we see here, other than the e-mails, I think are
20 all accessible on the ICANN Web site, including all the
21 sessions, all the transcript. Everything is available
22 for everybody to see.

23 Q So these individuals who worked for ICANN but
24 were posted in various geographic countries, was it
25 their job to help communicate not only to the countries,

1 but to others living in those countries how the
2 Guidebook worked?

3 A So mostly the parties that are affected, when
4 they have questions, that's what we do. We spend time
5 with them. We explain to them. And a lot of the times
6 the government people engagement folks that we have
7 don't know the answers very well, so a lot of times we
8 correct them.

9 A lot of time they come and ask us and we reply
10 to them and we tell them, especially on the new gTLD
11 program, you know, how it works, what the -- and we
12 point them to the Guidebook and we tell them to follow
13 the instructions on the Guidebook and that's what we are
14 doing.

15 So we do a lot of engagement and a lot of help
16 with systems.

17 Q The Guidebook is several inches thick, is it?

18 A Yes. It's actually broken into multiple modules.

19 I don't know if you're familiar with the -- how
20 many times we met with Amazon to try to explain to them
21 their rights in the Guidebook and what -- the steps they
22 can follow and what are the different processes and all
23 of that.

24 So, you know, it's equal treatment. We have no
25 preference on -- on winners and losers. We -- we have

1 only one preference, to follow the process as per the
2 Guidebook and get from beginning to end as quickly as
3 possible.

4 MR. LeVEE: I have only one new exhibit I'm going
5 to mark, and now I'm forgetting where you ended.

6 MS. BEYNON: 16.

7 MR. LeVEE: 16.

8 So we're going to mark as Exhibit 17 a document
9 that's already in the record as R 31.

10 (Atallah Exhibit 17 marked for
11 identification.)

12 BY MR. LeVEE:

13 Q Do you recognize Exhibit R 31?

14 A Yes.

15 Q Are these the meeting minutes of the April 29,
16 2014 NGPC meeting?

17 A Yes.

18 Q Now, you mentioned that ICANN puts a lot of
19 things up on the Web site.

20 Are the NGPC minutes typically put up on the Web
21 site?

22 A Yes.

23 Q And were all the applications put on the Web
24 site?

25 A All the applications. There are parts of the

1 application that are confidential, not on the Web site,
2 but the rest of the application is all on the Web site.

3 Q And if the GAC issues a communique, is that put
4 on the Web site?

5 A It's on the Web site.

6 Q Okay. So I want to just take you through a
7 bit -- now, you attended this -- did you attend this
8 meeting?

9 A Yes.

10 Q So if you look at the second page, you see where
11 it says "Main Agenda GAC Advice."

12 And then at the bottom, it says (as read):

13 "Chris Disspain, outlined,
14 potential alternatives for the
15 committee and discuss to address the
16 GAC advice and the next steps that
17 would be required depending on the
18 course of action taken.

19 "Committee explored potential
20 consequences associated with taking
21 the each action."

22 Do you see that?

23 A Yes.

24 Q Now, I'm not going to read the numbers; the panel
25 can read them, the next couple of pages.

1 But would you say that the discussion at that
2 meeting was thorough?

3 A Yes. It always is.

4 Q And are the minutes accurate, that there were a
5 lot of options that were considered?

6 A Yes. I mean, typically, on the GAC advice, we
7 had a communique. The communique had many pieces of
8 advice, so we had to put it in a spreadsheet, deal with
9 every piece of advice separately, and it took multiple
10 meetings. And we still have some advice that we are not
11 finished quite yet.

12 Q Okay. In the middle of the page, it says (as
13 read):

14 "The committee considered
15 correspondence and comments submitted
16 by the impacted parties throughout the
17 process."

18 One of those parties was Amazon, right?

19 A Yes.

20 Q And did the committee actually discuss the
21 information that Amazon was providing to the NGPC?

22 A Yes. So everybody got the letters and the
23 responses that everybody sends on every issue and that
24 all in packets and so available for them online.

25 So before the -- we prepare everything a week

1 before the meeting so that they have the week to
2 actually read up on all the information. And then when
3 they come to the meeting, they're prepared to actually
4 have the discussion. And if they are all ready to vote,
5 then they can vote on the issue at hand.

6 But most of the time there is some discussion
7 that happens.

8 Q Okay.

9 Now, at this particular meeting, there was no
10 vote, right?

11 A Yes.

12 Q And was that -- why was that?

13 A Because they were still debating the issue and
14 there were other things they were working on.

15 Q Okay. I'm staying in that paragraph. It says --
16 this is the last sentence, "Chris."

17 Who is Chris?

18 A Chris Disspain.

19 Q Board member?

20 A Board member.

21 Q NGPC member?

22 A NGPC member.

23 Q Chris asked whether any additional information
24 would be helpful to the committee as it continued its
25 deliberations on the matter. And the committee

1 considered whether additional information was needed.

2 Was it common that people would say, is there
3 anything else we should be looking at before we make our
4 decision?

5 A Yes. So they always ask if there are any other
6 information that they should be aware of, that they
7 could be aware of, or anything that could actually help
8 them make their decisions. And typically -- usually
9 there aren't any unless we received something like a day
10 or two days before the meeting.

11 Q In this instance, it was decided not to vote that
12 day, right?

13 A Yes.

14 Q Can you recall whether anyone thought that
15 additional material would be useful?

16 A I'm -- I need to check here. I'm not sure if
17 that was when the Pasaro (sic) study was.

18 Q I think they already had the Passa.

19 So turn to the last page.

20 A So that's where, actually, they were --
21 practically had all the information they needed and that
22 they felt like they needed to start replying to the GAC
23 and considering GAC advice.

24 Q Okay. Now, on page 4, the paragraph that begins
25 on that page, do you see where it says (as read):

1 "The committee analyzed."

2 Do you see that?

3 A Yes.

4 Q Let me just read it (as read):

5 "The committee analyzed whether the
6 impacted parties would benefit from
7 having additional time to continue to
8 address the noted concerns. Some
9 members noted that a considerable
10 amount of time had lapsed from when
11 the advice was offered by the GAC and
12 queried whether additional time would
13 be helpful."

14 Do you see that?

15 A Yes.

16 Q Is that consistent with your memory?

17 A Yes.

18 Q So would it be fair to say people say, we've got
19 a lot of information. There's been a lot of debate.
20 We're not going to decide it today, but we're close?

21 MR. THORNE: Objection; leading.

22 ARBITRATOR BONNER: Overruled.

23 THE WITNESS: Yes. I mean, these questions get
24 asked almost every meeting. Do you have enough
25 information? Have you read everything that is there?

1 Do you need any more information? So these are common
2 questions.

3 And eventually the board coalesces around
4 readiness to vote, and that's when -- actually, the next
5 meeting we prepare the information for the resolutions
6 for them.

7 BY MR. LeVEE:

8 Q Now, at the bottom of page 4, there's B, C, D.
9 And D, and it says for those topics, the committee did
10 not consider those agenda items.

11 Do you see that?

12 A Yes.

13 Q So it was to -- your recollection that the
14 discussion of .amazon was pretty much the entire meeting
15 in April of 2015?

16 A So we ran out of time, yes.

17 Q Put that aside. Just a couple more questions.

18 You joined ICANN in 2010?

19 A Yes.

20 Q And were you involved at all in the process in
21 2011 where the GAC and the board were trying to
22 reconcile some issues?

23 A Yes.

24 Q Did you attend a meeting?

25 A I attended the meeting in Brussels.

1 Q Okay. What was the purpose of the Brussels
2 meeting?

3 A So when the GAC provided advice to the board that
4 they needed more -- basically, they wanted -- in order
5 for them to agree to the new gTLD program launch, they
6 wanted to have the rights to provide advice on an
7 application-by-application basis because they didn't
8 know, basically, what the applications were going to be
9 about.

10 So they were -- you know, in a layman's term,
11 they were afraid of the unknown. And they wanted to
12 have more -- I believe to object on a string-by-string
13 basis.

14 And so the board decided to have consultation
15 with the GAC to find a middle ground. And during that
16 time, there was an agreement to actually provide the GAC
17 the ability to object on a string-by-string basis. And
18 at the same time, to counter that compromise, they
19 provided for the Early Warning.

20 So the concept was, if an applicant is going to
21 depend on the Guidebook and apply for an application and
22 then the GAC has the right to come and object, how fair
23 is that?

24 So the compromise was they get to have an Early
25 Warning so that early on in the application process, if

1 the GAC actually provides an Early Warning, then the
2 applicant has the ability to mitigate that risk of
3 losing the application or withdraw the application. And
4 by withdrawing, it would allow -- early on it would
5 allow the applicant to get more of their application fee
6 refunded.

7 So that was a typical that happened during that
8 session -- one of the things that happened.

9 Q So the sooner an application is withdrawn, the
10 more of the fee would be refunded to the applicant?

11 A Yes. So it allowed the applicants to -- the
12 Early Warning allowed the applicants to know that there
13 is practically a GAC advice that's going to come at this
14 application. So if you wanted to continue with that
15 path, you're taking risk. And if you decide to
16 withdraw, you can actually get most of your money -- or
17 a good amount of your application fee back.

18 Q Now, did the GAC want the right to give advice on
19 the geographic nature of the string -- of any string,
20 whether or not it appeared on a list?

21 A So, again, the GAC wanted to provide -- they were
22 afraid of the unknown, and they didn't want to be caught
23 later on with a string that is not acceptable, but they
24 couldn't do anything about it. So they insisted on
25 having the ability to object to any string later on.

1 Q Okay. But what would be the consequence if there
2 was a objection, a community objection to the string and
3 the objection was overruled, in other words, the
4 applicant won? Would that mean that the GAC could not
5 give advice on that particular string because there had
6 already been a community objection?

7 A No. I think that actually this happened more
8 than once, but the GAC advice still applies.

9 Q Finally, the -- you said that the board
10 considered the Amazon applications for approximately a
11 ten-month period?

12 A Yes.

13 Q And you attended every meeting?

14 A Yes.

15 Q At the final meeting in May of 2014, when the
16 board -- the NGPC voted to adopt the GAC advice, what
17 was the vote?

18 A The vote was unanimous to accept the GAC advice.

19 MR. LeVEE: Thank you, members of the panel. I'm
20 mindful of the hour, so I'm going to keep it short.

21 ARBITRATOR BONNER: Thank you, Mr. LeVee.

22 MR. THORNE: Judge Bonner, if I can have a couple
23 questions on the new document and some of the new
24 testimony that went a little bit beyond the scope.

25 ARBITRATOR BONNER: Proceed, Mr. Thorne.

1 ARBITRATOR MATZ: May I just ask one follow-up
2 question to the last inquiry?

3 MR. THORNE: Of course.

4 ARBITRATOR MATZ: When the board takes a vote
5 under its applicable bylaws, does a majority constitute
6 sufficient numbers to either pass or disapprove, or does
7 it have to be unanimous like the concept of consensus
8 for GAC?

9 THE WITNESS: No. It's actually majority if you
10 have quorum. But typically, the discussions take a
11 longer time until everybody is satisfied. And normally,
12 they're all satisfied one way or another with very few
13 exceptions.

14 ARBITRATOR MATZ: But the board can resolve an
15 issue by a majority vote?

16 THE WITNESS: Yes.

17 ARBITRATOR BONNER: Let me follow up too. This
18 is Exhibit 17 to the Atallah --

19 THE WITNESS: Yes, yes.

20 ARBITRATOR BONNER: And it's page 3, Mr. Atallah.
21 Mr. LeVee referred you to the top of that page,
22 and I'll just quote it. It says (as read):

23 "The committee explored potential
24 consequences associated with taking
25 each action."

1 So to that -- and you were there. So to that, it
2 seems to me that would indicate, if you recall, that one
3 of the potential actions that the committee, the NGPC,
4 could consider taking was to reject the GAC consensus
5 advice, right? That was one --

6 THE WITNESS: Yes.

7 ARBITRATOR BONNER: And I want you to think very
8 carefully on this, but during the course of that
9 meeting, was it mentioned that one of the consequences
10 of rejecting the GAC advice would be or could be that
11 certain countries of Latin America or elsewhere might
12 vote to join the ITR or vote in favor of the ITR treaty?

13 THE WITNESS: No, Your Honor, it wasn't.

14 ARBITRATOR BONNER: It was not discussed.

15 THE WITNESS: It was not discussed.

16 ARBITRATOR BONNER: Let me ask you -- and this is
17 kind of a broad question, but it is -- should -- we -- I
18 think the evidence would indicate that political issues
19 or concerns can enter into the GAC advice. Well, your
20 argument from counsel is to whether that statement is
21 true or not. But let's just assume for the moment
22 political concerns potentially could enter into how the
23 GAC advises the board or the NGPC.

24 But my question really is whether political
25 factors or political issues should be considered by the

1 NGPC or the board in terms of its making decisions.

2 THE WITNESS: So I believe that we tried to
3 separate the new gTLD program from everything that is
4 happening outside of ICANN, because of the rights of the
5 applicants. They actually use the Guidebook to base
6 their applications on, so we wanted to be true to that
7 commitment from the beginning to end. And we tried to
8 separate the two.

9 Now, like you're saying, that the GAC advice is
10 coming from left field and it wasn't foreseen, but then
11 was expectation that the GAC could provide this advice.
12 And we put the Early Warnings in the process so that we
13 can actually provide as much of the lead to the
14 applicant as possible.

15 ARBITRATOR BONNER: Okay. But focus in on this.
16 The board or the -- in this case, the NGPC, when it's
17 deciding whether to grant or deny an application, which
18 is really a decision whether the application is going to
19 proceed or not, when it's making that decision, would
20 you agree that the board or the NGPC is functioning in a
21 quasi judicial role?

22 THE WITNESS: I think that the quasi may be -- it
23 is a -- at the end, a -- every director has to vote to
24 his own conscience. And basically what they are
25 weighing is the applicant rights and other -- and the

1 rights of everybody else that is objecting to that.

2 So if the applicant has enough reasons or
3 rationale that can convince him to -- that -- you know,
4 to weigh it heavier, then they would actually go that
5 way.

6 And if it's not, then they would go with the
7 process.

8 ARBITRATOR BONNER: Yeah. So I think that --
9 what I mean by that is -- I'm not asking you for your --
10 I guess your interpretation of the articles and the
11 bylaws, given your position with the ICANN.

12 But don't the articles and the bylaws and the
13 Guidebook -- I mean, don't they contemplate that the
14 board or the NGPC decisions will be based on the merits?

15 THE WITNESS: Yes.

16 ARBITRATOR BONNER: Is that right? Is that a
17 fair statement?

18 THE WITNESS: Yeah, we believe that every
19 application that actually passes the process, which the
20 .amazon did, it's -- basically deserves a TLD, a
21 top-level domain.

22 Now, barring objections and the process of GAC
23 advice, then they should have gotten through the process
24 and gotten their TLD. But these -- these objection
25 processes and their GAC advice is put in place to

1 provide protections that are not in the interest of the
2 applicants, basically.

3 So if something -- if the -- the applicant is
4 mostly commercial or an applicant of commercial TLD,
5 they are not going to pay enough attention to the public
6 interest to the harm that could be done on the Internet
7 to the -- so these other objections and processes are
8 put in place to balance these two.

9 ARBITRATOR O'BRIEN: Mr. Atallah, you referred to
10 objection process in the GAC, but in this case, it's
11 only the GAC advice because the objection process was
12 resolved in Amazon's favor; is that correct?

13 THE WITNESS: Yes.

14 ARBITRATOR O'BRIEN: So in this case, the only
15 thing standing between Amazon and the gTLD was the GAC
16 advice, correct?

17 THE WITNESS: Yes, correct.

18 ARBITRATOR BONNER: So if there were no
19 legitimate public policy interest behind the GAC advice,
20 the merits would -- and their decision were made on the
21 merits, that would overcome presumably the presumption
22 that the GAC advice is to be followed?

23 THE WITNESS: Well, if we didn't get consensus
24 for that GAC advice, then yes, the application would
25 continue.

1 ARBITRATOR BONNER: No. I'm assuming that you
2 had consensus GAC advice, but the consensus GAC advice
3 was not based upon legitimate public policy interest.

4 THE WITNESS: That's a hypothetical. Yeah. I
5 don't know what would have happened if it wasn't based
6 on -- or how would we determine that it wasn't or who
7 would determine that it wasn't if the GAC has consensus.

8 ARBITRATOR BONNER: Well, how about this? If
9 there was a duty to inquire or investigate, how about an
10 inquiry as to whether or not the public policy interests
11 that's underlying the GAC advice is actually valid and
12 legitimate, did -- was there any inquiry or any
13 investigation to determine whether the public policy
14 interests that underlied the GAC advice, which seems to
15 be the positions taken by Brazil and Peru in the Early
16 Warnings and so forth, was there any inquiry or
17 investigation by the NGPC to determine whether that --
18 whether there was a -- truly was a rationale, logical
19 reason behind the advice? And if so, what was it? What
20 was done to determine whether there was a legitimate
21 public policy interest?

22 THE WITNESS: I don't think there was any
23 investigation done to look at that. But there was no
24 reason for us to believe that the public interests of
25 the Brazilian people is misrepresented by their

1 governments.

2 ARBITRATOR BONNER: Okay. Thank you.

3 ARBITRATOR MATZ: Follow up on yours.

4 When Judge Bonner asked you whether the bylaws
5 require a decision to be based on merits -- and I think
6 you basically wound up saying yes -- does the definition
7 of merits mean that the process and the evaluation would
8 be based on and consistent with what the articles and
9 bylaws require? Is that what it means to have a
10 decision based on the merits?

11 THE WITNESS: Yes. The Guidebook was based on
12 the bylaws, so the whole process was based on that.

13 ARBITRATOR MATZ: And was that the basis for the
14 outcome in the particular case here as to Amazon's
15 application?

16 THE WITNESS: Yes.

17 ARBITRATOR MATZ: And when you were responding to
18 the questions that were just put to you -- they were
19 very important questions about public policy -- did you
20 have a view in your mind as to whether or not a
21 determination of public policy can -- or whether a
22 public policy was acknowledged or addressed could be
23 decided based upon the position of a particular member
24 of GAC as to the interests of that member's
25 constituency?

1 THE WITNESS: My mind doesn't matter, but I'll
2 answer it. Because it's the board's mind that counts.

3 ARBITRATOR MATZ: Well, you're our only witness,
4 so I have to ask you.

5 THE WITNESS: Like I said, there was no
6 compelling reason for us to believe that the governments
7 were misrepresenting the public interest of their
8 constituents. And if there was any, you know, smoking
9 gun, I believe that we would have -- the board would
10 have actually inquired or asked some more questions.

11 That's how, you know, the presumptive -- strong
12 presumption would have been overcome, basically.

13 ARBITRATOR MATZ: Perhaps I can phrase the
14 question this way.

15 When the board was evaluating the record before
16 it -- Mr. LeVee and others helped you tell us what the
17 record was -- did that record include any information
18 about the public policy interests that were part of the
19 entire dispute to the extent that those interests were
20 asserted by the challengers, by the nations?

21 THE WITNESS: So yes. I mean, if you look at
22 the -- what we read earlier in the session where the
23 government of Peru was having the three points, one of
24 the points was the public interest. The same thing was
25 repeated by the Brazilian government, is that public

1 interest.

2 And I think that they viewed this as a missed
3 opportunity for the future of their -- of their
4 constituents in that if the TLD was awarded, that they
5 would not have access to it in the future.

6 And as a developing country and population, maybe
7 they are not ready today to apply for that string, but
8 in the future, they might see value in it and want to
9 apply for it, and that's where the public interest
10 governments are presenting for the future of these
11 people.

12 ARBITRATOR MATZ: Okay.

13 ARBITRATOR BONNER: Mr. Thorne, anything else?

14 MR. THORNE: Judge Bonner, you asked my
15 questions, so no. Thank you very much.

16 ARBITRATOR BONNER: All right.

17 Anything further, Mr. LeVee.

18 MR. LeVEE: No, thank you.

19 ARBITRATOR BONNER: May this witness be excused,
20 then?

21 MR. THORNE: Yes.

22 MR. LeVEE: Yes.

23 (Recess.)

24 ARBITRATOR BONNER: So we'll see you at 9:30
25 tomorrow morning.

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(Whereupon the proceedings was adjourned
at 4:50 p.m.)

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am not financially interested in the action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated:5/8/17



MELISSA M. VILLAGRAN

CSR No. 12543 RPR